



Habitat International Coalition
Housing and Land Rights Network

HIC-HLRN “ToolKit”

1. Legal security of tenure and freedom from dispossession

1.1. Concept and meaning

The legal right to secure tenure, whether freehold, leasehold, or other form of individual and collective possession of housing, involves protection from forced eviction, harassment and other threats. It also effectively guarantees access to, use of and control over land, property and housing resources. Governments should "confer security of tenure to all persons currently threatened with forced eviction and...adopt all necessary measures, giving full protection against forced eviction, based upon effective participation, consultation and negotiation with affected persons or groups" (CHR 1993/77).

Each individual and community has a right to a place to live without threat of dispossession from land, all forms of their property, their homes and resources, as well as all individual and collective holdings required to sustain livelihood. The state must safeguard this right to freedom from dispossession, protect vulnerable groups and compensate, resettle or provide for restitution where dispossession takes place.

1.2. Sources

In this section, your **Step 2**, the HLRN “Toolkit” provides the most important international legal basis and the popular claims that ground each element of the human right to adequate housing. This compilation attempts to be as comprehensive as possible; however, additional popular sources and legal developments will augment this inventory in the future.

It is vital to establish both the established sources in international law and the popular claims. The authority of the legal sources carries corresponding obligations on most States, and applies universally to all people on the planet as *human* rights. The popular sources advance claims that are “emerging” with human rights language eventually to be codified in the law. All legally established human rights norms originated as popular claims carried forth through various forms of historic struggle.

The Legal Authority

Please note that the legal instruments cited here carry differing levels of obligation, and they are organized for you accordingly. Customary law is made up of those norms and principles that legal opinion and interstate institutions consider so basic and so repeatedly affirmed as to be binding on all legal personalities. The Universal Declaration of Human Rights, the antecedent to all subsequent human rights treaties, is the most relevant example of customary law for our purposes, even though it does not establish a monitoring and enforcement mechanism to ensure compliance.

The ratified treaties (Covenants, Charters, Conventions, etc.) are binding on all their ratifying States parties, and each establishes an independent body to monitor and guide implementation. The treaty-monitoring process provides an opportunity for civil society, States and the international legal bodies each to play a role. These international treaties are also characterized as hard law (*lex lata*), because of their binding nature. Treaty law, by definition, is any agreement between two or more States. The treaties considered here are those of both international and regional nature.

The “soft-law” instruments (*lex feranda*) include the Declarations, Basic Principles, Minimum Rules, General Comments, etc., that are the multilateral commitments arising from international conferences, assemblies, summits, congresses and other specialised meetings. Also included in this category are the general and country-specific guidance that the treaty-monitoring bodies issue to guide and specify treaty obligations, as well as those instruments of inter-State agreement (decisions and resolutions) arising from the various political bodies of the international system (e.g., UN Commission on Human Rights, International Labour Organisation General Assembly, etc.). These instruments contain standards that are declaratory of already-binding international law, reflect the collective political will of States and provide specificity to the general Articles in the binding instruments. However, these form legal and policy guidance without the corresponding obligations of treaty law and without the corresponding legal monitoring mechanisms.

Thus, the list of legal sources in this section of the HLRN “Toolkit” maintains a corresponding priority order such that presents the binding instruments first (in chronological order of their adoption), and follows with the nonbinding, declaratory sources (in their chronological order):

- ***International Treaty Law***
- ***Regional Treaty Law***
- ***Declaratory Instruments and Jurisprudence***

The Moral Argument

The popular sources are useful especially in demonstrating ground-level recognition of the various elements of adequate housing as rights in and of themselves, but also provide a list of human rights that reflect common human needs, but await codification as *bona fide* rights. The “emerging rights” include elements inextricable from the human right to adequate housing: water, land and energy, among others. The popular sources are indicators of the ever-evolving specificity of human rights law and the legal and problem-solving horizons toward which social movements and the human rights community are heading.

The relevant excerpts from these collective moral are listed in the “Toolkit” Sources (Step 2) as *Popular Sources*. These are moral, rather than legal, in nature. However, as claims, they bear legal dimensions in the sense that they are the substance of future legal standards. We continue to include these claims in the HLRN “Toolkit” as they emerge from popular struggles, natural and social sciences, nongovernmental forums, social movements, campaigns and labour action (strikes), as well as other forms of popular and collective problem-solving initiatives.

In this “Toolkit,” *Popular Sources* are distinguished from the legal sources by their presentation in *italic* script.

Another source of the human right with a legal dimension is the jurisprudence of course-based decisions on cases involving housing and land rights. These also could provide the

basis for legal argument even in distant jurisdictions. Examples include the case-specific—but internationally relevant—rulings in famous decisions in favor of housing rights claims such as those arising from legal struggles in Cyprus, Palestine/Israel and South Africa:

Qa'adan versus Israel Lands Administration (ILA), Ministry of Construction and Housing, Tal-Iron Local Municipal Council, Jewish Agency for the Land of Israel (JA), KATZIR: Cooperative Association for Community Settlement in Samaria Ltd., and the Farmers Association; Case No. 6698/95 of the Israeli Supreme Court, sitting as the High Court of Justice.

Irene Grootboom and Others versus Oostenberg Municipality, Cape Metropolitan Council, the Premier of the Province of the Western Cape, National Housing Board, and Government of the Republic of South Africa, Constitutional Court of South Africa Case No: 6826/99 (1999).

Loizidou versus Turkey (Article 50 and Merits), European Court of Human Rights Case 40/1993/435/514 (18 December 1996).

✓ Legal sources

Legal security of tenure

Customary International Law

Universal Declaration of Human Rights (UDHR) (1948)

Article 17. “No one shall be arbitrarily deprived of his property...Everyone has the right to own property alone as well as in association with others.”

International Treaty Law

Committee on Economic, Social and Cultural Rights (CESCR) General Comment No. 4, “the right to adequate housing” (1991)

8(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.”

International Covenant on Economic, Social and Cultural Rights (1966)

Article 11.1. “The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.”

International Covenant on Civil and Political Rights (1966)

Article 1.1, 1.3. “All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural

development...The States Parties to the present Covenant, including those having responsibility for the administration of NonSelf-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.”

Convention on the Elimination of All Forms of Racial Discrimination (1965)

Article 5. “...States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of... **(d)(v)** The right to own property alone as well as in association with others; **(vi)** The right to inherit... **(e)(iii)** The right to housing...”

International Labour Organisation Convention No. 117 on Social Policy (Basic Aims and Standards) (1962)

4. “The measures to be considered by the competent authorities for the promotion of productive capacity and the improvement of living of agricultural producers shall include: **(d)** the supervision of tenancy arrangements and of working conditions with a view to securing for tenants and labourers the highest practicable standards of living...”

Regional Treaty Law

European Charter of Fundamental Rights (2000)

Article 17: Right to property

1. “Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest.”

African Charter on Human and Peoples’ Rights (1981)

Article 14. “The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.”

American Convention on Human Rights (1969)

Article 21.1. “Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society. **2.** No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law. **3.** Usury and any other form of exploitation of man by man shall be prohibited by law.”

Declaratory Instruments and Jurisprudence

World Summit on Sustainable Development Plan of Implementation (2002)

7(h) “Provide access to agricultural resources for people living in poverty, especially women and indigenous communities, and promote, as appropriate, land tenure arrangements that recognize and protect indigenous and common property resource management systems;”

40(i) “Adopt policies and implement laws that guarantee well defined and enforceable land and water use rights and promote legal security of tenure, recognizing the existence of

different national laws and/or systems of land access and tenure, and provide technical and financial assistance to developing countries as well as countries with economies in transition that are undertaking land tenure reform in order to enhance sustainable livelihoods;”

67(b) “Promote and support efforts and initiatives to secure equitable access to land tenure and clarify resource rights and responsibilities, through land and tenure reform processes that respect the rule of law and are enshrined in national law, and provide access to credit for all, especially women, and that enable economic and social empowerment and poverty eradication as well as efficient and ecologically sound utilization of land and that enable women producers to become decision makers and owners in the sector, including the right to inherit land;”

Declaration of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (2001)

43. “We also recognize the special relationship that indigenous peoples have with the land as the basis for their spiritual, physical and cultural existence and encourage States, wherever possible, to ensure that indigenous peoples are able to retain ownership of their lands and of those natural resources to which they are entitled under domestic law;”

Declaration on Cities and Other Human Settlements in the New Millennium (Habitat II +5 United Nations General Assembly resolution S-25/2 [2001])

38. “Also resolve to empower the poor and vulnerable, *inter alia* through promoting greater security of tenure...”

United Nations Millennium Declaration (2000)

19. “We resolve further...[to] Have achieved by 2020 a significant improvement in the lives of at least 100 million slum dwellers.”

United Nations Global Strategy for Shelter to the Year 2000 (UNGAR 43/181) (1988)

Point 13. “The right to adequate housing is universally recognized by the community of nations...All nations without exception, have some form of obligation in the shelter sector, as exemplified by their creation of ministries or housing agencies, by their allocation of funds to the housing sector, and by their policies, programmes and projects. All citizens of all States, poor as they may be, have a right to expect their Governments to be concerned about their shelter needs, and to accept a fundamental obligation to protect and improve houses and neighbourhoods, rather than damage or destroy them.”

Sub-Commission on the Promotion and Protection of Human Rights resolution 1998/15, “Women and the right to land property and adequate housing”

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

Sub-Commission on the Promotion and Protection of Human Rights resolution 1998/9, “Forced evictions”

“Reaffirming that every woman, man and child has the right to a secure place to live in peace and dignity, which includes the right not to be evicted arbitrarily or on a discriminatory basis from one’s home, land or community...1. Reaffirms that the practice of forced eviction

constitutes a gross violation of a broad range of human rights, in particular the right to adequate housing, the right to remain, the right to freedom of movement, the right to privacy, the right to property, the right to an adequate standard of living, the right to security of the home, the right to security of the person, the right to security of tenure and the right to equality of treatment;”

Sub-Commission on the Promotion and Protection of Human Rights resolution 1997/6, Forced Eviction”

1. “Reaffirms that forced evictions may often constitute gross violations of a broad range of human rights, in particular the right to adequate housing, the right to remain, the right to freedom of movement, the right to privacy, the right to property, the right to an adequate standard of living, the right to security of the home, the right to security of the person, the right to security of tenure and the right to equality of treatment;
2. Strongly urges Governments to undertake immediately measures at all levels aimed at eliminating the practice of forced eviction by, *inter alia*, ensuring the right to security of tenure for all residents.”

Istanbul Declaration on Human Settlements (Habitat II) (1996)

Habitat Agenda, adopted by the second United Nations Conference on Human Settlements (Habitat II) (1996)

8. “We reaffirm our commitment to 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 nongovernmental 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.”

39. “We reaffirm our commitment to the full and progressive realization of the right to adequate housing, as provided for in international instruments. In this context, we recognize an obligation by Governments to enable people to obtain shelter and to protect and improve dwellings and neighbourhoods. We commit ourselves to the goal of improving living and working conditions on an equitable and sustainable basis, so that everyone will... enjoy freedom from discrimination in housing and legal security of tenure. We shall implement and promote this objective in a manner fully consistent with human rights standards”

40. “We further commit ourselves to the objectives of:... (b) Providing legal security of tenure and equal access to land to all people, including women and those living in poverty; and undertaking legislative and administrative reforms to give women full and equal access to economic resources, including the right to inheritance and to ownership of land and other property, credit, natural resources and appropriate technologies... (d) Ensuring transparent, comprehensive and accessible systems in transferring land rights and legal security of tenure...”

61(b) “Providing legal security of tenure and equal access to land for all, including women and those living in poverty, as well as effective protection from forced evictions that are contrary to the law, taking human rights into consideration and bearing in mind that homeless people should not be penalized for their status”

Arab Declaration on Sustainable Development for Human Settlements (Rabat Declaration) (1995)

General Principles and Goals... human settlement and the achievement of sustainable development.

11. “Forced expulsion and settlement in the occupied Arab territories [are] confirmed by the international community as illegal acts, constitute a flagrant violation of human rights, a threat to regional and world peace, and an impediment to sustainable development of human

settlements in the region. Therefore, the termination of such illegitimate practices would enhance the establishment of equitable and comprehensive peace in the region.”

Commission on Human Rights resolution 1993/77, “Forced evictions”

1. ”Affirms that the practice of forced eviction constitutes a gross violation of human rights, in particular the right to adequate housing.”

2. “Urges Governments to undertake immediate measures, at all levels, aimed at eliminating the practice of forced eviction. Also urges Governments to confer legal security of tenure on all persons currently threatened with forced eviction and to adopt all necessary measures giving full protection against forced eviction, based upon effective participation, consultation and negotiation with affected persons or groups.”

Agenda 21, adopted at the United Nations World Conference on Environment and Development (UNCED) (1992)

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

Sub-Commission on the Promotion and Protection of Human Rights resolution 1991/12, “Forced evictions”

“The Sub-Commission, recognizing that the practice of forced eviction...[results] in the destruction of the lives and identities of people throughout the world, as well as increasing homelessness”; ... “Draws the attention of the Commission on Human Rights to... **(b)** The fact that the practice of forced evictions constitutes a gross violation of human rights, in particular the right to adequate housing; **(c)** The need for immediate measures to be undertaken at all levels aimed at eliminating the practice of forced eviction”; ... “Emphasizes the importance of the provision of immediate, appropriate and sufficient compensation and/or alternative accommodation, consistent with the wishes and needs of persons and communities forcibly or arbitrarily evicted, following mutually satisfactory negotiations with the affected person(s) or group(s).”

Declaration on Social Progress and Development (1969)

Article 1. “All peoples and all human beings, without distinction as to race, colour, sex, language, religion, nationality, ethnic origin, family or social status, or political or other conviction, shall have the right to live in dignity and freedom and to enjoy the fruits of social progress and should, on their part, contribute to it...”

Article 6.“Social progress and development require the participation of all members of society in productive and socially useful labour and the establishment, in conformity with human rights and fundamental freedoms and with the principles of justice and the social function of property, of forms of ownership of land and of the means of production which preclude any kind of exploitation of man, ensure equal rights to property for all and create conditions leading to genuine equality among people.”

American Declaration of the Rights and Duties of Man (1948)

Article XXIII. “Every person has a right to own such private property as meets the essential needs of decent living and helps to maintain the dignity of the individual and of the home.”

Right to Freedom from Dispossession and Right to Compensation

Customary International Law

Universal Declaration of Human Rights (UDHR) (1948)

Article 8. “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.”

Article 17. “Everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property.”

Article 2. “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.”

International Treaty Law

International Covenant on Civil and Political Rights (1966)

Article 2.3(a) [compensation]: “Each State Party to the present Covenant undertakes...To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.”

Regional Treaty Law

American Convention on Human Rights (1969)

Article 10. Right to Compensation: “Every person has the right to be compensated in accordance with the law in the event he has been sentenced by a final judgment through a miscarriage of justice.”

Article 21.2. “No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.”

African Charter on Human and Peoples’ Rights (1981)

Article 21.1. “All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it. **2.** In case of spoliation, the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation....”

Declaratory Instruments and Jurisprudence

Committee on Economic, Social and Cultural Rights (CESCR) General Comment No. 7, “The right to adequate housing: forced evictions” (1997)

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. [compensation] “...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.”

Vancouver Declaration Human Settlements (1976)

15. “The highest priority should be placed on the rehabilitation of expelled and homeless people who have been displaced by natural or man-made catastrophes, and especially by the act of foreign aggression. In the latter case, all countries have the duty to fully co-operate in order to guarantee that the parties involved allow... them the right to possess and enjoy their properties and belongings without interference.”

United Nations Guiding Principles on Internal Displacement (1998)

Principle 6.1. “Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence.”

Sub-Commission on the Promotion and Protection of Human Rights 1997/6, “Forced evictions”

4. “Recommends that all Governments provide immediate restitution, compensation and/or appropriate and sufficient alternative accommodation or land, consistent with their rights and needs, to persons and communities that have been forcibly evicted, following mutually satisfactory negotiations with the affected persons or groups, and recognizing the obligation to ensure such provision in the event of any forced eviction...”

Draft Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of Human Rights and Humanitarian Law (E/CN.4/Sub.2/1996/17)

VII. [restitution] ”In accordance with international law, States have the duty to adopt special measures, where necessary, to permit expeditious and fully effective reparations. Reparation shall render justice by removing or redressing the consequences of the wrongful acts and by preventing and deterring violations. Reparations shall be proportionate to the gravity of the violations and the resulting damage and shall include restitution, compensation, rehabilitation, satisfaction and guarantees of nonrepetition...”

[forms of reparation]: Reparations may take any one or more of the forms mentioned below, which are not exhaustive, viz:

12. Restitution shall be provided to re-establish the situation that existed prior to the violations of human rights and humanitarian law. Restitution requires, inter alia, restoration of liberty, family life, citizenship, return to one's place of residence, employment of property.

13. Compensation shall be provided for any economically assessable damage resulting from violations of human rights and humanitarian law, such as:

- (a) Physical or mental harm, including pain, suffering and emotional distress;
- (b) Lost opportunities including education;
- (c) Material damages and loss of earnings, including loss of earning potential;
- (d) Harm to reputation or dignity;
- (e) Costs required for legal or expert assistance.

Commission on Human Rights resolution 1993/77, “Forced evictions”

“Recommends that all Governments provide immediate restitution, compensation and/or appropriate and sufficient alternative accommodation or land, consistent with their wishes and needs, to persons or communities that have been forcibly evicted.”

Committee on Economic, Social and Cultural Rights (CESCR) General Comment No. 4, “the right to adequate housing” (1991)

17. [compensation]: “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... 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.”

United Nations General Assembly resolution “Palestine: Progress Report of the United Nations Mediator” (A/RES/194 [III]) (1948)

Article 11. [compensation] “Resolves that the refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible...Instructs the Conciliation Commission to facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation, and to maintain close relations with the Director of the United Nations Relief for Palestine Refugees and, through him, with the appropriate organs and agencies of the United Nations.”

✓ **Popular Sources**

Legal Security of Tenure

European Charter for Housing Rights and the Struggle against Exclusion (2000)
[Association Internationale de Techniciens, Experts et Chercheurs—AITEC]

1. “Everyone has a right to housing. It is a fundamental entitlement, not merely a right to shelter. It is a right to dignity and citizenship.”

The Practice of Forced Evictions: Comprehensive Human Rights Guidelines on Development-based Displacement (1997)

9. “States should secure by all appropriate means, including the provision of security of tenure, the maximum degree of effective protection against the practice of forced evictions for all persons under their jurisdiction. In this regard, special consideration should be given to the rights of indigenous peoples, children and women, particularly female-headed households and other vulnerable groups. These obligations are of an immediate nature and are not qualified by resource-related considerations.”

Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms

Article 1. “Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

People’s Petition to the UN to Reaffirm the Human Rights to Adequate Housing (1996)

[The Centre on Housing Rights and Evictions—COHRE [Switzerland], The People's Decade for Human Rights Education—PDHRE, Youth for Unity of Voluntary Action (India) and Habitat International Coalition (HIC)]

“The Vienna Human Rights Declaration, 1993, reaffirmed human rights as universal, indivisible, interconnected, and interrelated. In the spirit of this established truth it is evident that the human right of every woman, man, youth and child to a secure place to live in peace and dignity is a prerequisite of social justice. Security of home is essential for people to be able to benefit from the human rights to equal access to civic services, to potable water, to a safe and healthy environment, to primary healthcare, to education, and gainful employment. The gaining and retention of the human right to adequate housing is essential for the security and progress of individuals and communities and thus a critical basis in society for the attainment of justice and dignity.”

National Campaign for Housing Rights (1990)

[Some Essential Points for Shaping State Intervention in Housing in India Today]

V. “Displacement and eviction of people must be stopped, since they constitute the destruction of housing and the de-housing of people as well as greatly deepening poverty, crushing cultural identity, and causing social division and alienation.”

Draft Declaration on the Right to Adequate Housing (1990)

[“Working for Housing Rights” Conference Planning Committee: Affordable housing Action Group, Centre for Equality Rights in Accommodation, National Action Committee on the Status of Women, Shelter for the Homeless Foundation, and Urban Core Support Network, meeting in Ottawa ON, Canada, May 1990.]

“Secure tenure, establishing the right of all people to a home and to a safe and healthy environment; preventing eviction for convenience, profit or as a means of punishment; stopping economic eviction by unpredictable and unaffordable rent increases, or eviction by violence, harassment, war or environmental destruction; recognizing the rights of women, children and others to maintain their homes free from violence and the special rights of aboriginal communities to land and habitat.”

Right to Freedom of Dispossession and Right to Compensation

WCaR NGO Forum Declaration (2001)

367. *“States must take immediate and effective measures to end the...dispossession and denial of access to these waters, lands, territories and natural resources.”*

374. *“Demands that States take immediate and effective measures to end the devastation and contamination of Indigenous waters, lands, territories and natural resources and the dispossession and denial of access to these waters, lands, territories and natural resources.”*

Cambodian NGO Forum, NGO Issues Paper on Resettlement Programs (2003)

“The government should prepare and implement land use and relocation plans... planning should include the number of affected people and the scope of losses recognized in the policies and legal safeguards such as compensation with regard to property, the cost of dismantling of existing houses and rebuilding in a new location, the restoration of livelihoods, environmental protection, responsibility for the time delay in obtaining new land, and other measures related to relocation and the consultation mechanism with affected people.”

1.3. Over-riding principles

Principles found in the initial Articles common to all the major international human rights treaties affirm standards of justice arising from the major legal systems of the world. These include principles of immediate application, such as the inalienable rights to self-determination; non-discrimination, in general; gender equality; and the rule of law, including access to justice and domestic application of the human rights contained in each treaty, particularly by adopting legislative measures.

In the case of economic, social and cultural rights, the International Covenant on Economic, Social and Cultural Rights (ICESCR) is the principle source of these rights in treaty form. The Covenant also clarifies that the State party's treaty obligation entails ensuring the "progressive realisation" of the rights "to the maximum of its available resources" (Article 2.1), including the human right to adequate housing (Article 11). Therefore, a process of realising the rights should not regress, but should ensure "the continuous improvement of living conditions" (Article 11).

The ICESCR's Article 2.1 also requires States to undertake steps, individually and through international assistance and cooperation, especially economic and technical, progressively to achieve the full realization of the covenanted rights by all appropriate means. Thus, States party to the Covenant bear an obligation to apply these principles extraterritorially and in their international relations. Therefore, "international cooperation" forms an important practical aspect of ESC rights application and, therefore, one of the principles over-riding States' duties to implement human rights.

Comprehensive monitoring of the human right to adequate housing requires assessing each entitlement (element) in light of the rights and corresponding obligations arising from these over-riding legal principles:

- **Self-determination**
- **Nondiscrimination**
- **Gender equality**
- **Rule of law**
- **Progressive realization (nonregressivity/nonretrogression)**
- **International cooperation**

The normative approach provided in the international human rights system prevails upon the monitor to pose a number of relevant questions related to implementation not only of the specific content of the particular right, but also these over-riding principles common to the principal human rights treaties and applicable to all rights. This section will guide the monitor in applying these six over-riding principles in the respect, defense, promotion and fulfilment of the human right to adequate housing and land.

✓ **Self-determination**

General description

The principle of equal rights and self-determination of peoples is considered to have been a general principle of international law arising from common State practice already at the founding of the League of Nations. However, self-determination was first codified in the Charter of the United Nations in 1945, which sets forth the purposes of the United Nations as:

2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace...¹

The Charter's Article 55 stipulates further:

With a view to the creation of conditions of stability and well-being, which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

- a. higher standards of living, full employment, and conditions of economic and social progress and development;²
- b. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and
- c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

Every State has the duty, therefore, through unilateral, bilateral and multilateral action to promote universal respect for, and observance of human rights and fundamental freedoms in accordance with the Charter. Its Article 2.2 clarifies the universal duty of State membership such that:

All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with the present Charter.

The principle of self-determination has been progressively reaffirmed and legally defined throughout the UN system since its founding.³ The material significance of self-determination is further elaborated in the Covenants on human rights adopted in 1966.⁴ The common Article 1(2) of both the ICCPR and ICESCR sets forth that:

All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

How concerned persons/communities exercise an effective role in determining the terms by which they realize the human right to adequate housing is also a subject of the inalienable right of self-determination. Self-determination is the right of peoples, not of States. It is the State, however, that is the legal personality obliged to ensure the protection, defense,

¹ Charter of the United Nations, 26 June 1945, Article 1(2).

² *Ibid.*, Chapter IX, "International Economic and Social Co-operation," Article 55.

³ For example, see Declaration on the Granting of Independence to Colonial Countries and Peoples (1960), preamble and Article 7; "Permanent sovereignty over natural resources," General Assembly resolution 1803 (XVII) (1962), preamble and paras. 1–2, 5–7; International Convention on the Elimination of All Forms of Racism and Racial Discrimination (1965), Articles 1 and 5; Declaration on Social Progress and Development (1969), Articles 2, 3 and Part II; Declaration on Principles of International Law (1970), preamble and, esp., "The principle of equal rights and self-determination of peoples"; ECOSOC Declaration on Race and Racial Prejudice (1978), Articles 1, 3, 5 and 9 Declaration on the Right to Development (1986) preamble and Article 1, 6 and 8.

⁴ International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI), 16 December 1966 (entered into force 3 January 1976 in accordance with Article 27); Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI), 16 December 1966 (entered into force 23 March 1966 1976 in accordance with Article 49).

promotion and fulfillment of self-determination as a duty under international public law, as well as the essential legitimizing factor of the State itself.⁵

The concept of, and right to self-determination manifest in a spectrum of types and expressions of effective local control over developments and relations within a community and territory may involve either external or internal self-determination; that is, national independence as in the formal distinction of a self-determination unit with its own internationally recognized borders, a self-determination unit within the internationally recognized borders of a unitary State, or a community's⁶ effective control over developments and relations affecting it as an independent State.⁷

In its General Comment No. 12 on "the right of self-determination of peoples" (1984), The UN Human Rights Committee (HRC) gave its guidance on the corresponding obligations of States, with the following:

1. In accordance with the purposes and principles of the Charter of the United Nations, Article 1 of the International Covenant on Civil and Political Rights recognizes that all peoples have the right of self-determination. The right of self-determination is of particular importance because its realization is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights. It is for that reason that States set forth the right of self-determination in a provision of positive law in both Covenants and placed this provision as Article 1 apart from and before all of the other rights in the two Covenants.

2. Article 1 [of ICCPR] enshrines an inalienable right of all peoples as described in its paragraphs 1 and 2. By virtue of that right they freely "determine their political status and freely pursue their economic, social and cultural development". The Article imposes on all States parties corresponding obligations. This right and the corresponding obligations concerning its implementation are interrelated with other provisions of the Covenant and rules of international law.

3. Although the reporting obligations of all States parties include Article 1, only some reports give detailed explanations regarding each of its paragraphs. The Committee has noted that many of them completely ignore Article 1, provide inadequate information in regard to it or confine themselves to a reference to election laws. The Committee considers it highly desirable that States parties' reports should contain information on each paragraph of Article 1.

4. With regard to paragraph 1 of Article 1, States parties should describe the constitutional and political processes which in practice allow the exercise of this right.

5. Paragraph 2 affirms a particular aspect of the economic content of the right of self-determination, namely the right of peoples, for their own ends, freely to

⁵ Consistent with the principle of the Universal Declaration of Human Rights, Article 21, which states that "the will of the people shall be the basis of the authority of government."

⁶ While a standard legal definition of nation and people remains a subject of debate, the International Court of Justice has offered criteria for a community, having distinct rights as "a group of persons living in a given country or locality, having a race, religion, language and traditions of their own and united by the identity of race, religion, language and traditions in a sentiment of solidarity, with a view to preserving their traditions, maintaining their form of worship, insuring the instruction and upbringing of their children in accordance with the spirit and traditions of their race and rendering mutual assistance to each other," Permanent Court of International Justice, The Greco-Bulgarian "Communities" Advisory Opinion No. 17, 13 July 1939 (Leyden: Sijthoff, 1930), 21.

⁷ For a comprehensive consideration of the human right of self-determination and its applications, see Hurst Hannum. *Autonomy, Sovereignty, and Self-Determination: The Accommodation of Conflicting Rights* (Philadelphia: University of Pennsylvania Press, 1996).

"dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence." This right entails corresponding duties for all States and the international community. States should indicate any factors or difficulties which prevent the free disposal of their natural wealth and resources contrary to the provisions of this paragraph and to what extent that affects the enjoyment of other rights set forth in the Covenant.

6. Paragraph 3, in the Committee's opinion, is particularly important in that it imposes specific obligations on States parties, not only in relation to their own peoples but *vis-à-vis* all peoples which have not been able to exercise or have been deprived of the possibility of exercising their right to self-determination. The general nature of this paragraph is confirmed by its drafting history. It stipulates that "The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations". The obligations exist irrespective of whether a people entitled to self-determination depends on a State party to the Covenant or not. It follows that all States parties to the Covenant should take positive action to facilitate realization of and respect for the right of peoples to self-determination. Such positive action must be consistent with the States' obligations under the Charter of the United Nations and under international law: in particular, States must refrain from interfering in the internal affairs of other States and thereby adversely affecting the exercise of the right to self-determination. The reports should contain information on the performance of these obligations and the measures taken to that end.

7. In connection with Article 1 of the Covenant, the Committee refers to other international instruments concerning the right of all peoples to self-determination, in particular the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, adopted by the General Assembly on 24 October 1970 (General Assembly resolution 2625 (XXV)).

8. The Committee considers that history has proved that the realization of and respect for the right of self-determination of peoples contributes to the establishment of friendly relations and cooperation between States and to strengthening international peace and understanding.

Self-determination applied to communities

The over-riding principle of self-determination in this "Toolkit" is inspired by classic (customary and treaty) law criteria, as well as popular claims to the same. In both senses, the claim is legally fixed in the common Article 1 of the human rights treaties. Using the ICESCR as a basic and integrated instrument, the "ToolKit" especially applies this over-riding principle to Article 11, which guarantees the human right to housing.

In making the case for ultimate "self-determination" at the community level, this "Toolkit" draws on a number of popular instruments (mostly written and collectively endorsed statements, but also those rooted in oral traditions) asserting the "right" of communities to determine their own destiny. "Community" also enjoys a legal definition (see below).

Self-determination becomes as vital as any other need that grounds other human rights, including those other over-riding principles of rule of law, nondiscrimination, gender equality and international cooperation consistent with all human rights. In their collective dimension, these all become community "needs" and, consequently, "rights" insofar as their absence leads to erosion and violation of a bundle of individual, stand-alone rights and can lead to the deprivation or demise of a community as such.

It should be noted that States and others have recognized the real problem of "ethnocide" and "cultural genocide" resulting from assimilation policies so as to compel the rewriting of the International Labour Organisation (ILO) Convention No. 107 on Indigenous and Tribal Populations in Independent Countries (1956), eventually to adopt the Indigenous and Tribal Peoples Convention No. 169 (1989). Relevant to the practice of self-determination is the question of land tenure, which ILO Convention No. 169 treats in Articles 13–19, while at the same time disclaiming that the term "people" in the Convention does not convey implications as a term of international law (i.e., conferring the right of self-determination).

However, it is the human consequence of the deprivation, rather than the legal "peoplehood," that makes self-determination vital for any putative victims. Therefore, collective self-determination becomes the right of communities as necessary, even if they are not (or not yet) internationally recognized as a "people" or "nation," the category To avoid the horrendous consequences of demise and deprivation, and to ensure survival of communities as a "right"—especially marginal and otherwise vulnerable ones such as those facing ethnic cleansing and/or elimination through military, administrative, globalization, forced eviction or development measures—local self-determination is vital, no matter what assimilationist governments individually or jointly say. In human rights, it is the human who has the first and final subject of respect, protection, promotion and fulfillment.

That having been said, and recognizing that self-determination can be either internal or external, the international public law term of art "internal self-determination unit" applies in the case of group or community, and is subject to case-by-case interpretation. This could refer to the rightful place of a minority or an indigenous people. It could conceivably apply also to a community of urban poor, particularly if their survival and/or well-being is threatened and their self-determination then becomes a need/right and requisite to the realization of other rights (life, adequate housing, culture, health, etc.).

In any case, the claimant of self-determination, whether an external or internal type, must meet the challenge and legal test of asserting that the claim at any level does not conflict with—or at least is balanced with—the rights of others. That may mean, of course, ensuring that self-determination claims do not negate general ecological values, others' self-determination rights, the rights of women to gender equality, security of person, regional peace and security, etc.

What are the criteria for *bona fide* claimants to local self-determination in the terms of international law as developed? The criteria presented by Martinez-Cobo (*Study of Discrimination against Indigenous Peoples*, UN document E/CN.4/Sub.2/1986/7/Add.4) has grounded much of the self-determination thinking about indigenous peoplehood and the rights arising. Based on his criteria for indigenous "people," the characteristics constituting a community with the right to claim external or internal self-determination could also be that the community (1) predate the influx of "others," (2) possess distinct cultural attributes, (3) occupy an identifiable territory and (4) identify itself as a people/community having the right to self-determination.

Legally defining the subjects of self-determination

Definitions of “people” or “nation,” the legal self-determination rights holders, are generally unpopular with States and their sitting governments, unless the definition applies to an existing “nation-state.” Of course, very few States can claim adherence to this definition, that is, to contain a single native people or nation (except, perhaps, Portugal, excluding immigrants). The General Assembly has assumed the task of defining self-determination (particularly in resolution 1514(XV), 14 December 1960). That has been construed typically as applying to cases of decolonization (Angola, Algeria, Namibia, Mozambique, Palestine, Puerto Rico, etc.). In its Advisory Opinion on Namibia, the International Court of Justice recognized Namibians as a “people” and “nation” in light of the value of, and for the purpose of decolonization. Despite this legal reference, the actual definition of “people” and “nation” remains under debate for political and practical reasons.

In addition to the guidance on “people,” including indigenous peoples, as explicit self-determination rights holders, we have an international law definition of what constitutes a “community.” The “community” definition does not deviate significantly from the four-part construct that Martínez-Cobo offered (above). It comes to us from the first International Court in a case sorting out criteria for transferring the ethnically Greek and Turkish communities between the Republic of Turkey and Greece after the First World War:

A group of persons living in a given country or locality having a race, religion, language and tradition of their own and united in the identity of race, religion, language and tradition in a sentiment of solidarity, with a view to preserving traditions, maintaining their form of worship, insuring the instruction and upbringing of their children in accordance with the spirit and traditions of their race and rendering mutual assistance to each other.⁸

Leaving aside the probability that the purpose of the Court’s opinion (population transfer) would be legally impermissible today,⁹ the legal definition of “community” it provided is actually less ambiguous than that of “people” or “nation.” The “people” definition remains elusive largely because some States find it a political Pandora’s box that could challenge their jurisdiction and/or effective control over territory. Until now, some governments instead persist in proffering the legally vacuous term “indigenous populations,” so that the legally more-significant term “people/s” would wane into disuse, as would also the corresponding rightful and self-preserving claims of its subjects to self-determination. However, if one is looking for a way to apply self-determination to “communities,” one has this definition of the ICJ’s predecessor as a reference.

Significant also is the fact that the Court’s definitive Advisory Opinion was intended for a narrow and specific purpose. That was not to recognize an external self-determination right, but to rationalize a population transfer scheme that today would be considered a clear violation of international public law. That is not only because of the absence of consent and the obvious human suffering population transfer causes, but also because it deviates from the most basic concept of contemporary statecraft and democratic governance, which is that the State administer—including by way of implementing the right to self-determination—for *all* of its citizens. Population transfers and external self-determination claims, therefore, serve as a seismograph of a government’s failure at effective statecraft.

⁸ Permanent Court of International Justice, The Greco-Bulgarian “Communities,” Advisory Opinion No. 17, 31 July 1930 (Leyden: Sijthoff, 1930), p. 21.

⁹ See report of the Special Rapporteurs Aun al-Khasawneh and Ribot Hatano, “The human rights dimensions of population transfer, including the implantation of settlers and settlements,” E/CN.4/Sub.2/1993/17.

This dissertation on self-determination has admittedly merged concepts and definitions of communities with peoples/nations, as the Permanent Court of International Justice effectively has done. Nonetheless, the values that sustain them are akin, and so should the safeguards that promise to prevent the worst of consequences arising from human rights violations against any identifiable group. In summary, self-determination has a local and community-based expression and basis as a right. For the purposes of advancing human rights through the “Toolkit,” both “communities” as well as “nations/peoples” hold the right and responsibility to determine their own habitat, the essence of a people and/or community’s survival and sustainability with dignity in its dwelling place.

Applied to Security of Tenure, Freedom from Dispossession

Applied to security of tenure, the over-riding principle of self-determination, in its classical expression, means that every people has the inalienable right to determine the terms of tenure of housing and land in its administrative and territorial unit(s). The international standards on property rights stipulate that everyone has the right to own (“derive peaceful and unrivaled enjoyment of”) property privately and in association with others, and has a right not to be arbitrarily deprived of that property.¹⁰ Thus, freehold tenure should include a variety of formulations, including titled property and collective ownership, whether or not accompanied by a title deed.

The same prerogative applies to a people in determining its terms of leasehold, or other forms of tenure. This determination must be made according to local specificity, reflecting the consent of the people subject to self-determination, but also within the obligations provided in the ICESCR and the CESCR’s General Comment No. 4 (cited above).

That means that, “notwithstanding the type of tenure, all persons should possess a degree of security of tenure [that] guarantees legal protection against forced eviction, harassment and other threats.” *Ad minimum*, States should “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.” Therefore, for peoples, as such, or for other affected persons, a measure of self-determination, assured through “genuine consultation,” is required to realize secure tenure, regardless of the type of tenure.

✓ Nondiscrimination

General description

Like self-determination, an inalienable human right common to the major legal systems throughout the world, a fundamental requisite of justice is the absence of discrimination on any arbitrary basis. Discrimination typically results in deprivation of human needs and rights.

Given its centrality, the principle of nondiscrimination, consequently, is an over-riding human rights principle embodied in the first Articles of each major human rights treaty. Nondiscrimination, and its corresponding State obligation to ensure nondiscrimination, are enshrined in the preamble of all international declarations and resolutions concerned with human rights matters, governance and the relations between and among States, nations and peoples.

¹⁰ As set forth in the Universal Declaration of Human Rights, Article 17.

Common to Article 2 in both the Covenants, nondiscrimination stands out as an over-riding principle with *immediate* application to all the rights contained in those instruments.¹¹ The Covenants prohibit arbitrary preferential or punitive treatment and oblige States parties to undertake steps to ensure that rights be exercised without distinction or discrimination “of any kind [as to] race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”¹²

The International Convention on the Elimination of All Forms of Racial Discrimination (1965) defines discrimination as:

any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.¹³

Article 5 of that Convention actually offers the historic first codification of the human right to housing, with particular reference to the over-riding principle of nondiscrimination. It reads:

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

In the Convention and its negotiation history, an important distinction emerges: While it is the obligation of States’ parties and their governments to combat both “racism” and “racial discrimination,” the former is a state of mind that should be eradicated through measures including education and other efforts to bring about a cultural and social transformation toward antidiscrimination. The latter, “racial discrimination” is the actual activation of prejudice which, in its manifestation, is a material violation of the rights of others. Any official action or omission of practicing or condoning racial discrimination is a violation of an *immediate* obligation of the State, not subject to “progressive realization.”

This distinction between (1) theoretical racism and (2) racial discrimination in practice has historic roots. It is found also in moral systems, as reflected in the Holy Qur’an, which recognizes the existence of prejudice, but, nevertheless, entreats against putting that into practice:

O you who believe, be upright for God, bearers of witness with justice; and let not hatred of a people incite you not to act equitably. Be just, [for] that is nearer to the observance of duty [the nearest thing to piety].¹⁴

This moral distinction was found relevant nearly one millennium later, during the French Revolution. Then, the revolutionary slogan and moral call to the Human Rights of Man and Citizen was “*liberté, égalité, fraternité*. While all three qualities were found desirable and necessary to build a new, democratic society, only liberty and equality could actually be

¹¹ For further guidance on the legal obligations to immediate implementation of the nondiscrimination principle applied to housing rights, see the report of the Special Rapporteur on Adequate Housing E/CN.4/2002/59.

¹² ICESCR, Article 2.2; ICCPR, Article 2.1.

¹³ Article 1, International Convention on the Elimination of All Forms of Racial Discrimination, adopted by General Assembly resolution 2106 (XX) of 21 December 1965, entered into force, 4 January 1969.

¹⁴ Chapter 5: The Food [al-Ma’da], Section 2: “Duty of Uprightness,” verse 8. Maulana Muhammad Ali, transl. The Holy Qur’an (Lahore: Ahmadiyya Anjuman Isha’at Islam, 1963), p. 243.

legislated. Fraternity (or sorority) could be developed and encouraged by the State and civil society much more likely than it could be enforced. Nonetheless, a range of practical measures can be undertaken to nondiscrimination in actual practice.

Inherent in the principle of nondiscrimination is the understanding that programs formally providing advantages to persons and groups historically subject to discrimination are not considered to constitute unlawful discrimination. On the contrary, international public law calls upon States to provide additional assistance to those persons and groups subject to past and/or present discrimination, as in corrective/positive discrimination or affirmative action programs that redress foregoing patterns of deprivation.¹⁵

Applied to Security of Tenure, Freedom from Dispossession

Applied to security of tenure, the nondiscrimination principle ensures that individuals and groups are not deprived of opportunities to access secure tenure, including legal enforcement, protection and remedy, nor denied this entitlement on the basis of race, color, creed, gender, sex, sexual orientation, political opinion, social or economic status, language, physical ability/disability, property, form of legitimate work, descent, or any other origin or arbitrary criterion. For indigenous, tribal or other land-based peoples, the State has the obligation to recognize their tenure systems in law and in administrative matters. Likewise, no State possesses the legal authority to practice or condone *de jure* or *de facto* discrimination that leads to the loss or denial of secure tenure to any member of any group, particularly to the unfair advantage of another. This applies to the practice of nepotism and other forms of corruption that allow disproportionate benefits to family members or political partisans, as well as preferences given to groups such that ignite sectarian or intercommunity conflict.

International public law calls States to provide special assistance to persons and groups who have been subject to past and/or present discrimination, as in affirmative action programs that redress foregoing patterns of deprivation.¹⁶ Such affirmative action is at the core of CESCR's legal finding that, under Article 11 of ICESCR, States are obliged "to confer secure tenure on those persons and households currently living without such protection."¹⁷

✓ Gender equality

General description

Despite the universal acceptance of the principle of gender equality in international law, many women are denied equal treatment and discriminated against in their housing on the basis of sex or gender. Approximately one-third of the world's women may be homeless, living in inadequate housing and own less than one percent of the world's property.¹⁸ The intersectionality of poverty or other factors (i.e., class, indigenous, refugee, migration, caste, sexual orientation, ethnic minority, age, disability, widowhood, citizenship or nationality status, etc.) further marginalize women. In the context of the increased feminization of poverty, decreased access to public services, and destruction of natural environments, all of

¹⁵ See Marjorie Cohn, "Affirmative Action and the Equality Principle in Human Rights Treaties: United States' Violation of Its International Obligations," *Virginia Journal of International Law*, Vol. 43 (2002), 249–74.

¹⁶ For further guidance on the legal obligations to immediate implementation of the nondiscrimination principle applied to housing rights, see the report of the Special Rapporteur on Adequate Housing E/CN.4/2002/59.

¹⁷ CESCR General Comment No. 4, "Legal Security of Tenure," *op. cit.*, para. 8 (a).

¹⁸ COHRE Fact Sheet on Women's Right to Housing, Land and Property.

which are accelerating with the process of globalization, women are increasingly placed in situations where they do not have adequate housing.

The denial of adequate housing for women is a violation of women's human rights. It can also result in the violation of women's other human rights such as rights to life, livelihood, adequate food, employment and political participation (e.g., voting rights). In particular, the lack of adequate housing also can make women more vulnerable to various forms of violence against women (e.g., domestic violence, trafficking, sexual and gender-based violence against migrant workers etc.).

The right to nondiscrimination in gender relations, as an over-riding principle in human rights implementation, is generally stated in UDHR, Article 2 (nondiscrimination) and throughout the Declaration in its language of human rights for "everyone" and "all are equal before the law." More specifically, gender equality has emerged as a binding, over-riding principle in the two Covenants' common Article 3:

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all... rights set forth in the present Covenant.

This principle is further elaborated in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).¹⁹ Article 13 obliges States parties to take all appropriate measures to eliminate discrimination against women in areas of economic and social life, and to ensure women's equal right to bank loans, mortgages, and other forms of social credit. In Article 14, paragraph 2, CEDAW specifically addresses women's equal rights in human settlements as the right of women in rural areas to enjoy adequate standard of living conditions, particularly, in relation to housing sanitation, electricity and water supply, transportation, education, communications and access to credit. This extends explicitly to women's "equal treatment in land and agrarian reform as well as in land resettlement schemes." Article 15 also addresses women's equal right to conclude contracts and administer property; while Article 16, paragraph 1 (c) guarantees women's equal rights and responsibilities during marriage and its dissolution, including equal rights for both spouses in respect of ownership, acquisition, management, administration, enjoyment and disposition of property.

This legal norm is carried forward in the Beijing Platform for Action (BPFA), which calls on Governments to remove all obstacles for women in obtaining affordable housing and access to land.²⁰ This remains standard in the subsequent multilateral agreements formulated in the Istanbul Declaration and the Habitat Agenda (1996)²¹ and the World Summit on Sustainable Development (WSSD) Plan of Implementation (2002).²²

The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (1997), which were developed for understanding and determining violations of economic, social and cultural rights, affirmed that, in order to eliminate discrimination against women's rights recognized in the Covenant, the State party should face the need and legal obligation to eliminate discrimination against women that arises out of social, cultural and other structural advantages.²³

¹⁹ Adopted and opened for signature, ratification and accession by General Assembly resolution 34/180, 18 December 1979; entered into force, 3 September 1981, in accordance with Article 27(1).

²⁰ Para 58(m).

²¹ Para 40 (b), 78 (e) and (g).

²² Para 67 (b).

²³ Related sources of gender equality for women in human settlements can be found in CEDAW Articles 1, 2(f), 3 and 5 (a); UDHR, Articles 2, 16, 17 and 25; UDHR, Articles 5 (d) (v) and (vi), 5 (e) (iii); ICERD, Article 2, para 1, Articles 3, 9, 16, 17,

Typically, for women the home is the single most important place in the world. Beyond shelter, it is a place for the vast majority of woman to generate income, care for children, and seek respite from violence and patriarchy in the community at large. For many still, it is the only place where women can participate fully in decisions and social activities.

Applied to Security of Tenure, Freedom from Dispossession

The intersectionality of poverty or other status (i.e., class, indigenous, refugee, migration, caste, sexual orientation, ethnic minority, age, disability, widowhood, citizenship or nationality status, etc.) further marginalize women as tenure holders in their home. In the context of the increased feminization of poverty, decreased access to secure tenure finds women increasingly in situations where they do not have adequate housing, including by denying secure tenure to them, or simply passing them over in the scramble for ever-scarcer resources.

Freely exercising one's own culture (cultural adequacy) is understood to mean allowing for cultural choice and expression within the human rights framework; that is, within limits beyond which the rights of others are adversely affected. However, preserving or condoning a practice of unequal rights to secure tenure, inheritance and other economic/social/cultural rights is not consistent with the present framework and likely would violate both the gender-equality provisions of the Covenant, as well as essential provisions of the Vienna Convention on the Law of Treaties (1969).²⁴

✓ Rule of law

General description

In the over-riding principles pertaining to previously discussed forms of discrimination, human rights are, by their nature, equal, inalienable and universal. By this is meant that the criteria for applying the standards and norms are to be inconsistent in their application. One way to ensure that is through the formal and institutionalized rule of law.

As enshrined in UDHR, Article 6, "Everyone has the right to recognition everywhere as a person before the law." This right is codified in the ICCPR (Article 16), and is supported by regional instruments affirming the same.²⁵ The equal inalienable and universal right to a fair trial, including the presumption of innocence, is enshrined in ICCPR,²⁶ as well as the regional instruments.²⁷

The law-abiding State and its officers must not withhold or impede remedies, apply the law inconsistently or arbitrarily, or exercise any form of discrimination that affects the human right to adequate housing. Inhabitants who have lost or undergone damage to their housing

Article 23, para 4, ICCPR, Article 26; ICESCR, Article 2, para 2, Article 3, and Article 11, para 1; and CRC, Article 1, 16, para 1 and Article 27.

²⁴ The Vienna Convention sets forth, in Article 27, that "[A] party may not invoke the provisions of its internal law as justification to perform a treaty," and the customary law principle, arising from Article 8 of the Universal Declaration of Human Rights, states that "everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him [her] by the constitution or by law."

²⁵ African Convention on Human and Peoples' Rights, Article 5; Inter-American Convention on Human Rights, Article 3.

²⁶ Article 10 reads: "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his[her] rights and obligations and of any criminal charge before him[her]." [Bracketed text added.] Article 14.2 sets forth that "Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to the law."

²⁷ African Charter, Article 7; Inter-American Convention, Article 8; European Convention on Human Rights, Article 6.

unjustly or illegally have the right to unobstructed access to legal remedy, including compensation for victims, which the State bears the corresponding obligation to respect, defend, promote and fulfill.

States are required to maintain the rule of law in order to ensure a consistent, predictable and accessible resolution of disputes with remedy and compensation for the victims. This covers the right of equal access to public services, such as law enforcement, public defense and judicial services. The conduct of law enforcement officers, prosecutors and judges can determine whether or not the rule of law is respected or violated. Therefore, there is a tremendous need for the State to train, discipline and rehabilitate legal enforcers and practitioners. In the case of police services, the use of force is required to follow strictly the principle of presumed innocence and the criteria of necessity and proportionality in case where State force is used.²⁸ Where local statutory law may be silent on housing rights safeguards, lawyers and judges bear an extra professional duty to apply the human rights norms to the extent possible.

The principles of remedy and reparation have been firmly established in instruments declaratory of the human right to access to justice. Culminating the development of international law derived from the major legal systems in the world, the revised Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law (2003) outline the right and corresponding State obligations as follows:

VII. Victim's Right to Remedy

Remedies for violations of international human rights and humanitarian law include the victim's right to:

- (a) Access justice;
- (b) Reparation for harm suffered; and
- (c) Access the factual information concerning the violations.

VIII. Victims' Right to Access Justice

A victim's right of access to justice includes all available judicial, administrative and other public proceedings, mechanisms and modalities that exist under domestic laws, as well as under international law. Obligations arising under international law to secure the individual or collective right to access justice and fair and impartial proceedings should be made available under domestic laws. To that end, States should:

Make known, through public and private mechanisms, all available remedies for violations of international human rights and humanitarian law;

Take measures to minimize the inconvenience to victims, protect their privacy as appropriate, and ensure their safety from intimidation and retaliation, as well as that of their families and witnesses, before, during, and after judicial, administrative, or other proceedings that affect the interests of victims;

Facilitate assistance to victims seeking access to justice.

²⁸ Code of Conduct for Law Enforcement Officials, adopted by General Assembly resolution 34/169, 17 December 1979, Article 3; Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted at the Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August–7 September 1990, preamble and Articles 1–11.

Make available all appropriate diplomatic and legal means to ensure that victims can exercise their rights to a remedy and reparation for violations of international human rights or humanitarian law.

In addition to individual access to justice, adequate provisions should also be made to allow groups of victims to present collective claims for reparation and to receive reparation collectively.

The right to an adequate, effective and prompt remedy against a violation of international human rights or humanitarian law includes all available international processes in which an individual may have legal standing and should be without prejudice to any other domestic remedies.²⁹

The restitution of housing and property is one form of restitutive/restorative justice sought in the rule of law applied to housing rights violation victims. Efforts continue to develop these methods and disparate efforts, not least in the development of draft guidelines on restitution for refugees.³⁰

Applied to Security of Tenure, Freedom from Dispossession

In the case of a dispute over tenure, the State bears an obligation to ensure that the rule of law is applied in a context of equality, inalienability and universality of rights, particularly with regard to the human right to adequate housing. In the case where State representatives (e.g., courts or police) assume a role in a dispute over tenure, they bear the responsibility to abide by the State's human rights obligations and refrain from violations of the right to housing such as by unlawful forced eviction, or other forms of violence, or other punitive behavior inconsistent with the principles of (1) presumption of innocence until proven guilty and, in the use of force, (2) necessity and (3) proportionality.

The law-abiding State, its agents and offices must not withhold housing tenure arbitrarily or exercise any form of arbitrary discrimination against the tenure holder. Inhabitants who have lost their housing tenure unjustly or illegally have the right to unobstructed access to legal remedy, including compensation for victims, for which the State bears the corresponding obligation.

✓ Nonretrogression/progressive realization

General description

ICESCR's Article 2 identifies the State party's obligation to ensure the "progressive realisation" of ESC rights. That is widely interpreted to mean that the State party breaches this provision if it tolerates or causes "regressivity" in the enjoyment of the right. The relevant jurisprudence has established that, even in the case of scarce resources, the State must exert good-faith efforts, including through international cooperation, to advance—and not derogate—the enjoyment of ESC rights, including adequate housing and its constituent entitlements.

The treaty bodies have clarified further that neither political processes, domestic legislation, scarcity of resources, or agreements with other parties can be invoked to justify

²⁹ As revised in accordance with UN Commission on Human Rights resolution E/CN.4/2003/34 (2003).

³⁰ Progress report of the Special Rapporteur, Paulo Sérgio Pinheiro, "Housing and property restitution in the context of the return of refugees and internally displaced persons," E/CN.4/Sub.2/2004/22, 2 June 2004.

nonimplementation of human rights treaty obligations.³¹ For example, the binding nature of a treaty obligation is further clarified in the Vienna Convention on the Law of Treaties (1969), clarifying in its Articles 27 and 46, that invoking an internal law is not admissible as a justification for nonimplementation of a treaty obligation.³² To harmonize treaty obligations with local implementation, human rights obligations arising from the treaties and case law should guide policy formulation and decision-making processes in law-abiding States. Therefore, a process of realising the rights should not regress, but should ensure “the continuous improvement of living conditions” (Article 11).

This over-riding principle of “nonregressivity” has been reaffirmed in the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights (1986) and Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (1997),³³ as well as numerous cases of international jurisprudence through the monitoring functions of CESCR.

The many examples of globalization-era economic reforms demonstrate how the withdrawal of the State from its obligations to fulfill economic/social/cultural rights can lead to deprivation. The State nonetheless bears a covenanted obligation to ensure that economic policies do not make tenure more precarious and insecure, whether arising from domestic political change or pressures of an external actor, such as an international financial institution. In order to ensure “progressive realization,” therefore, it is vital to ensure that the human right to adequate housing forms a part of the overall human rights framework for development policy, especially guiding international cooperation arrangements. This civilizing process requires improved coordination among the relevant government bodies, such as ministries of Justice, Finance and Foreign Affairs. This is not only out of domestic duty toward citizens for States to ensure that development partnerships effect “progressive realization,” but also an extraterritorial obligation of the State party under ICESCR, Article 2.

The CESCR has commented also on the “core obligations” of States to implement the human right to adequate housing. It noted that, regardless of the state of development of any country, certain steps must be taken immediately, in addition to the over-riding principles of human rights law. These include abstaining from measures that would impinge upon the right, as well as to engage positively in practices to facilitate the people’s processes of groups seeking to improve their living conditions, in accordance with the specific elements outlined above.³⁴

Applied to Security of Tenure, Freedom from Dispossession

³¹ Letter of CESCR Chairperson Mme. Virginia Bonoan-Dandan to S.E. M. Yaakov Levy, Permanent Representative, Permanent Mission of Israel to the United Nations Office and Specialized Agencies at Geneva, 11 May 2001, annex to Letter by the Chairperson of the Committee on Economic, Social and Cultural Rights to the President of ECOSOC (11 May 2001).

³² Article 27 (Internal law and observance of treaties): “A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to Article 46.” Article 46 (Provisions of internal law regarding competence to conclude treaties) states that: 1. A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance. 2. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith.”

³³ Text available at <http://ip.aaas.org/escrdocs.nsf/>.

³⁴ “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.” General Comment No. 4, para. 10.

The State's offices and agents, as well as its guiding policies and legislation, should ensure housing tenure arrangements become more effective at safeguarding tenure and ensure the progressive improvement of all entitlements of the inhabitants' home. This means that new laws or policies, as well as trends in official behavior and practice should improve in the direction of greater justice for all, and protection for those vulnerable to, or victimized by loss or deterioration of any housing and land rights entitlement. It also means that those same parties should develop greater capacity to deliver relief to those who have lost their home or shelter.

✓ International Cooperation

General description

States parties to both Covenants bear an obligation to implement human rights within a context of "international economic cooperation."³⁵ The ICESCR's Article 2.1 requires States party to undertake steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

In the spirit of the numerous multilateral agreements on human rights and development, "progressive realization of ESC rights," as a borderless objective, logically engages "international cooperation" duties for States to conduct themselves accordingly through their relations with other States, nations and peoples:

In fraternity and solidarity
Domestically and extraterritorially
Individually, jointly and/or collectively.

The preamble of the United Nations Charter specifies the purposes of the world organization insofar as "we the peoples of the United Nations" are determined "to promote social progress and better standards of life in larger freedom." Article 1, para. 3 of the Charter sets out one of the UN's purposes as "to achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion."

Linking international cooperation and self-determination as essential to the peaceful order of the United Nations, the Charter's Article 55 reads:

With a view to the creation of conditions of stability and well-being[,] which are necessary for peace and friendly relations among nations based on respect for the principles of equal rights and self-determination of peoples, the United Nations shall promote universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

The Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations considers as essential:

³⁵ Common Article 1.2.

the progressive development and codification of the following principles:... (d) the duty of States to cooperate with one another in accordance with the Charter;...(g) the principle that States shall fulfill in good faith the obligations assumed by them in accordance with the Charter, so as to secure their more-effective application within the international community would promote the realization of the purposes of the United Nations;...³⁶

The UN States members share a duty to cooperate with one another, irrespective of their differences, to maintain international peace and security and promote international economic stability and progress, the general welfare of nations and international cooperation free from discrimination. To this noble end, the Declaration embodied by UN members commitments such that:

(c) States shall conduct their international relations in the economic, social, cultural, technical and trade fields in accordance with the principles of sovereign equality and nonintervention;

(d) States Members of the United Nations have the duty to take joint and separate action in cooperation with the United Nations in accordance with the relevant provisions of the Charter.

States should cooperate in the economic, social and cultural fields as well as in the field of science and technology and to the promotion of international cultural and educational progress. States should cooperate in the promotion of economic growth throughout the world, especially that of the developing countries.³⁷

In addition to its Article 2, ICESCR also sets out to identify the UN systems itself as a vehicle for international cooperation to uphold the Covenant. The Covenant empowers ECOSOC to raise the Covenant-monitoring reports as a guide for UN technical assistance.³⁸

Other instruments of international public law are dedicated to specifying norms for international cooperation agreements between and among States. Consistent with human rights norms and other *jus cogens* principles of law, the Vienna Convention, Article 53, provides clarity:

A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

States parties adhering to the international law principles of international cooperation are required to behave extraterritorially consistent with the progressive realization of

³⁶ Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly in its resolution 2625 (XXV) of 24 October 1970 Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly in its resolution 2625 (XXV) of 24 October 1970

³⁷ Ibid.

³⁸ Article 22 reads: "The Economic and Social Council may bring to the attention of other organs of the United Nations, their subsidiary organs and specialized agencies concerned with furnishing technical assistance any matters arising out of the reports referred to in this part of the present Covenant which [sic] may assist such bodies in deciding, each within its field of competence, on the advisability of international measures likely to contribute to the effective progressive implementation of the present Covenant."

economic/social/cultural rights. For our purposes, this extends especially to the human right to adequate housing and land.

As a donor country, a State must ensure that the projects and programs it supports do not erode any of the entitlements contained in their right to adequate housing for inhabitants in beneficiary countries. That includes avoiding any action that leads to forced evictions, confiscation or demolition of housing. In the case of development assistance resulting in dislocation of inhabitants, all aspects of the undertaking are to be the subject of consultation with the affected persons, and the efforts should enhance legal security of tenure as a result within the covenanted human rights framework.

As a recipient country, structural adjustment, deregulated foreign investment, privatization and related measures typified by today's bilateral and multilateral arrangements assistance agreements and programs must be compatible with the human rights obligations of the affected State. Measures that deny or reduce tenure security would be illegal and unaccepted as a condition of the assistance. States parties to the human rights instruments have a self-preserving opportunity and responsibility to uphold their prior treaty obligations as a form of (moral, legal and practical) resistance to negotiation pressures or conditionalities that may derogate the terms of legal security of tenure for inhabitants.

As all human rights implementation ultimately is a local matter, regional instruments can be a source a greater specificity in determining of State obligations and practical measures needed to uphold economic, social and cultural rights. For example, the African Charter on Human and Peoples' Rights (1981) provides a broad agreement on the term of international cooperation in its Article 21: 1, which establishes that:

All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it. 2. In case of spoliation, the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation. 3. The free disposal of wealth and natural resources shall be exercised without prejudice to *the obligation of promoting international economic cooperation based on mutual respect, equitable exchange and the principles of international law*. 4. State Parties to the present Charter shall individually and collectively exercise the right to free disposal of their wealth and natural resources with a view to strengthening African Unity and solidarity. 5. *State Parties to the present Charter shall undertake to eliminate all forms of foreign exploitation particularly that practised by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources.*
[Emphasis added.]

States Parties are required to review multilateral agreements on investment, trade-related intellectual property arrangements, poverty-reduction strategy papers (PRSPs), bilateral and multilateral relations in the World Trade Organization context, World Bank lending and assistance terms, and the International Monetary Fund programs operating in, or otherwise affecting the State, in order to ensure consistency with covenanted obligations and avoid either retrogressivity or violations of its citizens' ESC rights. The State party is obliged to apply the Covenant *a priori* to ensure that any such conditionality would be subject to the ESC rights safeguards for its own inhabitants, and for those of another State party.

Privatization programs may lead to deprivation of the housing rights entitlement to tenure security. In the event of workers living in administrative housing who become laid off as part of a privatization or State-enterprise sell-off arrangement may lose their tenure altogether.

Even in cases where local legislation is silent, international treaty obligations remain for the State party to defend the workers' human right to adequate housing by legal and enforceable protection for their secure tenure and all other housing rights entitlements.

As an extreme example of international cooperation conducted in explicit violation of ESC rights applying to adequate housing and secure tenure would be a scenario wherein a State engaged in, or condoning third parties to engage in acts or omissions that would contribute to population transfer or any of its related international crimes, such as mass deportations, ethnic cleansing, destruction of civilian or private property, implantation of settlers and settler colonies, or other forms of demographic manipulation of an internal or external self-determination unit. Duty prohibits States party from allowing public or private resources to accrue to settler colonies in an occupied territory, for example, or engage in any other acts or omissions that would facilitate another State party's violations of the Covenant or Convention in this way. There are numerous examples today in countries where these forms of violation continues unaddressed with the accomplice and collaboration of other States. Impunity still characterizes the conduct of many of these crimes, as the perpetrators have not yet been prosecuted at any level, including at the International Criminal Court.

A State's participation in international economic sanctions or blockades that lead to violations of the ESC rights of persons other than the State Party's own residents, citizens and nationals may lead to conditions that undermine housing rights. CESCR has provided guidance to States parties of the Covenant on ESCRs affected by sanctions regimes and subject to protection measures to avoid regressivity and violation.³⁹

Direct provision, or participation in multilateral programs of development and financial assistance actually may lead to violations of rights embodied in the Covenant (e.g., stagnation, deterioration or denial of work, education, health or housing rights, forced eviction, etc.) and constitute a breach of treaty obligations. Specifically, ICESCR and its enshrined rights should guide and govern a State's policies and conduct in any multilateral institution that imposes economic conditionalities on other States or their agents that bring about a negative consequences effect inhabitants housing rights conditions. The legacy of development banks' support for forced evictions of all possible scales and levels of deprivation has become notorious, and States that promote, finance or engage directly or indirectly in making decisions or executing these policies may be in breach of their human rights treaty obligations.

Applied to Security of Tenure, Freedom from Dispossession

International development cooperation should lead to improved protection for security of tenure, whether that be by enhancing administrative capacity, governance, service provision or technical cooperation of a material nature. Any cross-border cooperation and investment in human settlements and/or in other sector should not affect tenure security negatively. States must insist that any international assistance uphold and, where possible, enhance adequate housing tenure security, especially for those most vulnerable.

✓ Other principles of application

The principles discussed above are those explicitly stated in the major international human rights treaties. At the same time, we can consider additional principles and concepts that also guide the application of the human right to adequate housing. These arise from the

³⁹ See CESCR General Comment No. 8, "the relationship between economic sanctions and respect for ESC rights."

international jurisprudence of individual State party reviews by the treaty-monitoring bodies, as well as from their General Comments and General Recommendations. They also come to us from popular claims of people's movements, from the political resolutions of the multilateral organizations, from expert opinions found in the legal literature, and from the evolving experience at implementing human rights. Three such principles of application for us to consider are known as the "indivisibility of rights," "minimum core obligations" and "universality."

Indivisibility

The concept of all human rights as indivisible is as practical as it is theoretical. It arises from the realization that, when we unpack the contents of a right, we encounter aspects of the other rights as well.

Take, for example, the "habitability" entitlement contained in the human right to adequate housing. The deterioration of the structural features of the home leaving the inhabitants exposed to the elements, or pollution in the immediate vicinity of the housing surely effect the enjoyment of the human right to "a standard of living adequate for the health and well-being of himself and of his family," as recognized in Article 25 of the 1948 Universal Declaration of Human Rights (UDHR), and codified as the "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health" in Article 12 of the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR).

Likewise, homelessness is a status synonymous with the denial of voting rights in most States, where registration and voting require a *domicile fixe*. Thus, the human right to adequate housing is linked with everyone's "right to take part in the government of his [sic] country, directly or through freely chosen representatives," as promised in UDHR (Article 21), and codified in the Covenant on Civil and Political Rights (ICCPR), in 1966, as everyone's "right to take part in public life, directly or through freely chosen representatives" (Article 25). Incorporating the experience of HIC members and others around the globe, it has become clear that our monitoring methodology calls our attention also to the "congruent" human right to participation and self-expression among the constituent entitlements of the human right to adequate housing.

Sorting, categorizing and distinguishing subjects of any kind can be a useful exercise that makes manageable order out of complexity and facilitates understanding. Human rights are no exception. However, in practice, we find that human rights are interdependent, and categorical separation can become artificial and actually impede understanding. One example is in the division of human rights found in the UDHR into the two, separate Covenants. The reason for adopting two basic Covenants, instead of one, is largely attributed to the divergent Cold War ideologies that dominated the General Assembly when it adopted the Covenants in 1966. Ideology is also the reason that one of the largest and wealthiest industrialized States has failed to ratify the ICESCR until today, and ideology also prevailed to exclude a "human right to own property" from that Covenant, although that right is included in the UDHR (Article 17). Despite the false impression left by the Covenants dividing human rights into two instruments camps, the ICCPR's nonetheless recognizes, in its preamble, that:

... in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights.

Without appreciating the over-riding principle of indivisibility, other distortions can arise. With civil and political rights traditionally gaining from more attention and specificity than economic/social/cultural rights (consistent with some Western Bloc preferences), some authors have proposed that we consider “generations” of rights.^{40[1]} Presenting distinct rights in such a priority order perpetuates the historic neglect of economic/social/cultural rights and promotes a logic that may culminate in violations. Nominating civil and political rights in a hierarchical order as “first generation” rights classifies economic/social/cultural rights as secondary: the “second generation” of rights. Group rights, as distinct from individual rights, environmental rights and, in certain cases, self-determination thus become degraded as “third generation.” This view is kept alive by a simple misunderstanding of “progressive” realization, required in ICESCR, such that slow realization of economic/social/cultural rights is acceptable and that all aspects of economic/social/cultural rights, as such, are subject to gradual implementation. The indivisibility of human rights belies such gradualist or generational notions. Therefore, this toolkit cannot accommodate the divisive, generational approach to human rights not for ideological reasons, but for the fact that theories neatly segregating rights are not sustained in practice.

It is with this recognition of the indivisibility of rights that CESCR commented:

...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....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.^{41[2]}

Core obligations

Alone, the very general reference to the human rights in treaty texts does not provide the specific guidance needed for States parties around the world to know their precise

^{40[1]} French jurist Karel Vasak is attributed with first proposing the division of human rights into three generations, while at the International Institute of Human Rights (Strasbourg), in 1979. His division adapted the French Revolution’s slogan of *Liberté, Égalité, Fraternité* as ordinal categories. The three generations are subsequently reflected in some of the rubrics of the European Charter of Fundamental Rights.

First-generation human rights deal essentially with liberty. In Vasak’s view, these are seen as fundamentally civil and political in nature and serve to protect the individual from excesses of the State. First-generation rights include, *inter alia*, freedom of speech, the right to a fair trial, and freedom of religion, as enshrined in Articles 3–21 of UDHR and ICCPR.

Second-generation human rights would be those related to equality, and are supposedly the social, economic, and cultural rights. This theory sees these essentially as positive rights; that is, actions that the State is required to provide to the people under its jurisdiction, as opposed to actions from which the State should refrain—e.g., forced eviction—in order to realize rights.

Third-generation human rights correspond with fraternity, or involving “solidarity.” They include group and collective rights, such as self-determination, economic and social development, sovereignty over natural resources, and the right to participate in the common heritage of mankind. Treated as third generation, the generational theory of rights presumes that these rights are not yet binding and dubiously judicial.

In an alternative explanation for the three-generational approach rests on the political divisions of the Cold War, where the West promoted allegedly first-generation (civil and political) rights, and the East promoted second-generation (economic, social and cultural) rights. The Third World (i.e., third priority in the putative hierarchy) promoted (third-generation), solidarity rights, as in the decolonization struggles of the 1970s, including decolonization processes delayed until today.

^{41[2]} General Comment No. 4: “the right to adequate housing” (1991), para. 9.

obligations. ICESCR's English-language version requires States to "take steps." The French texts calls on States "to act" (*s'engage à agir*) and, in Spanish, the Covenant requires States "to adopt measures" (*a adoptar medidas*), but offers little about what those steps/actions/measures should be, except to say that these should be "appropriate," "progressive" (nonregressive/ nonretrogressive), nondiscriminatory (nondiscrimination), involve international cooperation and include legislative measures (rule of law). Therefore, the treaty-monitoring bodies bear the task of issuing General Comments and General Recommendations to supply the needed specificity, based on international public law and the implementation experience of all States parties.

In its General Comment No. 3: "The nature of States parties' obligations,"^{42[3]} CESCR addressed the principle of "minimum core obligations":

...a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party. Thus, for example, a State party in which any significant number of individuals is deprived of ...basic shelter and housing...is, *prima facie*, failing to discharge its obligations under the Covenant. If the Covenant were to be read in such a way as not to establish such a minimum core obligation, it would be largely deprived of its *raison d'être*.^{43[4]}

The General Comment, like the Covenant, takes into consideration material limits of States. However, the Covenant's Article 2 (1) obligates each State party to take the necessary steps "to the maximum of its available resources," and the treaty body has determined that the nature of treaty obligations are such that a State bears a heavy burden of proof to demonstrate that "every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations."^{44[5]}

The "minimum core obligations" also include those appropriate steps to respect, defend, promote and fulfill the human right to adequate housing, like other economic/social/cultural rights, as a matter of immediate application. Among the appropriate measures, in addition to harmonizing domestic legislation with the covenanted rights, is to provide judicial remedies to victims within the national legal system. That would be among the most effective measures to ensure compliance with obligations to implement certain aspects of economic/social/cultural rights *immediately*, such as by ensuring nondiscrimination. The Committee has determined that it is "difficult to sustain" any suggestion that these immediate obligations are inherently non-self-executing. This legal authority is consistent also with the terms of the Vienna Convention on the Law of Treaties (1969), which provides that "A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty."^{45[6]} The treaty bodies have clarified further that neither political processes, domestic legislation, scarcity of resources, nor agreements with other parties could be invoked to justify nonimplementation of human rights treaty obligations.^{46[7]}

^{42[3]} Adopted by the CESCR in its fifth session (1990), E/1991/23.

^{43[4]} *Ibid.*, para. 10.

^{44[5]} *Ibid.*

^{45[6]} Vienna Convention on the Law of Treaties, signed at Vienna, 23 May 1969; entered into force, 27 January 1980, Article 27: "Internal law and observance of treaties." The Article also goes on to state that "this rule is without prejudice to Article 46." Article 46: "Provisions of internal law regarding competence to conclude treaties" states that "1. A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance. 2. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith."

^{46[7]} Letter of CESCR Chairperson Mme. Virginia Bonoan-Dandan to S.E. M. Yaakov Levy, Permanent Representative, Permanent Mission of Israel to the United Nations Office and Specialized Agencies at Geneva, 11 May 2001, annex to

Nondiscrimination is perhaps the most obvious and urgent of the immediate principles in implementing the human right to adequate housing. CESCR has provided specific guidance such that, among other things, "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."^{47[8]}

The measures needed for States parties to comply with obligations of immediate application include negative obligations. That is, many of the measures to realize the human right to adequate housing would require little more than the State and its agents to refrain from certain harmful practices, such as arbitrary house demolitions and forced eviction, or a meaningful commitment to enabling "self-help" or "social production of habitat" by affected groups. Such changes in State behavior would not require significant expenditure of public resources.

Universality

The principle of human rights' "universality" is simply expressed in the UDHR's recognition that "All human beings are born free and equal in dignity and rights" (Article 1). Everyone, without exception, is entitled to human rights by virtue of belonging to the human family. From a moral point of view, the universality of human rights is an essential principle if the human civilization is to advance for the better. In international law, the text of ICESCR also speaks consistently of right of "everyone," which obliges States not to discriminate in adherence to minimum core obligations. In the field of housing, in particular, States are not permitted to interpret its minimum core obligations to apply selectively, that is, only to citizens, or only certain citizens, but also to ensure the human right to adequate housing is realized also for "everyone," including residents, immigrants and migrant workers, etc. The only conditionality permitted in law is that the subjects of human rights qualify as members of the human family.

Before the Universal Declaration, the social movements, revolutions, antislavery struggles and intellectual contributions of the past have served as vehicles for the promotion of human rights that eventually have been incorporated into local and international law and practice. However, many of these famous accomplishments were limited in their substance or application, geographically or socially, or were subject to reversal. Social science and philosophy have contributed greatly to the recognition of human rights, but have not carried the force of law. The recognition of the universality of human rights overcomes the shortcomings left by these otherwise-significant accomplishments:

Limits in scope of application:

- The rights and ethics delivered through the world's moral systems, especially those found in the religions, also are limited in scope by the fact that they apply to adherents to a particular faith group, not applying universally;

Letter by the Chairperson of the Committee on Economic, Social and Cultural Rights to the President of ECOSOC (11 May 2001).

^{47[8]} General Comment No. 3: "The nature of States parties' obligations,"^{47[8]} CESCR addressed the principle of "minimum core obligations," adopted by the CESCR in its fifth session (1990), E/1991/23, para. 11.

^{47[9]} The Vienna Convention sets forth, in Article 27, that "[A] party may not invoke the provisions of its internal law as justification to perform a treaty," and the customary law principle, arising from Article 8 of the Universal Declaration of Human Rights, states that "everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him [her] by the constitution or by law."

- The Magna Carta of 1215 imposed limits on royal impunity that equate as new rights for citizens, especially property-owning citizens. However, this historical achievement had only local application in the geographical realm of the English king.

Exclusion of social sectors and substantive rights:

- The “American Revolution,” in the English colonies that eventually became the original United States of America, realized the right to self-determination as a legal right and *raison d'état*. However, the right to self-determination, as inalienable as it is, applied in the American Revolution case as a right limited only to the white colonizers who identified themselves as a distinct people. The remaining indigenous peoples—whom the settlers mostly largely and replaced—have yet to achieve their self-determination to this day;
- The French Revolution, for all its achievements, realized rights for individuals. French farmers and workers sought recognition of their group rights in the context of the revolution; however, its leadership rejected those expansive notions of rights and insisted on *liberté, égalité and fraternité* with an individual focus;
- The results of the Bolshevik Revolution institutionalized recognition of group rights for workers, etc.; however, rejected a right to property ownership. However ethically grounded the rationale for that omission, the denial of property rights also has emerged as a common tool for depriving persons, communities and entire peoples of their means of subsistence, thereby demonstrating, by its violations, the importance of that neglected human right.

Retrogression:

- The antislavery movement in Haiti at the end of the 18th Century resulted in a democratic regime and Constitution under the leadership of former slave and eventual General Toussaint Louverture. However, the same France that produced the world-changing Revolution only 12 years before saw the French General Napoleon I crush the new democracy in 1801 for reasons of imperial interest, reversing the accomplishments of Haitian antislavery democracy, with consequences extending to this day.

Despite their shortcomings, these episodes in the gradual achievement of rights through local struggle all have contributed to the accumulation of human rights recognition as universally applicable. Human rights law today embodies that cumulative recognition into an international and universal code that seeks to leave no human group, geographical region or human need without mutual protection in the multilateral legal regime.

Universality of human rights now means that it is impermissible to neglect certain rights as if they were intended selectively for certain cultures, as if and people of other cultures deserve an inferior standard. Universality also means that no State or government is exempt from its obligations, either for reasons of specificity of local law, as the Vienna Convention has addressed, or to uphold traditional practices that violate rights or their over-riding principles of application.

Interpreting rights consistent with one's own culture (as in the cultural adequacy of housing) means applying locally specific options and idiomatic expressions consistent with the human rights framework. However, practices that preserve or condone unequal rights to secure tenure, inheritance or other entitlements of the human right to adequate housing are not

consistent with the present framework and likely to violate both the gender-equality provisions of the Covenant, as well as essential provisions of the Vienna Convention on the Law of Treaties (1969).^{48[9]}

While local experience of application and struggle continue to provide specificity on how to realize human rights, reveal a variety of possible strategies and define emerging rights (such as the rights to water, land and energy), cultural specificity does not mean allowance for the derogation of rights to something short of the over-riding principles and entitlements reflected in this toolkit. As affirmed by moral arguments and legal authority, adequate housing is the right of everyone, everywhere.

Conclusion

The over-riding principles featured in the monitoring steps of this toolkit are those explicitly mentioned in the major human rights treaties. The “Other principles of application” are implied in the human rights instruments or recognized in international jurisprudence, but are not less important to keep in mind.

The HLRN toolkit attempts to go further than merely encouraging the monitor to keep these additional principles in mind, however. The toolkit’s design actually incorporates all of these three principles, but without culling them out as additional steps in the monitoring process.

The indivisibility of rights is already present in the 12 entitlements; whereas, the first eight derive directly from the CESCR’s General Comment No. 4 specifically on the right to housing. The “Congruent rights” derive from rights whose sources and concepts arise from the ICCPR, Refugee Convention and other instruments. Therefore, the housing rights entitlements themselves embody the indivisibility concept in a practical form.

The core minimum obligations applying in the case of the human right to adequate housing also are consistent with those entitlements outlined in the General Comment No. 4, which are embedded in this methodology (human right to adequate housing entitlements A–H). Naturally, the local specificity as to the nature and level of effort required to realize the human right to adequate housing is precisely your contribution through your monitoring effort, your critical process and by posing your solutions to problems in the field.

The universality of the human right to adequate housing is also inherent to this toolkit, by design. That is manifest in the wide range of international and regional instruments guaranteeing the right and incorporated into the Step 2 presentation of both the Sources in international law and Popular sources.

The good news is that, with these principles integrated in the design of the toolkit, you are able to apply them as a matter of course. Therefore, it would be unnecessary and redundant to create corresponding, additional tasks. By applying the methodology in this Housing and Land Rights Monitoring Toolkit, you will be putting all of these inter-related and interdependent principles into living practice.

1.4. Guarantees

Guarantees of the Human Right to Adequate Housing

We will now determine the existing assets guaranteeing the entitlements of the human right

to adequate housing in your country situation. We can begin by making our assessment at the general and international level, then proceeding to the more instrumental and local level. The “guarantees” do not mean only legal provisions, but also institutional, policy and other assets that function to ensure, or at least contribute to implementation of the various contents of our human right to adequate housing.

Therefore, one should assess first the State’s current obligations by its ratification of international (and then regional) treaties recognizing the human right to adequate housing, its over-riding principles and its specific entitlements. Then this method would have us determine any similar guarantees in the national constitution (or equivalent). At the more-specific level of legislation, the inquiry should have us identify which statutes, regulations and even municipal ordinances actually guarantee the right or any entitlement within the right. Presumably, public policies, programs, institutions and budgets in place should form the practical implementation counterparts to complement these legal criteria and the respect, defense, promotion and fulfillment of the human right at the most-localized operational level.

Inquiry Begins Here

Following this logic, our line of inquiry on “guarantees” poses a number of questions for the monitor to provide the answer. Now your role will become more active. Accordingly, we will follow the method of assessing the guarantees in your country situation for implementation of the human right to adequate housing from general to specific, thus, focusing on:



- Ratifications and multilateral commitments:** Obligations arising from multilateral (international and regional) ratification of relevant treaties;
- Constitutional provisions** relevant to the human right to adequate housing and land;
- National legal system:** Legislation and other local law;
- Institutions:** both binding and bonding institutions, whether as a formal structure, or a more-customary, social character;
- Policies:** having nationwide application;
- Programs:** long-term, policy-based and systematic efforts;
- Projects:** having more temporary and localized application; and
- Budgets** of public institutions.

In that order, our line of inquiry will explore these guarantees for each of the twelve entitlements of the human right to adequate housing and land. You will likely find that you may already have the answers to many of these questions from the previous sections on “Sources” and “Over-riding Principles.” For instance, you have already learned about, and identified many multilateral treaty instruments guaranteeing the human right to adequate housing. Now, you will be able to fill in the rest of the guarantees to complete the picture of how these norms translate into legal and functional assurances locally for this and every entitlement of our human right that you choose to monitor and assess.

This method ensures that the monitor take into consideration also the guarantees of the over-riding human rights principles (as explained above in “Over-riding principles applied to legal security of tenure and freedom from dispossession” in Step 3 of this toolkit). These principles, found in the first Articles of all the major human rights treaties, are to be generally and universally applied in order to ensure a context for the realization of all rights, not least

the human right to adequate housing and land. Since these principles over-ride, or sit on top of the human rights framework applied to housing and land, they appear first in the list of questions in our line of inquiry. These questions include a list of legal instruments and commitments by States to guarantee these over-riding principles. (Please note that these are illustrative lists; they are not exclusive lists. You may know of other such guarantees, and you may find that some listed do not apply to your country situation.)

In the same way that we proceed from the general to the specific, the inquiry about the guarantees of the over-riding principles is followed by the more precise, practical guarantees that ensure the human right to adequate housing and land is made real in practice. Therefore, the systematic questions here include a test of (1) the present (general and contextual) guarantees for applying the over-riding principles of international human rights law in the case of the entitlement legal security of tenure and freedom from dispossession (i.e., self-determination, nondiscrimination, gender equality, rule of law, nonregressivity/nonretrogression and international cooperation), as well as (2) the (functional and specific) local guarantees of legal security of tenure and freedom from dispossession deriving from the guaranties listed above.

✓ Guarantees of the over-riding principles

Self-determination

Which international treaties has the State ratified, acceded to or succeeded to that guarantee that the principle of self-determination be applied, including in the housing context?

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention on the Elimination of All Forms of Racial Discrimination (1965)
- Convention on the Rights of the Child (1989)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- ILO No. 107 concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (1957)
- ILO Convention No. 169 concerning Indigenous Peoples in Independent Countries (1989)
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee that the principle of self-determination be applied, including in the housing context?

- Declaration on the Right to Development (1986)
- Declaration on Social Progress and Development (1969)
- Habitat II Agenda (1996)
- Istanbul Declaration (1996)
- Social Summit Declaration and Programme of Action (1995)
- Universal Declaration of Human Rights (1948)
- United Nations Commission on Human Rights resolutions
- UN General Assembly resolutions [various]
- Vienna Declaration and Programme of Action (1993)

- Durban Declaration and Programme of Action [of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] (2002)
- Johannesburg Declaration of the World Summit on Sustainable Development and Plan of Implementation (2001)

Which regional treaties has the State ratified, acceded to or succeeded to that guarantee that the principle of self-determination be applied, including in the housing context?

- African Charter on Human and Peoples Rights (1981)
- American Convention on Human Rights (1969)
- American Declaration of Human Rights (1948)
- Arab Charter on Human Rights (1994)
- (European) Convention for Protection of Human Rights and Fundamental Freedoms (1950)
- European Social Charter (1961)

Has the State participated in the adoption of multilateral agreements in the form of regional conferences, summits, or congresses, etc., or voted in favor of resolutions in regional organizations that guarantee that the principle of self-determination be applied, including in the housing context?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (2000)
- Rabat Declaration (1995)

Nondiscrimination

Which international treaties has the State ratified, acceded to or succeeded to that guarantee that the over-riding principle and human right to freedom from discrimination be applied, including also in the housing context?

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention on the Elimination of All Forms of Racial Discrimination (1965)
- Convention on the Rights of the Child (1989)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- International Labour Organisation Convention No. 107 concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (1957)
- International Labour Organisation Convention No. 117 *on Social Policy (Basic Aims and Standards)* (1962)
- ILO Convention No. 169 concerning Indigenous Peoples in Independent Countries (1989)
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)
- Refugee Convention (1951)

- Convention relating to the Status of Stateless Persons (1954)
- Convention on the Reduction of Statelessness (1961)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee that the over-riding principle and human right to freedom from discrimination be applied, including also in the housing context?

- Declaration on Asylum (1967)
- Declaration on the Right to Development (1986)
- Declaration on Social Progress and Development (1969)
- Declaration on the Elimination of Violence against Women (1993)
- Habitat II Agenda (1996)
- Declaration on Cities and Other Human Settlements in the New Millennium [Habitat II+5 UNGAR S-25/2] (2001)
- UN Guidelines on Internally Displaced Persons (1998) [vote in favor of adoption in UNHRCR E/CN.4/1998/53/Add.2, dated 11 February 1998]
- International Labour Organisation Recommendation No. 162 concerning Older Workers (1980)
- Istanbul Declaration (1996)
- Rio Declaration and Agenda 21 (1992)
- Social Summit Declaration and Programme of Action (1995)
- Universal Declaration of Human Rights (1948)
- UN General Assembly resolutions [various]
- United Nations Commission on Human Rights resolutions [various]
- Vancouver Declaration Human Settlements (1976)
- Vienna Declaration and Programme of Action (1993)
- Durban Declaration and Programme of Action [of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] (2002)
- Johannesburg Declaration of the World Summit on Sustainable Development Plan of Implementation (2001)

Which regional treaties has the State ratified, acceded to or succeeded to that guarantee that the over-riding principle and human right to freedom from discrimination be applied, including also in the housing context?

- African Charter on Human and Peoples Rights (1981)
- American Convention on Human Rights (1969)
- Arab Charter on Human Rights (1994)
- (European) Convention for Protection of Human Rights and Fundamental Freedoms (1950)
- European Social Charter (1961)

Has the State participated in the adoption of multilateral agreements in the form of regional-level conferences, summits, or congresses, etc., or voted in favor of resolutions in regional organizations that guarantee application of the over-riding principle and human right to freedom from discrimination, including also in the housing context?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]

- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (2000)
- Rabat Declaration (1995)

Gender equality

Which international treaties has the State ratified, acceded to or succeeded to that guarantee the application of the over-riding principle of gender equality be applied, including also in the housing context?

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention on the Rights of the Child (1989)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- International Labour Organisation Convention No. 117 *on Social Policy (Basic Aims and Standards)* (1962)
- International Labour Organisation Convention No. 131 Concerning Minimum Wage Fixing, with Special Reference to Developing Countries (1970)
- International Labour Organisation Convention Recommendation No. 115 concerning Workers' Housing (1961)
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee the application of the over-riding principle of gender equality be applied, including also in the housing context?

- Declaration on Asylum (1967)
- Declaration on the Right to Development (1986)
- Declaration on Social Progress and Development (1969)
- Habitat II Agenda (1996)
- Declaration on Cities and Other Human Settlements in the New Millennium [Habitat II+5 UNGAR S-25/2] (2001)
- International Labour Organisation Recommendation No. 162 concerning Older Workers (1980)
- Istanbul Declaration (1996)
- Rio Declaration and Agenda 21 (1992)
- Social Summit Declaration and Programme of Action (1995)
- Universal Declaration of Human Rights (1948)
- United Nations Commission on Human Rights resolutions
- Vienna Declaration and Programme of Action (1993)
- Durban Declaration and Programme of Action [of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] (2002)
- Johannesburg Declaration of the World Summit on Sustainable Development and Plan of Implementation (2001)

Which regional treaties has the State ratified, acceded to or succeeded to that guarantee the application of the over-riding principle of gender equality be applied, including also in the

housing context?

- African Charter on Human and Peoples Rights (1981)
- American Convention on Human Rights (1969)
- American Declaration of Human Rights (1948)
- Arab Charter on Human Rights (1994)
- (European) Convention for Protection of Human Rights and Fundamental Freedoms (1950)
- European Social Charter (1961)

Has the State participated in the adoption of multilateral agreements in the form of regional conferences, summits, or congresses, etc., or voted in favor of resolutions in regional organizations that guarantee the application of the over-riding principle of gender equality be applied, including also in the housing context?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (2000)
- Rabat Declaration (1995)

Rule of law

Which international treaties has the State ratified, acceded to or succeeded to that guarantee the State's application of the over-riding principle of the rule of law, which also extends to the housing sphere?

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention on the Elimination of All Forms of Racial Discrimination (1965)
- Convention on the Rights of the Child (1989)
- Rome Statute on the Establishment of the International Criminal Court (1998)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- International Labour Organisation Convention No. 107 concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (1957)
- International Labour Organisation Convention No. 117 *on Social Policy (Basic Aims and Standards)* (1962)
- International Labour Organisation Convention No. 131 Concerning Minimum Wage Fixing, with Special Reference to Developing Countries (1970)
- ILO Convention No. 169 concerning Indigenous Peoples in Independent Countries (1989)
- International Labour Organisation Convention Recommendation No. 115 concerning Workers' Housing (1961)
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)
- Refugee Convention (1951)
- Convention relating to the Status of Stateless Persons (1954)

- Convention on the Reduction of Statelessness (1961)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee the State's application of the over-riding principle of the rule of law, which also extends to the housing sphere?

- Declaration on Asylum (1967)
- Declaration on the Right to Development (1986)
- Declaration on Social Progress and Development (1969)
- Habitat II Agenda (1996)
- Declaration on Cities and Other Human Settlements in the New Millennium [Habitat II+5 UNGAR S-25/2] (2001)
- International Labour Organisation Recommendation No. 162 concerning Older Workers (1980)
- Istanbul Declaration (1996)
- Rio Declaration and Agenda 21 (1992)
- Social Summit Declaration and Programme of Action (1995)
- Universal Declaration of Human Rights (1948)
- United Nations Commission on Human Rights resolutions
- Vancouver Declaration Human Settlements (1976)
- Vienna Declaration and Programme of Action (1993)
- Durban Declaration and Programme of Action [of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] (2002)
- Johannesburg Declaration of the World Summit on Sustainable Development and Plan of Implementation (2001)

Which regional treaties has the State ratified, acceded to or succeeded to that guarantee the State's application of the over-riding principle of the rule of law, which also extends to the housing sphere?

- African Charter on Human and Peoples Rights (1981)
- American Convention on Human Rights (1969)
- American Declaration of Human Rights (1948)
- Arab Charter on Human Rights (1994)
- (European) Convention for Protection of Human Rights and Fundamental Freedoms (1950)
- European Social Charter (1961)

Has the State participated in the adoption of multilateral agreements in the form of regional conferences, summits, or congresses, etc., or voted in favor of resolutions in regional organizations that guarantee the State's application of the over-riding principle of the rule of law, which also extends to the housing sphere?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (2000)
- Rabat Declaration (1995)

Nonregressivity/nonretrogression

Which international treaties has the State ratified, acceded to or succeeded to that guarantee the State's implementation of the principle of nonregressivity/nonretrogression in the respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human right to adequate housing and land?

- Convention on the Elimination of All Forms of Racial Discrimination (1965)
- Convention on the Rights of the Child (1989)
- International Covenant on Economic, Social and Cultural Rights (1966)
- International Labour Organisation Convention No. 117 *on Social Policy (Basic Aims and Standards)* (1962)
- International Labour Organisation Convention Recommendation No. 115 concerning Workers' Housing (1961)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee the State's implementation of the principle of nonregressivity/nonretrogression in the respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human right to adequate housing and land?

- Declaration on the Right to Development (1986)
- Declaration on Social Progress and Development (1969)
- Habitat II Agenda (1996)
- Declaration on Cities and Other Human Settlements in the New Millennium [Habitat II+5 UNGAR S-25/2] (2001)
- Istanbul Declaration (1996)
- Rio Declaration and Agenda 21 (1992)
- Social Summit Declaration and Programme of Action (1995)
- Universal Declaration of Human Rights (1948)
- United Nations Commission on Human Rights resolutions
- Vancouver Declaration Human Settlements (1976)
- Vienna Declaration and Programme of Action (1993)
- Durban Declaration and Programme of Action [of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] (2002)
- Johannesburg Declaration of the World Summit on Sustainable Development and Plan of Implementation (2001)

Which regional treaties has the State ratified, acceded to or succeeded to that guarantee the State's implementation of the principle of nonregressivity/nonretrogression in the respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human right to adequate housing and land?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (200)
- Rabat Declaration (1995)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee the State's implementation of the principle of nonregressivity/nonretrogression in the respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human right to adequate housing and land?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (2000)
- Rabat Declaration (1995)

International Cooperation

Which international treaties has the State ratified, acceded to or succeeded to that guarantee the State's implementation of the principle of international cooperation to ensure respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human rights to adequate housing and land?

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention on the Elimination of All Forms of Racial Discrimination (1965)
- Convention on the Rights of the Child (1989)
- Rome Statute on the Establishment of the International Criminal Court (1998)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- International Labour Organisation Convention No. 107 concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (1957)
- International Labour Organisation Convention No. 117 *on Social Policy (Basic Aims and Standards)* (1962)
- International Labour Organisation Convention No. 131 Concerning Minimum Wage Fixing, with Special Reference to Developing Countries (1970)
- ILO Convention No. 169 concerning Indigenous Peoples in Independent Countries (1989)
- International Labour Organisation Convention Recommendation No. 115 concerning Workers' Housing (1961)
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)
- Refugee Convention (1951)
- Convention relating to the Status of Stateless Persons (1954)
- Convention on the Reduction of Statelessness (1961)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee the State's implementation of the principle of international cooperation to ensure respect, defense, promotion and fulfillment of economic, social and

cultural rights, including the human rights to adequate housing and land?

- Agenda 21 (1992)
- Declaration on Environment and Development (1992)
- Declaration on Asylum (1967)
- Declaration on the Right to Development (1986)
- Declaration on Social Progress and Development (1969)
- Habitat II Agenda (1996)
- Declaration on Cities and Other Human Settlements in the New Millennium [Habitat II+5 UNGAR S-25/2] (2001)
- International Labour Organisation Recommendation No. 162 concerning Older Workers (1980)
- Istanbul Declaration (1996)
- Rio Declaration and Agenda 21 (1992)
- Social Summit Declaration and Programme of Action (1995)
- Universal Declaration of Human Rights (1948)
- United Nations Commission on Human Rights resolutions
- Vancouver Declaration Human Settlements (1976)
- Vienna Declaration and Programme of Action (1993)
- Durban Declaration and Programme of Action [of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] (2002)
- Johannesburg Declaration of the World Summit on Sustainable Development and Plan of Implementation (2001)

Which regional treaties has the State ratified, acceded to or succeeded to that guarantee the State's implementation of the principle of international cooperation to ensure respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human rights to adequate housing and land?

- African Charter on Human and Peoples Rights (1981)
- American Convention on Human Rights (1969)
- American Declaration of Human Rights (1948)
- Arab Charter on Human Rights (1994)
- (European) Convention for Protection of Human Rights and Fundamental Freedoms (1950)
- European Social Charter (1961)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee the State's implementation of the principle of international cooperation to ensure respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human rights to adequate housing and land?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (2000)
- Rabat Declaration (1995)

What additional multilateral commitments has the State made to guarantee nondiscrimination in the respect, protection, promotion and fulfillment of the human right to adequate housing and, by extension, legal security of tenure and freedom from dispossession?

Do not forget that the body of the binding international treaties that the State already has ratified contains binding human rights obligations that take precedence over nonbinding declarations of mere intent or political will. Monitoring these obligations is the covenanted task of the treaty parties [ratifying States], which has been delegated to neutral treaty-monitoring bodies that are supported in their task by government and civil-society monitors.

Keep in mind also that some multilateral declarations and many agreements with international financial and development institutions may contain standards less protective of human rights and freedoms than those of a binding nature under human rights treaties. Those agreements may even impede the enjoyment of economic/social/cultural rights. Such agreements are to be evaluated subject to prior human rights treaty obligations—not vice versa.

✓ Local guarantees

Ratifications and international commitments

Which international treaties has the State ratified (acceded or succeeded to) that guarantee the human right to adequate housing, in particular security of tenure and freedom from dispossession?

Constitutional provisions

- Does the State have a Constitution, or equivalent, guaranteeing the right to human right to housing and land, including legal security of tenure and freedom from dispossession?
- Does the State have a Constitution, or equivalent, guaranteeing the right to local self-determination?
- Does the State have a Constitution, or equivalent, guaranteeing the right to freedom from discrimination?
- Does the State have a Constitution, or equivalent, guaranteeing gender equality?
- Does the State have a Constitution, or equivalent, guaranteeing the rule of law, including access to justice and democratic participation and representation?
- Does the State have a Constitution, or equivalent, guaranteeing the right to the continuous improvement of living conditions?
- Does the State have a Constitution, or equivalent, providing that international relations be conducted within the framework and objectives of human rights, including economic, social and cultural rights?

National legal system

- Is the right to adequate housing, including security of tenure and freedom from dispossession recognized as a distinct right in the country's legal system?
- Is national and local legislation consistent with the human rights right to housing and land, including legal security of tenure and freedom from dispossession?
- Is national and local legislation consistent with the principle of local self-determination?
- Is national and local legislation consistent with the right to freedom from discrimination? What statutes has the State/government legislated, and are in force, to ensure nondiscrimination in the respect, defense, promotion and implementation of the human right to adequate housing, in particular, security of tenure?
- Do the concerned persons or community have the sense that the terms of their tenure are equal and consistent with others'?
- Does national and local law maintain the principle of gender equality, particular as it relates to housing, land and legal security of tenure and freedom from dispossession?
- Do local and national laws and regulations uphold the rule of law, including access to justice and democratic participation and representation in matters related to housing, land and legal security of tenure and freedom from dispossession?
- Does the State's legal system maintain the right to the continuous improvement of living conditions?
- Are the laws and regulations of the State consistent with the principle that international relations, including international entities operating locally, conduct themselves within the framework and objectives of human rights, including economic, social and cultural rights, in particular, the human right to adequate housing and land, including legal security of tenure and freedom from dispossession?
- Does the performance of the law-enforcement services guarantee the practice and enforcement of the respect, defense, promotion and implementation of the human right to adequate housing, including legal security of tenure and freedom from dispossession?
- Are judges and lawyers performing sufficiently and consistently to uphold the human right to adequate housing, including the entitlement of legal security of tenure and freedom from dispossession? What are some examples?

Institutions

- Is there a sense in the community that the State and government institutions represent their aspirations to self-determination?
- What State and public institutions exist as a guarantee of nondiscrimination in the respect, defense, promotion and implementation of the human right to adequate housing, in particular, legal security of tenure and freedom from dispossession?

- Do the concerned persons or community have the possibility to exercise an effective role in determining the terms of security of tenure and protection from dispossession?
- What State and public institutions exist as a guarantee of gender equality in the defense, promotion and implementation of the human right to adequate housing, in particular, legal security of tenure and freedom from dispossession?
- What private and nongovernmental institutions exist as a guarantee of gender equality in the defense, promotion and implementation of the human right to adequate housing, in particular, legal security of tenure and freedom from dispossession?
- What informal institutions (including social norms) function so as to help implement the human right to adequate housing and, in particular, security of tenure?⁴⁹
- What social institutions and consistent social practices exist as a guarantee of gender equality in the defense, promotion and implementation of the human right to adequate housing, in particular, legal security of tenure and freedom from dispossession?
- How have these institutions actually improved capacity to protect, or actual protection of legal security of tenure and freedom from dispossession for those in need?

Policies

- What statewide policies are in place and implemented to guarantee of the human right to adequate housing and, in particular, security of tenure?

Keep in mind that the body of the binding international treaties that the State has ratified contain provisions that call for human rights to be implemented in the presence of the over-riding principles of self-determination, nondiscrimination, gender equality, the rule of law, international cooperation in the implementation of human rights, and progressive realization (nonregressivity/ nonretrogression) and the continuous improvement of living conditions.

- How have national policies enhanced local self-determination so as to ensure acceptable levels of legal security of tenure and freedom from dispossession?
- How have national policies to ensure nondiscrimination positively affected legal security of tenure and freedom from dispossession in the country?
- How have national gender policies led to improvements in the conditions of legal security of tenure and freedom from dispossession in the housing sphere, especially for those in need?
- How have the State's policies on access to justice enhanced conditions of legal security of tenure and freedom from dispossession, especially for those in need?

⁴⁹ The operative concept of institutions here encompasses both bonding and bridging institutions. "Institutions," in this sense, involve the rules of the game under which formal and informal activity is conducted, and include public institutions, private institutions, collective practices and norms, as well as changing norms (e.g., brought about through the youth, technology, economic or demographic shifts, and other emerging behaviours). According to Douglas C. North, 1993 Nobel economics laureate, institutions are "humanly devised constraints that shape human interaction."

- How have national housing policies ensured the continuous improvement of living conditions, in particular the housing rights entitlement of legal security of tenure and freedom from dispossession, especially for those in need?
- In what ways have national housing policies ensured that international relations and international entities operating within the country respect, defend, promote and fulfil the human right to housing, in particular the entitlement of legal security of tenure and freedom from dispossession for those in need?
- To what extent have external parties positively influenced your country's official policies or practices in guaranteeing the right to security of tenure and freedom from dispossession?

Programs

- What progressive steps has the State made on a national scale in the past period (year[s], or since your last assessment) to improve housing rights, especially the entitlement of legal security of tenure and freedom from dispossession? (These may include: law reforms, improved infrastructure, more effective implementation methods, population registry programs, programs to consider ratification of international covenants, and evaluations of housing rights implementation, etc.)

Keep in mind that the body of binding international treaties that the State has ratified contain provisions that call for human rights to be implemented in the presence of the over-riding principles of self-determination, nondiscrimination, gender equality, the rule of law, international cooperation in the implementation of human rights, and progressive realization (nonregressivity/ nonretrogression) and the continuous improvement of living conditions.

- What private-sector or NGO programs are in place and implemented to guarantee the human right to adequate housing and, in particular, security of tenure?
- How have these national programs enhanced local self-determination in a way that has improved the conditions of legal security of tenure and freedom from dispossession?
- What national programs are completed, ongoing, or planned to ensure nondiscrimination positively affected legal security of tenure and freedom from dispossession in the country?
- Are there any national gender programs completed, ongoing or planned with the purpose and effect of improving the conditions of legal security of tenure and freedom from dispossession in the housing sphere, especially for those in need? Do they cover land rights and inheritance issues?
- What are have the State's recent, present or future programs to enhance access to justice that are intended to improve housing and living conditions, especially for those in need? How have those programs implemented to date succeeded in enhancing legal security of tenure and freedom from dispossession of housing?
- How have national housing programs ensured the continuous improvement of living conditions, in particular the housing rights entitlement of legal security of tenure and freedom from dispossession, especially for those in need?

- In what ways have national housing programs ensured that international relations and international entities operating within the country respect, defend, promote and fulfil the human right to housing, in particular the entitlement of legal security of tenure and freedom from dispossession for those in need?
- Has the government in the concerned State cooperated with other State or non-State parties to find identify and adapt good practices locally to improve legal security of tenure and freedom from dispossession for all those living there?

Projects

- What progressive actions has the State undertaken in the way of limited-scale or pilot projects in the past period (year[s], or since your last assessment) to improve housing rights, especially the entitlement of legal security of tenure and freedom from dispossession?
- What private-sector or NGO projects are in place and implemented to guarantee the human right to adequate housing and, in particular, security of tenure?
- How have such local projects enhanced local self-determination in a way that has improved the conditions of legal security of tenure and freedom from dispossession?
- What projects completed, ongoing, or planned to ensure nondiscrimination positively affected legal security of tenure and freedom from dispossession in the country?
- Are there any gender-based projects completed, ongoing or planned with the purpose and effect of improving the conditions of legal security of tenure and freedom from dispossession in the housing sphere, especially for those in need? Do they cover land rights and inheritance issues?
- What are have the State's recent, present or future projects to enhance access to justice that are intended to improve housing and living conditions, especially for those in need? How have those programs implemented to date succeeded in enhancing legal security of tenure and freedom from dispossession of housing?
- How have these projects ensured the continuous improvement of living conditions, in particular the housing rights entitlement of legal security of tenure and freedom from dispossession, especially for those in need?
- In what ways have public or private projects ensured that international relations and international entities operating within the country respect, defend, promote and fulfil the human right to housing, in particular the entitlement of legal security of tenure and freedom from dispossession for those in need?
- Has the government in the concerned State cooperated with other State or non-State parties to find identify and adapt good practices locally through projects that actually improve legal security of tenure and freedom from dispossession for all those living affected?
- Are there foreign State or foreign private interests operating projects affecting the housing and human settlements sector in the country and affecting the situation under

review? Are their roles positively affecting the enjoyment of legal security of tenure and freedom from dispossession?

Budgets

- What public budgets are in place to guarantee the human right to adequate housing and, in particular, security of tenure? How does the budget correspond to actual spending and implementation targets?
- Is the necessary public budget information available to conduct a multiyear assessment of the financial performance of policies, programs and projects affecting housing and living conditions of those vulnerable and needy inhabitants of the country?
- Does the public have access to the budgets of private companies and organizations operating in the housing sphere and having an effect on the housing rights entitlement of legal security of tenure and freedom from dispossession?
- Does the reliable budget information support the public claims of those responsible for the budgets intended for improvement of living conditions of the needy, particularly in the housing rights entitlement of legal security of tenure and freedom from dispossession?
- What international obligations and commitments affect the public budget with ramifications on the housing sector, including the entitlement of legal security of tenure and freedom from dispossession?
- What national obligations and commitments affect the public budget with ramifications on the housing sector, including the entitlement of legal security of tenure and freedom from dispossession?
- What financial policies affect the public budget with ramifications on the housing sector, including the entitlement of legal security of tenure and freedom from dispossession?

1.5. Obstacles, impediments, barriers

At the present stage in the monitoring process, you have well identified the elements arising from the human right and legal concept of adequate housing. You have completed the necessary review of international minimum standards that codify the right, along with the corresponding obligations on the ratifying State. Your process has taken you through the moral arguments of social movements and others, who are the very source of human rights throughout history. Those sources fill legal gaps and provide specificity to local human rights priorities and application. In your context, you also have identified which of the binding instruments and other theoretical guarantees apply to the case at hand.

At this point, you are advancing beyond the theoretical dimensions of the human right to adequate housing, its constituent elements and its guarantees. As a housing-and-land-rights monitor, you will now enter the practical dimension and assess the most difficult challenge in the field of human rights: implementation. The following sample questions guide the monitor to prepare needed data and arguments by detailing the present obstacles, impediments, barriers, threats and constraints that have brought about, or threaten to bring about a violation or deprivation of the right and the element of security of tenure and freedom from dispossession, which you are currently addressing.

When monitoring documenting any stage of this toolkit inquiry, or assessing the conditions affecting any right, it is essential to ensure the highest quality of information possible. It has been said often that information is power. In our case, this is especially true, but the degree of that power will depend largely on the following qualities of your information:

- Completeness
- Level of detail and specificity
- Date (freshness) of the information
- Integrity of the information (i.e., lack of contradictions)
- Effective (articulate, concise, understandable and correct) use of language
- Relevance: linkage to the question of housing and land rights implementation
- Credibility of source (reputation, effective presentation, link to issue and community)

In order to begin assessing the compatibility of the theoretical affirmations of the human right to housing and land with the local reality, you will determine now whether, and to what extent barriers, contradictions, obstacles, and impediments contribute to actual and/or potential violations of the entitlement to security of tenure and freedom from dispossession. This process is aided with the following battery of questions:

✓ **Obstacles to the over-riding principles**

Self-determination

- Are the people dissatisfied with the terms of their security of tenure and freedom from dispossession?
- Do the concerned persons or community lack the possibility to exercise an effective role in determining the terms of security of tenure and freedom from dispossession?
- Does the community lack sufficient information or capacity sufficiently to enjoy the human right to adequate housing, in particular, the entitlement of legal security of tenure and freedom from dispossession? [See the “**Information, education, capacity and capacity building**” entitlement in this toolkit.]
- Is illiteracy an impediment to the community’s access to sufficient information to enjoy the human right to adequate housing, in particular the entitlement of legal security of tenure and freedom from dispossession? [See the “**Information, education, capacity and capacity building**” entitlement in this toolkit.]

Nondiscrimination

- To what extent is discrimination an issue in realizing the entitlement to security of tenure and freedom from dispossession?
- Is there (does the affected community report) any type of discrimination practiced randomly, occasionally or on the social level, or institutionalized in some form, affecting security of tenure and freedom from dispossession?
- What are the nature of the discrimination and its effects of the entitlement of security of tenure and freedom from dispossession?

Gender equality

- Is there any gender-based discrimination applied in realizing the entitlement to security of tenure and freedom from dispossession?
- Is the discrimination practiced randomly, occasionally or on the social level, or is it institutionalized in some form such that affects security of tenure and freedom from dispossession?
- Does local law on inheritance, divorce or other specialization fail to provide equal rights to males and females of all ages? How?

Rule of law

- Has the State failed to ratify any of the relevant international or regional treaties guaranteeing the HRAH?
- Has the State issued any reservations, declarations or understandings to international or regional treaties that possibly limit the affect of HRAH guarantees, particularly so as to affect the entitlement of security of tenure and freedom from dispossession?
- Do legal or procedural shortcomings impede the admissibility of claims invoking international treaty obligations in the defense of HRAH, in particular, the entitlement to security of tenure and freedom from dispossession?
- Has the State failed to ratify the Rome Statute on the International Criminal Court, limiting the options to seek justice and remedy for gross violations of the HRAH?
- Has the State government failed to conduct a legal evaluation of housing rights implementation?
- Has the State government failed to present timely reports to the relevant treaty-monitoring bodies covering the HRAH?
- Has the State and its government failed to implement in good faith the Concluding Observations of the various treaty bodies concerning implementation of the HRAH?
- Do the three branches of government (judiciary, legislative and executive) operate with autonomous authority?
- Do the three branches of government coordinate to uphold and enforce a single system of law?
- Does the State lack a Constitution, or equivalent, guaranteeing gender equality?
- Does the State lack a Constitution, or equivalent, guaranteeing the rule of law, including access to justice and democratic participation and representation?
- Does the State lack a Constitution, or equivalent, guaranteeing the right to the continuous improvement of living conditions?
- Does the State lack a Constitution, or equivalent, providing that international relations be conducted within the framework and objectives of human rights, including economic, social and cultural rights?

- Does the country's legal system lack recognition of the human right to adequate housing, including security of tenure and freedom from dispossession?
- Does the political system in the country lack coordination among branches of executive, legislative and judicial government?
- Does the State lack a Constitution, or equivalent, guaranteeing the rule of law, including access to justice and democratic participation and representation?
- Has the legislature failed to harmonize national laws with international human rights treaty obligations in the formulation of policies affecting the HRAH, in particular, with affect on legal security of tenure and freedom from dispossession?
- Are there contradictions in the national law affecting security of tenure and freedom from dispossession?
- Is there insufficient enforcement of laws and/or policies against arbitrary eviction enforced, including safeguards for vulnerable groups, such as: women, children, orphans, etc.?
- Do local authorities fail to recognize explicitly the application of the international human rights treaties that the State has signed and/or ratified and that guarantee the HRAH, including the entitlement of security of tenure and freedom from dispossession?
- Is national and local legislation inconsistent with the human rights right to housing and land, including security of tenure and freedom from dispossession?
- Is law enforcement inadequate to ensure enjoyment of the entitlement of security of tenure and freedom from dispossession?
- Are law enforcement officers in need of training in, and information about the HRAH in order to uphold the entitlement of security of tenure and freedom from dispossession?
- Do lawyers, prosecutors and/or judges lack awareness and training in the housing and land rights law in order to uphold and defend the entitlement of security of tenure and freedom from dispossession?
- Has the national court system failed in any way to admit claims of housing and land rights victims, including those whose entitlement to security of tenure and freedom from dispossession has been violated?
- Do the rule-of-law, regulations, or their enforcement fail to govern market forces effectively to ensure the respect, protection, promotion and fulfilment of the right to adequate housing (e.g., governing monopolies, procedures for legal redress)? How does fact affect the enjoyment of the housing rights entitlement to security of tenure and freedom from dispossession?
- Does local law restrict civil society associations from advocating rights or providing services that would advance the respect, defense, promotion and fulfillment of the human right to housing, including legal security of tenure and freedom from dispossession?

Nonregressivity / nonretrogression

- Has the State failed to take steps to improve housing rights, especially affecting security of tenure and freedom from dispossession, in the past period (year[s], or since your last assessment)?
- Have new laws degraded protection of HRAH in the recent period, particularly affecting security of tenure and freedom from dispossession?
- Have new policies degraded protection or enjoyment of HRAH in the recent period, particularly affecting security of tenure and freedom from dispossession?
- Have national programs led to a decline in the enjoyment of HRAH in the recent period, particularly affecting security of tenure and freedom from dispossession?
- Have infrastructure or physical features of the built or natural environment led to a decline in the enjoyment of HRAH, particularly affecting security of tenure and freedom from dispossession?
- Have nationwide programs failed to improve, or led to a decline in, the enjoyment of HRAH, in particular the terms of security of tenure and freedom from dispossession?
- Have local projects supported by State or local authorities failed to improve, or led to a decline in, the enjoyment of HRAH, in particular the terms of security of tenure and freedom from dispossession?
- Have public budget allocations failed to improve, or led to a decline in, the enjoyment of HRAH, in particular the terms of security of tenure and freedom from dispossession?
- To what extent has the State government's efforts fallen short in the improvement the terms of security of tenure and freedom from dispossession, especially of the poor, vulnerable and minorities?

International cooperation

- Are foreign State or non-State interests operating in the housing and human settlements sector in the country and affecting the entitlement of security of tenure and freedom from dispossession? Are their roles negatively affecting the enjoyment of security of tenure and freedom from dispossession?
- To what extent have external parties (States, or international financial institutions) negatively influenced your country's official policies or practices in guaranteeing the right to security of tenure and freedom from dispossession?
- Has the State neglected to take steps, "individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources" and capacities to ensure (especially poor and vulnerable) people's security of tenure and freedom from dispossession?

✓ Local obstacles

Institutions

- As far as HRAH and security of tenure and freedom from dispossession are concerned, are there gaps or shortcomings in the State, government and other public institutions

positioned to improve living conditions, including the housing-rights entitlement of security of tenure and freedom from dispossession?

- What State and public institutions exist as a guarantee of gender equality in the defense, promotion and implementation of the human right to adequate housing, in particular, legal security of tenure and freedom from dispossession?
- Has there been a recent decrease in the quantity or quality of civil society institutions upon which the community now relies.
- Do the concerned private and nongovernmental institutions fail to guarantee gender equality in the defense, promotion and implementation of the human right to adequate housing, in particular, security of tenure and freedom from dispossession?
- What informal institutions (including social norms) function so as to impede the enjoyment of the human right to adequate housing and, in particular, security of tenure and freedom from dispossession?⁵⁰
- Do these institutions actually lack the will or capacity to protect legal security of tenure and freedom from dispossession for those in need?
- Do these institutions actually lack the will, knowledge or capacity to use the relevant treaty body Concluding Observations in work of monitoring and lobbying officials

Policies

- Do the relevant ministries omit to incorporate international human rights treaty obligations in the formulation of policies affecting the HRAH, in particular, with affect on legal security of tenure and freedom from dispossession?
- What statewide policies are still needed to guarantee of the human right to adequate housing and, in particular, security of tenure and freedom from dispossession?
- Have the relevant national policies neglected to ensure acceptable levels of self-determination in determining the terms and conditions of security of tenure and freedom from dispossession? How and why?
- Have national policies failed to reach their targets (even despite announcements of official intent) positively to affect security of tenure and freedom from dispossession? How and why?
- Have national gender policies led to improvements in the conditions of legal security of tenure and freedom from dispossession in the housing sphere, especially for those in need? How and why?
- Have the State's policies on access to justice failed to improve conditions of legal security of tenure and freedom from dispossession, especially for those in need?

⁵⁰ The operative concept of institutions here encompasses both bonding and bridging institutions. "Institutions," in this sense, involve the rules of the game under which formal and informal activity is conducted, and include public institutions, private institutions, collective practices and norms, as well as changing norms (e.g., brought about through the youth, technology, economic or demographic shifts, and other emerging behaviours). According to Douglas C. North, 1993 Nobel economics laureate, institutions are "humanly devised constraints that shape human interaction."

- Have national housing policies failed to ensure the continuous improvement of living conditions, in particular, by stagnating or degrading the housing rights entitlement of security of tenure and freedom from dispossession, especially for those in need? How and why?
- Do national housing policies lack consideration of, and/or reference to the international human rights instruments relevant to the HRAH and security of tenure and freedom from dispossession, and to which the State is bound?
- To what extent have external parties negatively influenced your country's official policies or practices in guaranteeing the security of tenure and freedom from dispossession?
- Have State housing-policy implementing institutions omitted to seek international cooperation in the human right framework by conditioning international entities operating within the country also to respect, defend, promote and fulfil the human right to housing, in particular the entitlement of security of tenure and freedom from dispossession?

Programs

- What negative steps has the State taken on a national scale in the past period (year[s], or since your last assessment) to improve housing rights, especially the entitlement of security of tenure and freedom from dispossession? These may include declining legal assistance laws, deteriorating infrastructure without repair, declining implementation efforts?
- What related private-sector or NGO programs have failed to enhance the enjoyment of the HRAH, in particular, security of tenure and freedom from dispossession?
- Is there a lack of, and need for national gender programs completed, ongoing or planned with the purpose and effect of improving the conditions of legal security of tenure and freedom from dispossession in the housing sphere, especially for those in need?
- Do existing programs omit to cover land and inheritance rights?
- Have the intergovernmental relations declined between your State and others leading to a decline on options for international cooperation in advancing the respect, defense, promotion and/or fulfilment of the HRAH, in particular security of tenure and freedom from dispossession?
- Has the government in the concerned State declined to cooperate with other States, intergovernmental agencies, or foreign non-State parties to identify and adapt good practices locally to improve the entitlement to security of tenure and freedom from dispossession?

Projects

- What relevant State actions or omissions have led to the failure of limited-scale or pilot projects in the past period (year[s], or since your last assessment) to improve housing rights, especially the entitlement of security of tenure and freedom from dispossession?
- What private-sector or NGO projects have failed to seek, or fallen short of their intended goal to guarantee the human right to adequate housing and, in particular, security of tenure and freedom from dispossession?

- Have such local projects undermined local self-determination with negative effect on the conditions of security of tenure and freedom from dispossession? How and why?
- Are foreign State or foreign private interests operating projects negatively affecting the housing and human settlements sector in the country and affecting the entitlement of security of tenure and freedom from dispossession? How and why?
- Have projects conducted by local or international entities in the country privatized the provision of housing or public services replaced the role and responsibility of the State and local authorities to fulfil the HRAH, in particular the entitlement of security of tenure and freedom from dispossession for those in need?

Budgets

- Are there obstacles to obtaining adequate information about public expenditures in the housing sector, or in areas affecting the enjoyment of the HRAH, including security of tenure and freedom from dispossession?
- Is there a lack of legal and actual protection of the right to information, including information and documentation on public budget expenditures in the housing sphere related to the entitlement of security of tenure and freedom from dispossession?
- Are public budgets inadequate to guarantee the human right to adequate housing and, in particular, security of tenure and freedom from dispossession?
- Is there underspending of the budget such that impedes the achievement of policy, program or project implementation targets, affecting security of tenure and freedom from dispossession?
- Do public budget items and actual financial performance reflect a lack of sufficient priority given to implementing policies, programs and projects to improve housing and living conditions, affecting also security of tenure and freedom from dispossession, of those vulnerable and needy inhabitants of the country?
- Does the public have access to the budgets and financial performance data of private companies and organizations operating in the housing sphere and having an effect on the housing rights entitlement of security of tenure and freedom from dispossession?
- Does the reliable budget information contradict the public claims of officials and institutions responsible for the continuous improvement of living conditions of the needy, particularly in the housing rights entitlement of security of tenure and freedom from dispossession?
- Do international obligations and commitments negatively affect the public budget with ramifications on the housing sector, including with negative affect on the entitlement of security of tenure and freedom from dispossession?
- What national obligations and commitments affect the public budget with ramifications on the housing sector, including the entitlement of security of tenure and freedom from dispossession?
- What financial policies constrain the public budget with negative consequences on the housing sector, including the entitlement of security of tenure and freedom from dispossession?

- Is the achievement of security of tenure and freedom from dispossession accompanied by an inordinate economic burden?
- Is the State failing to regulate effectively the terms and conditions of housing market, so as to avoid corruption, collusion, fraud, discrimination, nepotism and any arbitrary criteria? How is this affecting the entitlement of security of tenure and freedom from dispossession?
- Is the State prohibiting or impeding individual and community initiatives toward obtaining security of tenure and freedom from dispossession, individually as well as collectively?
- Are State authorities permitting other parties to interfere with community efforts toward obtaining security of tenure and freedom from dispossession, individually as well as collectively?
- Are present government mechanisms and structures inefficient at assisting the needy population from gaining access to security of tenure and freedom from dispossession?
- Does the State lack needed resources to ensure security of tenure and freedom from dispossession, especially for the poor, vulnerable and needy?
- Does national political disharmony impede enjoyment of the HRAH and security of tenure and freedom from dispossession?
- Is there armed conflict in the country impeding the private and/or public institutions from carrying out development and delivering services that safeguard and improve security of tenure and freedom from dispossession conditions?
- Has a natural disaster inflicted parts of the country, creating conditions that negatively affect the HRAH, including the entitlement to security of tenure and freedom from dispossession? Do these conditions impede relief or reconstruction assistance by public and private actors?

1.6. The victims and vulnerable persons: the actors

At this step in the housing and land rights monitoring process, you will have to provide relevant facts and figures concerning the people who already have been affected and those who remain vulnerable. You should also identify and describe precisely which part of the population is affected.

Those affected (victims or vulnerable) individuals and groups could be, for example, an indigenous community historically undergoing discriminatory treatment and land confiscation. It is essential to report the number of affected people, among them proportions of children, women and other groups having special needs, such as the elderly, who may be particularly affected.

In your inquiry into the identities of the victims and the vulnerable inhabitants, it is vital that you determine the place and time, as well as the characteristics of the affected persons in the case. The numbers and any demographic data of the composition of the affected population are critical to understanding the case and characterizing the type of violations. The violation or vulnerability may be multidimensional (or intersectional), involving more than one form of discrimination. Knowing the victims and vulnerable persons can help determine which combinations of housing rights elements are simultaneously affected. In describing the

population, knowing the particular vulnerabilities and special needs of the affected persons or community (whether arising from historical factors, gender, age or other demographics) complete the picture that you eventually will present to your intended audience.

✓ Distinguishing between the victims and vulnerable

It is important for the monitor to distinguish between those victims, whom already have been violated, and those who are vulnerable to future violation or deprivation. Of course, this distinction will be strategically important later in the process, when the housing and land rights monitors and defenders choose an action in response to the violation. You will have to determine then if your intervention is to be remedial or preventive. In any case, an eye to those who remain vulnerable even after the principal violation, as well as after a particular solution to a case, will maintain the monitors focus—as necessary—on the further interventions needed toward the ultimate realization of the human right to adequate housing and land.

The following sample questions guide the monitor to prepare needed data and arguments, in the case of any present obstacles, but focusing on the human dimension in the case of a violation of the housing rights entitlement of secure tenure.

Victims

- Identify the type and form of violation of the entitlement to security of tenure and freedom from dispossession:
 - Homelessness
 - Forced eviction
 - Arbitrary demolition
 - Denial of equal inheritance rights
 - Confiscation of property by public officials and bodies
 - Confiscation by private actors (criminal gang, settlers, armed groups)
- Who has been affected by the violation of the entitlement of security of tenure and freedom from dispossession?
- How many people have been affected in the same way in the last year (any time period)? Does it demonstrate a pattern?
- Identify and provide demographic details of the victims, for example:
 - Numbers and proportions of refugees
 - Numbers and proportions of migrant workers
 - Numbers and proportions of minority persons
 - Numbers and proportions of males and females
 - Number of workers (denied tenure of administrative housing)
 - Numbers and proportions of indigenous and/or tribal and semitribal people
 - Number of adoptive (or *kafala*) status person denied equal inheritance rights
 - Numbers and proportions of elderly, disabled, medically challenged persons with special needs
 - Numbers and proportions of members of groups subject to (current and historic) discrimination
 - Numbers and proportions of impoverished inhabitants, including those subject to discrimination on the basis of their economic status or work (e.g., Dalits)

- Numbers and proportions of any other relevant group identity of victims
- Where does the violation of this right mostly occur (i.e., rural, urban, slums)?
- When does this violation mostly occur? Day or night? Weekend? Certain times of the year? Why does the violator choose this timing?

Vulnerable individuals and groups

- Identify the type and form of vulnerability to future violation of the entitlement to security of tenure and freedom from dispossession:
 - Homelessness
 - Forced eviction
 - Arbitrary demolition
 - Denial of equal inheritance rights
 - Confiscation of property by public officials and bodies
 - Confiscation by private actors (criminal gang, settlers, armed groups)
- Who are the populations most likely to experience the violation of the right to security of tenure and freedom from dispossession? Why are they vulnerable?
- Provide demographic details of the concerned vulnerable persons or groups:
 - Numbers and proportions of refugees
 - Numbers and proportions of migrant workers
 - Numbers and proportions of minority persons
 - Numbers and proportions of males and females
 - Numbers and proportions of indigenous and/or tribal and semitribal people
 - Numbers and proportions of elderly, disabled, medically challenged persons with special needs
 - Numbers and proportions of members of groups subject to (current and historic) discrimination
 - Numbers and proportions of impoverished inhabitants, including those subject to discrimination on the basis of their economic status or work (e.g., Dalits)
 - Numbers and proportions of any other relevant group identity of vulnerable persons
- Explain the insecurity of their situation and give details about the naturally vulnerable populations (women, children, indigenous, slum dwellers, refugees, workers/migrant workers, farmers, etc.).



Focus on multidimensional / intersectional affects

Your case will be enhanced when your information includes emphasis on the particular types of victimization or vulnerability by focusing on the social groups typically subject to multidimensional, or intersectional types of deprivation. The monitor should identify such multiple forms of deprivation for each of the groups already identified in this section (above). This step allows you to identify the nature and causes of the particular affects on certain groups who may be made vulnerable already in addition to, or in advance of the specific

housing land rights violation, or anticipated violation. The following sample questions will lead you to clarify this point.

Women

- Are women in the given community or case subject to deprivation of their entitlement to security of tenure and freedom from dispossession?
- What are the reasons for this condition? Is it by some custom, religion or other ideological motivation?
- Does the practice of domestic or social violence against women somehow impede women's enjoyment of their entitlement to security of tenure and freedom from dispossession?
- Are the formal or informal terms of inheritance already biased against women in a way that negatively affects the enjoyment of the entitlement to security of tenure and freedom from dispossession?



Children

- Do housing conditions impede acceptable access to public goods and services as an element of the RAH, so as to obviate violence and abuse, including psychological & sexual abuse, within the home or community?
- Are housing conditions, in particular, the rights element of security of tenure and freedom from dispossession, suitable for children to carry out their studies?
- Are housing conditions, including security of tenure and freedom from dispossession, conducive to achieving the highest attainable standard of physical and mental health?

Racial, ethnic or other groups

- Who are the victims or vulnerable persons or community subject to discrimination that includes denial of security of tenure and freedom from dispossession?
- Have the affected persons or groups (either the vulnerable or the victims) been denied their right to suitable housing, and particularly to security of tenure and freedom from dispossession, because they belong to a specific minority, ethnic or indigenous group?
- How has historic discrimination, if any, affected the current situation?

✓ Victims' case documentation form

1.7. Losses/consequences

✓ Quantification methodology

Quantifying violations to the right to adequate housing: a tool for evaluating the effects of demolitions, confiscations and forced evictions

The purpose of this tool is to help determine the value of costs and losses that victims incur as a consequence of the violation their housing rights. Using this tool will aid in the various necessary stages of proper monitoring of specific violations of the right to housing, including:

1. Documentation and recording
2. Monitoring and reporting
3. Quantifying/evaluating
4. Identifying and solving problems
5. Follow-up assessments
6. Fact-finding missions
7. Public information and campaigns
8. Social mobilization
9. Media work
10. Compensation efforts
11. Legal defense and prosecution
12. Monitoring international obligations

The quantification methodology and “Loss Matrix” are designed to aid human rights workers responsible for each stage in the monitoring process, including interventions that are both preventive and remedial. These stages may involve the same individual human rights worker at each stage, or may involve a division of team labor. In either case, this tool also can serve as a vehicle for organizing tasks in a coordinated and complementary way, when more than one individual or organization is involved in the process. For instance, if different teams or organizations are specializing in respective geographical areas, applying this tool commonly aids the process to avoid duplication and the discrediting contradiction of facts.

Whether or not your monitoring objective is legal defense, policy analysis, compensation or public information, the quantification of the effects of the violation strengthen your argument and, consequently, help mobilize support for the movement to end, redress and compensate/obtain restitution for the violations. In particular, your findings will substantiate the assertion that many housing rights violations actually widen and deepen poverty, having a de-development effect on the community and country.

The material and otherwise-calculable costs resulting from the violation are determined for each unit (household) affected and then totaling them. Alternatively, in the case of multiple units affected, a representative sample should be obtained to determine the average values, which then are to be multiplied by actual numbers of units affected.

Other incalculable losses still have to be recorded and reported in narrative terms. Such narrative explanation and analysis will be useful as an accompaniment to this quantification table.

Both short-term and long-term values are to be assessed. (You can follow examples of traffic dispute jurisprudence, or the law pertaining to insurance or divorce cases in your country to come up with a methodology of determining personal injury and pain-and-suffering damages claims for compensation purposes.) Accurate and thorough quantification of costs and losses calls for both a great deal of cooperation between the monitor and the affected community, and a continuous relationship over time. In order to capture many of the values,

sustained monitoring and calculation are required over time. It is, therefore, recommended that such monitoring effort be undertaken or coordinated by those who maintain a program and commitment to the affected community over the long term.

This tool seeks to quantify the costs of victims, as well as public, or social costs. For our purposes, the principal victim(s) would be those persons whose property and lives are directly affected by the act, be it a demolition, confiscation and/or eviction, etc. (This tool would be used for any and all categories of violation.) Ancillary or indirect victims would be those who undergo the cost or other harm as a result of an act intended or directed at others. The indirect victims' losses and damage should be included in the overall assessment of the violation's effects.

The middle column, entitled "Methodology," in the quantification table found at the "**Loss Matrix**" link contains commentary on the contents of the calculated costs/losses and provides guidance on how to calculate them. It is there where you will record in your applied version of the "Loss Matrix" the type of items or values totaled under the particular type of cost/loss. There, too, you could cite whether or not the values are losses/costs to the principal victims only, or include those of indirect victims, such as those enduring collateral damage from a house demolition. The "Methodology" description should be as complete but concise as possible, within a short line or two.

It is possible to modify "Loss Matrix" to the user's discretion. (However, we emphasize that any modifications be shared among the community of monitors to ensure compatibility of findings.) For example, certain direct and indirect victims' losses may need to be separately calculated for some reason. In that case, an additional column can be added. In any case, however, it is important to arrive at a global cost figure for the violations under review. The column at the far right under each category of cost should be totaled using the imbedded Excel formula.

Follow the links to access the details of the quantification methodology and "**Loss Matrix**."

- Victim's material losses
- Victim's nonmaterial losses
- Other than victim's material losses (public costs)
- Other than victim's nonmaterial losses (including social costs)

Contents and methodology for determining each category of loss/costs

Victims' Material Losses

The Structure

The fair market value of the house, shelter or other structure(s). This is probably greater than the cost, as indicated in official records of the most recent tax assessment, for example. That price may be a guide, but is likely to be out of date with the value that would be obtained if the property were to be sold on the market. The market value would also likely be less than the "speculative value," which is considered to be that value (price) that a speculator, investor or other interested party would anticipate after the demolition/eviction and after converting the structure—if partially retained—for eventual exchange or reassessment. The reference for determining the market value would be reliable real estate agents, banks, or other parties involved in the sale and exchange of such properties. The standard methodology would involve collecting three quotes/estimates and selecting the average, or taking the middle quote as the fair market value.

In the likely event that no such property market is actively issuing quotes on the value of the affected property. The remaining alternative method for determining market value would be the estimated cost of replacing the property at current market values.

Note that the victim incurring the loss in this case would be the owner(s) and or title holder(s), including those owning the property individually, or collectively, under formal title, or by traditional tenure systems.

Plot

The plot and the structure are considered separately in this methodology to accommodate systems where the two aspects of property value are determined separately, or by different methods. For example, a cooperative arrangement may provide for outright title to the structure, but a “share” of the land area under it. It also allows for disaggregating these values in the event of a dispute over one and not the other. In the event that the structure and the land are both held in title by the same owner and the values are customarily assessed in combination, the structure and plot values could be combined in the matrix.

The eviction and/or demolition may not involve the dispossession of land title or ownership of the plot on which the structure stands. In that case, the evaluator would proceed to the next categories and not enter a value for the plot. However, in some cases, such as in Israel, the land plot under a demolished structure may, perforce, be assumed by, or “revert to” the state as “state land” or “national land.” The evaluator must be familiar with the local laws and regulations to determine if that is the case in the event of an eviction or demolition. That may determine whether or not a value is entered in this category of the matrix or not.

In the case of a housing plot being confiscated by the state, determining the value of that plot may be difficult if, again, no market value can be determined for the affected area. In that case, the methodology would involve determining the cost at current market value of a comparable site in another location.

Contents

Each affected party should cooperate with the field workers to provide an inventory of the actual contents lost and damaged in the demolition. The value of those contents for this quantification purpose is the **replacement value** of the items, not the market value. The contents (furniture, clothing, foodstuffs, electronics, housewares items, etc.) would be subject to depreciation and the resale or fair-exchange values would not be sufficient to cover the cost of replacement. The replacement value represents the actual cost of repurchasing items comparable in quality to those lost or damaged by the demolition. (For heirlooms and other items sentimental value, a replacement cost should be included in this category; however, the nonmaterial loss or irreplaceability should be expressed in the “Victims’ Nonmaterial Losses” section of the matrix, with a narrative either included in the matrix or attached to it.

Collateral damage

This section of the matrix allows for inclusion of the material losses to the indirect victims in particular, including neighbors’ and public property that are affected by the act. In cases of

violent eviction or demolition, using bulldozer or explosives, for example, nearby property can be damaged in various degrees, or destroyed.

Infrastructure

This section refers to services and other infrastructure lost in the demolition/eviction/confiscation that would have to be replaced after the event. For example, electricity provided at the original site may have to be replaced by a generator or purchasing energy from an alternate source. Water, previously available from installed or nearby facilities may have to be replaced by purchasing water or hauling it from another source. The resulting added cost—including the relative cost of labor at the going rate of such work for hire, which is beyond the existing regular costs of obtaining same—is the value to be calculated here.

Business losses

If the demolition/eviction/confiscation results in the loss of a business, or a portion of business, that cost is to be included here. Those losses are the subject of subcategories to be detailed below.

Equipment/inventory

This includes the value of machinery and equipment, other installations, such as furnishings and built ins, as well as all stock and supplies. This should include also the property belonging to others lost or damaged in the event. For example, a laundry or repair service would hold clients' property to be processed and returned. The values of those items are also to be included in this figure.

Prospective income

The loss resulting from inability to deliver goods and services, and the anticipate profit from existing stores, orders, contracts, etc. that would be unfulfilled due to the event. The short-term and long-term affects are to be calculated by different methods. This category of loss follows the method developed locally for determining "goodwill" as an asset, which would include the projected income from a pattern of business developed through the lifetime of the enterprise. [Refer to insurance law methods.]

Mortgage, other debts and penalties

The demolition/eviction/confiscation removes the owner's relationship with the land and/or structure, contents, livestock, inventory and other matters of material value, such as materials and work performed for physical improvement to the property. However, the event does not relieve the owner from responsibility to repay for those values obtained on a credit basis. Those values, including any penalties and increased interest resulting from the event, are to be included here for both the short-term and long-term. If a situation prevails, as in many legal systems, that a debtor relinquishes claims (as in a natural disaster, for example), then that cost should nonetheless be calculated and listed under the category of "Other than Victim's Losses."

Livestock

The value of livestock lost and the treatment of those injured by the event is calculated here. This would include also the labor costs for time spent in rounding up dispersed livestock at the rate of pay for such work for hire. The calculus for these values includes the loss of anticipated returns from normal sale of, and/or produce from the animals, including their normally anticipated progeny over the short-term and long-term. In the case of the animals' value as beasts of burden, the returns on their labor are to be included in the figures provided under lost revenue, increased transportation costs, returns from crop loss, or other appropriate category.

Land

The landed property not associated with the affected structure itself is to be calculated on the basis of fair market value, as with the structure and its plot entered above. This could be land adjacent to the dwelling or other affected structure, or land confiscated separately. This land could be lost entirely through confiscation, or its value could be reduced as a result of the eviction or demolition. In the case of eviction, land title might not be lost outright, but the conditions created by the eviction may prevent the owner(s) from returning to or reclaiming their land. In that case, the land in question would be calculated as an outright loss.

Trees/crops

The value of a lost or damaged nonfruit-bearing, or otherwise unharvestable tree or other vegetation would be determined by the cost of purchasing and replanting a comparable replacement. The nonmaterial, aesthetic, or sentimental value of the tree or other vegetation would be included by narrative in the Victim's Nonmaterial Losses item under Environment or Heritage, as appropriate. The value of harvestable trees and crops would include the value of the replacement itself for fruit-bearing trees and crops, as well as the (short-term and long-term) value of the harvest. The loss of timber would be calculated accordingly also, with the value being the anticipated return from the harvesting or sale of the tree itself.

The ecological loss of vegetation, depending on the nature of the event—if by demolition were by fire or other destructive means—also carries a value. Ecological damage is calculated on the basis of the restoration costs entailed. Collateral damage to wildlife and other natural assets, owing to the damage and the time required to restore it, may be of both a calculable and incalculable loss. Where possible, such calculable values should be included here. Otherwise, those losses are to be recorded in the narrative section of both the Victim's and Nonvictim's Nonmaterial Losses, for those losses would be of a more public nature.

Lost/decreased wages/income

The loss of a home, including subsequent short-term or long-term resettlement, may involve the loss of livelihood, whether that livelihood is linked to the dwelling and/or land lost. In any event, wages would inevitably be lost (to victim or her/his employer) for nonproductive time attending to the event and its aftermath. Resettlement can lead to loss of a job or jobs altogether, or necessitate securing alternative employment, especially if temporary or long-term resettlement is far from the regular workplace. To calculate that value, one would subtract the short-term and long-term wages and other income of affected persons from the normal, anticipated wages and other income before the event. Since obtaining new employment and other income involves a loss of certain benefits, such as accumulated vacation leave, seniority and other benefits, the relative loss of those values should be

included here if calculable. Job seniority may not be calculable value in monetary terms if it involves merely standing vis-à-vis colleagues. However, if that seniority arguably would have led to promotion with material effect in the short or long terms, that value is to be factored here as well.

Health care

The event itself or its aftermath may have negative health consequences. Social science has recorded the effects of eviction and resettlement upon the increased mortality and morbidity rates of the affected communities. While these notable consequences belong among the Victim's Nonmaterial Losses, the care for these consequences has clearly calculable values. The loss of life, limb and other health effects are the subject of the laws of states for the purposes of calculating victim compensation in insurance and other cases involving law suits. A sample of such methods taken from such statutes could form a composite methodology for calculating victims' health losses here.

The overcrowding, such as in interim or alternative housing arrangements, often leads to negative health consequences for those evicted, as well as for those providing the alternative shelter in their own quarters. The care and treatment of these health consequences (such as influenza, scabies, malnutrition, etc.) are an additional value added to these health care costs.

Interim housing

Eviction, confiscation and demolition victims often seek alternative housing with relatives or friends, either within the community or elsewhere. This housing has a value, which is to be calculated on the basis of fair rental rates for such shelter, whether rent is paid or not. It remains a cost and value that is subsidized in one form or another. It also can lead to an actual expanded definition of what constitutes the victim, for persons and groups offering assistance in various forms can be counted as second tier victims by virtue of the loss—voluntary or otherwise—incurred as a result of servicing the persons directly affected by the eviction, confiscation or demolition.

Bureaucratic and legal fees

While under threat of a violation, such as eviction, demolition and confiscation, the eventual victim would likely undergo costs related to both time spent and out-of-pocket costs in order to restrain or defend against the impending violation (if the threat is known in advance). Both the time and monetary costs incurred by both bureaucratic processes and legal advice and defense work should be quantified. Even if the legal advice given is free of charge to the affected person(s), those rendering the advice (NGO, CBO, other *pro bono* service) should put a value on that service for the purposes of this costing exercise. (The costs of bureaucratic efforts by public personnel is determined below under "Other than Victims' Nonmaterial Costs.")

Before the victim(s) can restore their proper housing, s/he conventionally undergoes a procedure and cost toward obtaining a license to rebuild or otherwise restore a dwelling. The costs incurred in this process, including fees, legal service, bribes and other out-of-pocket expenses should be included as a category in its own right.

Alternative/replacement housing

The cost of securing comparable housing on a permanent basis is represented here. (Temporary lodging costs are treated above under “Interim housing.”) The comparable housing is meant to include a dwelling with similar spatial dimensions, infrastructure, location and services as the home lost in the violation. This may involve calculation of the replaceable features of the original dwelling with some adjustments, depending on circumstances. For instance, a comparable dwelling space may be found near the source of livelihood, but may be in a differently priced market, and the adjusted figure would account for that. That dwelling may be comparable in most aspects, but lack services or infrastructure. In that case, the cost of obtaining the replacement services or infrastructure at the local rate would have to be added. Likewise, if the replacement housing is comparable to the original dwelling lost, but its location is less convenient for commuting to one’s source of livelihood or family and original community members, that additional transportation cost would be included in the “Transportation” item below.

Since this category of cost is of a more-or-less permanent nature, it should be cited in the “Long-term” cost column of the matrix. Typically, obtaining permanent replacement housing is a lengthy process; therefore, calculating this costs would be a subject for, and a further argument for follow up monitoring of violation cases.

Resettlement

The expenses of traveling and transport of goods to both interim and replacement housing sites form part of the resettlement cost. This, too, would likely involve the efforts and time on the part of several persons—with equivalent values—in order to locate and secure the short-term and long-term housing alternatives. All related costs should be calculated as much as possible.

Transportation costs

This category is the amount of difference between the amounts spent on transportation as a result of the eviction, demolition or confiscation and the amounts spent (if any) on transportation in the normal conduct of life at the original place of residence. Such values include expenses *and* time spent commuting to and from the source of livelihood, visiting family and community members, going to market, carrying out cultural and religious activities, visiting grave sites, conducting other official or private business, etc.

Victims’ nonmaterial losses

Health

In addition to the cost of medical treatment, the loss of health has a value seldom calculated in monetary terms. Methods for calculating the values of losses of life and limb can be found in local legal practice concerning divorce, traffic and insurance. This loss will have to be described in some detail in order to make your case.

Living space

A reduction in living space can have negative physical and emotional effects, as when an evicted family takes refuge with friends and relatives in small, temporary quarters.

Consequences may include nervousness, loss of sleep or skin ailments. Be sure to describe this situation as part of the victim's experience.

Reconstruction licensing

Long waiting and frustration may result from the search for a license to rebuild after demolition, eviction or confiscation. This loss can be measured in time and stress, and should be included here.

Psychological harm

The victims may suffer mental stress and psychological harm, especially in the context of violence during eviction, or the trauma that accompanies homelessness after the violation. Children are particularly susceptible. Their story needs to be told. You may find criteria for quantifying the value of pain and suffering from the specialized practice of local law on traffic and insurance.

Disintegration of family

Displacement and other violations of adequate housing could lead to separation of family members and the deterioration of family relationships. With the psychological depression arising from housing and land loss, some victims may engage in antisocial behavior, such as violence or substance abuse that harms family relations.

Loss of community

Eviction, resettlement or land loss can fragment communities and reduce social capital built up over time. It can separate people from support systems (including child-care arrangements, domestic division of labor, etc.) upon which they depend for livelihood and social activities, while women bear an extra burden of maintaining an uprooted home.

Investment in infrastructure

Even—and especially—the most-impooverished communities have to invest in local infrastructure (e.g., electricity, water, transport, roads), particularly if the municipal institutions exclude them. Separation from these facilities by forced eviction, confiscation or demolition means a total loss of that investment, which may not be quantified, partly because they are the product of volunteer labor.

Investment in sanitation and waste-management systems

A community may provide its own waste-management solutions, however simple it may be, especially in the absence of public services. The vital functions of waste management may no longer be possible because of the separation, causing a loss of labor divisions or disposal options and spell a deterioration in the quality of life, including entitlements to environmental health as a result of the violation.

Investment in security protection systems

Informal communities are typically forced to seek their own security arrangements, since civil police may fail to serve them, or deteriorating living conditions may coincide with increased social violence.

Investment in educational infrastructure

Local communities' arrangements for popular education may be curtailed with eviction, leading also to the disruption of formal education (e.g., lost school days). Each home also is a locus of educational infrastructure, especially where children carry out their homework.

Heritage

For heirlooms and other items of sentimental value, as for land-based identity and culture, a replacement cost should be included in this category. However, the incalculable nonmaterial dimension, or irreplaceability should be expressed in the "Victims' Nonmaterial Losses" section of the matrix, with a narrative either included in the matrix or attached to it.

Victims' nonmaterial costs

Environment/ecology

Various forms of housing rights violation can spell the loss of environmental safety, health and recreation. Displacement and eviction sever the relationship between the inhabitants and their habitat. It may also force them to live in precarious or unsafe environments as a consequence.

Standing/seniority

A home owner who loses her/his housing also loses the status that comes with the property and securely tenured lifestyle. The formerly real or perceived capacity of the victims to advise and support others dissipates with the violation of their right to adequate housing, especially through land loss.

Relocating long-standing communities to new areas makes them low-status newcomers in competition with new, indigenous neighbors. Environmental degradation or rezoning may affect the status of a community negatively, leading to intangible—but sometimes also quantifiable—losses.

Political marginalization

Homeless people in many States are denied the right to vote for lack of a fixed address. Resettlement renders inhabitants politically weak vis-à-vis new neighbors, especially without the benefit of local connections and established relationships.

Social marginalization

Losing one's home and place to live often means losing also the social integration once enjoyed in the former residence. Spatial marginalization to the outskirts of the city may be synonymous with exclusion from social services and infrastructure.

Further vulnerabilities

The loss of home, land and social capital (i.e., productive relations within the community) can leave the victim(s) without protection from the natural elements, and/or without livelihood and sources of income. The homeless woman becomes further vulnerable to threats against her personal security and integrity long after the housing-rights violation.

Other-than-victims' material costs (public costs)

Police

The law enforcement officials engaged in either committing or remedying a housing and land rights violation, for example, represent a cost to the public purse. You can calculate their number, multiplied by the hours/days engaged and by corresponding wages and benefits to derive an estimate of the public costs incurred.

Bulldozers

In some cases (e.g., in Israel), courts issue orders to targeted inhabitants and communities to demolish their own homes. If they do not comply, the State carries out the deed and charges the victim for the service. In other cases, the housing rights monitor would have to calculate the cost of using the equipment and the wages of the operator to determine the public expenditure in carrying out that part of the violation.

Legal practitioners

Lawyers, either arguing against or defending housing and land rights, as well as judges, prosecutors and court staff dedicate time and materials that are covered from public budgets. Their level of effort and cost per unit of time (hours or days) could form a method of calculating these public costs.

Army

Military personnel and equipment used in the violation (or defense against a violation) also represent a cost. Quantifying these costs may be a more-elusive exercise, but it may be useful to pose estimates for your public's consideration.

Other forces

The public bodies may subcontract tasks and functions to private parties; however, those expenditures related to the case at hand would factor among the nonvictim's material costs.

Bureaucratic and personnel costs

The inspection, administrative processing, clerical and other desk work in public institutions may be carried out in connection with your case and paid by the tax payer. Your educated estimate of these values forms part of the public cost scenario.

Other-than-victims' nonmaterial costs

Social costs

Housing rights violations can be a cause or consequence of social unrest in a country. Depressed living conditions within a community often coincide with increased social violence, and dislocation often generates new adversary relations among inhabitants competing over territory and property, either at the original site, or in resettlement. Squalid living conditions also could give rise to practices and pathogens that bear a social cost in the form of declining public health.

Civic order

Linked to adequate housing and other economic and social rights, civic order typically deteriorates commensurate with the deprivation of living conditions. Resistance to eviction and forced relocation, demolitions and dispossession by any party is the natural response to a breakdown in civic order, including that characterized by the State omitting to implement its obligation to respect, defend, promote and fulfill the human right to adequate housing and land.

Political legitimacy

Depending on the facts and scale of a particular situation, a housing and land rights violation could undermine the legitimacy of the political party, government or even State in whose name the violation is committed. Alternatively, resolving and remedying a violation could have the opposite effect of recovering the loss of official credibility and legitimacy.

✓ **Loss matrix**

✓ **Housing contents inventory**

1.8. Duty holders

The professional monitor of the human right to adequate housing should provide a list as complete as possible of the duty holders both legally and morally responsible. This legal duty holder (i.e., the State and its agents) may be operating in conjunction with others in either the violation or the potential solution. The audience of your eventual action, whether they are the general public, journalists, or a prosecutor or judge, will need a clear and complete picture of the legal personalities, those who are responsible for their acts of commission and/or acts of omission, and who does what to whom, from the beginning to the present.

As borne out in the foregoing sections on sources of law and guarantees, the concerned State is always the principal duty holder. The State is the legal personality that is treaty bound by the obligation to respect, protect, promote and fulfil human rights, but also to aid those who have been deprived of them. The State's duties are threefold:

- To avoid deprivation,
- To protect and defend those facing deprivation,
- To provide remedy in the forms of assistance and justice to those deprived.

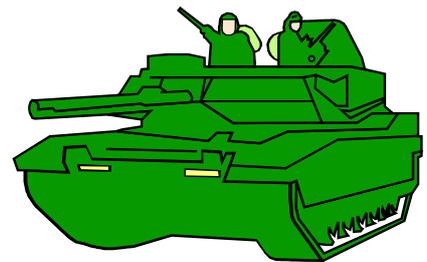
You may find that the State, as duty holder, has committed acts that cause deprivation, or omitted to protect or remedy a deprivation through the obstacles identified above. One might

also find that the duty holder is constrained by other actors or factors, such as natural disaster, or global economic recession.

Identifiable institutions and man-made forces, either internal or external, may be known to contribute to a violation. These may include actors such as the International Monetary Fund (IMF), the World Bank, a multinational corporation or national planners. You may find that these parties are either directly or indirectly responsible for the deprivation, or conditions leading up to it. So, too, are factors such as debt or traditional social practices. Especially when the role of the State is passive (i.e., by denial or failure to protect and ensure remedy to the victims), other actors may come to the fore. Private companies, including multinational corporations, for instance, regularly acquire assets and carry out projects that involve forced evictions and land confiscation. In some cases, the regional and international development banks have their well-articulated policies on compensation/relocation. However, these companies may be the right hand of State policies, or implementers of international public projects. That is why it can be crucial to record the relations between the different actors forming a whole chain of duty holders.

One must not overlook the possibility that duty holders, particularly as violators owing remedy and restitution to victims, might also be members of the community, or even family members of the victim(s). Where does the State duty lie in such a situation?

As the legal personality obliged to respect, defend, promote and fulfil the human right to adequate housing, the State's duty lies squarely in the execution of its human rights obligations to regulate behavior of legal persons within its jurisdiction (and areas where it exercises effective control) in order to uphold rights. The human rights treaties and other instruments provide the guidance on how States—and statecraft—should address human rights violations by third parties not only as matters of civil or criminal law, but also as means to ensure the legitimacy of the concerned government, or even State itself.



To have a full outline of questions for identifying the duty holders and the applicable legal obligations, you can use this "Toolkit" very effectively, since each element of the right to adequate housing that you have identified as relevant to your case has corresponding duty holders.

Primary duty holders: State authorities

- Has the State failed to take to prevent the violation of housing rights, especially security of tenure and freedom from dispossession? What are those neglected steps?
- Has the State protected the impoverished and vulnerable inhabitants and aided the victims (e.g., by prosecution, return, compensation, etc.) in the violation of housing rights, especially security of tenure and freedom from dispossession? Which are the particular bodies responsible for these preventive and remedial steps?
- Has the State taken sufficient measures to promote the entitlement of security of tenure and freedom from dispossession (e.g., human rights education, campaigns, public-service announcements, awareness-raising publications, etc)? Which are the specific bodies responsible for those measures?

- What is the State's relationship with other duties holders regarding the assessed violations? Explain the nature of that relationship. Is it a contract, foreign aid package, nepotism, political patronage, etc.?

Secondary duty holders: Have other actors affected the denial of secure tenure and freedom from dispossession?

- Are other local, non-State actors somehow engaged in the denial of security of tenure and freedom from dispossession? Who are they and what is their role?
- What role do international financial institutions (IFIs) such as the World Bank, IMF, a regional development bank, or the World Trade Organisation have in determining the policies or conditions affecting secure tenure in the affected community/country?
- What role and influence do multinational corporations or international development agencies have in determining the policies or conditions of secure tenure in the affected community/country?
- How are these secondary duty holders responsible for the violation of the right to security of tenure and freedom from dispossession? To what extent do they influence State policies, programs, and laws having an effect on the violation?
- Do the secondary duty holders have internal policies/codes of conduct regarding housing rights, especially affecting the entitlement to security of tenure and freedom from dispossession? If so, are they publicly accessible?
- What are the relevant details of those policies or codes? How do they protect the HRAH and the entitlement of security of tenure and freedom from dispossession?
- Are these conditions part of an implementation contract or other cooperative agreement with State bodies or other partners?
- Before implementation, do they study the impact the projects will have or consider the possible unintended consequences?
- If there are several secondary duty holders, what is their relationship to each other, and how do they share responsibility for the assessed violation of the entitlement to security of tenure and freedom from dispossession? What is the relationship between each of them and the State?
- Do local authorities lack sufficient autonomy in housing and community development to apply locally relevant options to ensure the HRAH, especially security of tenure and freedom from dispossession?
- Do local authorities use their autonomy to protect and influence the central authorities of the State in a positive way, or do they participate in the violation and denial of the State's obligations and national policies?

Assessment

- To what extent is the State responsible for the vulnerability or violation of the housing rights entitlement to security of tenure and freedom from dispossession?

- ❑ To what extent are non-State actors responsible for the vulnerability or violation of the housing rights entitlement to security of tenure and freedom from dispossession?

1.9. Actions

The following table of actions (comprised of both preparation and implementation tasks) arranges a variety of possible problem-solving options for you by categorizing them for organizational and selective decision-making purposes. It is not an exhaustive set of options, but merely part of an array of possibilities for you to undertake with the affected community, depending on the present strengths (assets), weaknesses (liabilities), opportunities and threats.

Before selecting your actions, you should conduct a strategic planning exercise. For guidance click [here](#).

Footnotes shown here refer to relevant manuals, training materials, expertise, trainers, recorded experiences and/or methodologies already available to guide your chosen action toward a desired goal/result/solution. Toolkit users are encouraged to consult the HIC-HLRN website regularly for updates and further reference (www.hlrn.org) on constantly evolving updates, including strategies and practices arising from experiences throughout the global HIC and HIC-HLRN community.

Action		Solution
Preparation	Implementation	
Alternative tenure options		
Gather information for community to consider tenure options	Develop "limited equity cooperatives" ⁵¹	Legal secure tenure in adequate housing and sustainable land
	Inform and train community in pursuing land-tenure options ⁵²	
Community capacity building		
Conduct training for community on their human right to adequate housing ⁵³	Mobilize community in local and national human rights campaigns	Greater community participation in projects, programs and policy formulation with well-defined human rights orientations

⁵¹ The limited-equity cooperative is a form of housing tenure in which shareholder residents manage their buildings, within limits imposed by a charter, and have the right to get back what they have paid for their shares plus an allowance for improvements, if and when they decide to leave. See Duncan Kennedy, "The Limited Equity Coop as a Vehicle for Affordable Housing in a Race and Class Divided Society," 46 Howard Law Journal 85–125, 85 (Fall 2002).

⁵² Luanne Warnock, *Sharing the Cost of Land Tenure and Stewardship* (Davis CA: Sustainable Agriculture Research and Education Program, University of California, 1996).

⁵³ See Circle of Rights (Washington: 2000); Jules N. Pretty, Irene Guijt, John Thompson and Ian Scoones, *Participatory Learning and Action, A Trainer's Guide* (London: International Institute for Environment and Development, 1995), available from Earthprint at www.earthprint.com; also materials of Peoples' Movement for Human Rights Education, <http://www.pdhre.org>.

Legal service organizations and centers provide legal advice and representation to disadvantaged individuals and communities ⁵⁴	Organize popular resistance to HRAH violations (demonstrations, petitions, sit-ins, street theater, etc.) ⁵⁵	Community blocks housing rights violations by State and non-State entities
<i>Pro bono</i> (volunteer) lawyers provide legal advice and representation to disadvantaged individuals and communities	Organize national campaign on RAH ⁵⁶	Coordinated community action and reaction to influence State authorities on housing policies
Build capacity of community-based and other civil society organizations to manage projects and campaigns ⁵⁷		CBOs and NGOs more capable to support the affected people in responding rapidly and effectively to crises/violations
Train communities (in HRAH, strategic planning, technical skills, etc.) ⁵⁸	Public agencies provide adequate technical, marketing and research assistance to disadvantaged community on an affirmative-action basis	Community better able to mount specific alternatives to official plans
Raise public awareness toward social mobilization through public education ⁵⁹	Mobilize peaceful public protests to housing rights violations	Prevent forced evictions
Enhance monitoring-and-documentation skills and methods (e.g., archiving,	Urgent Action appeals (organize regional and/or international mobilization) ⁶¹	Convince public of violations and need for resolution

⁵⁴ Gridley Hall and Burton Fretz, "Legal Services in the Third World," Clearinghouse Review (December 1990); Jose Diokno, Developmental Legal Aid in Rural Asean: Problems and Prospects (Washington: 1981); Richard J. Wilson and Jennifer Rasmussen, Promoting Justice: A Practical Guide to Strategic Human Rights Lawyering (Washington: Human Rights Law Group: 2001).

⁵⁵ Morjane Baba, Guérilla Kit (Paris: La Découverte, 2003); Mike Prokosh and Laura Raymond, The Global Activist's Manual: Local Ways to Change the World (New York: Nation Books, 2002).

⁵⁶ "Global Struggle and National Focus Note" (Geneva: HIC, 1996).

⁵⁷ Kaplan, Allan, The Development of Capacity (Geneva: UN Nongovernmental Liaison Service, 1999); Goggey, Shirley, Rural Community Resource Centers: A Guide for Developing Countries (London and Basingstoke: MacMillan, 1988).

⁵⁸ Barrameda, Teresita V. and Lea I. Espallardo, Learning, Reflecting and Acting for a Human Rights Future: A Training Manual for the Education of the Human Right to Housing in Urban Communities (Quezon City: Process, Inc. and New York: PDHRE, 2000).

⁵⁹ Writing for change: An interactive guide to effective writing, writing for science, writing for advocacy [CD and user's guide] (Oxford: fahamu and IDRC, 2000); International Human Rights Internship Program, Ripple in Still Water: Reflections by Activists on Local- and National- Level Work on Economic, Social and Cultural Rights (Washington: University of Minnesota Human Rights Resource Center, 1997), Chapter 6, online at <http://www1.umn.edu/humanrts/edumat/IHRIP/ripple/toc.html>; Allan McChesney, Promoting and Defending Economic, Social and Cultural Rights: A Handbook (Washington: AAAS and HURIDOCS, 2000) Chapter 7 online at: <http://shr.aaas.org/escr/handbook/>.

statistics, multimedia, etc.) to build strong argumentation ⁶⁰	Public-information campaigns ⁶²	
Design and implement alternative planning (community generated techniques in the people's initiative to design their own living environment) ⁶³		Participatory alternative housing projects adapted to the community's needs
Conduct an inventory (enumeration) of community human resources and social capital ⁶⁴	Organize and divide volunteer labor of affected communities; and to areas to develop alternative plans	Community housing and built environment upgraded on-site as alternative to relocation.
	Community representatives lobby officials and legislators to cooperate with/approve community- proposed alternatives	Obtain adequate relocation site with suitable location, environmental conditions and livelihood options
Community organizing		
Consult with community representatives and conduct an inventory (enumeration) of community human resources and social capital	Establish a tenants union ⁶⁵	Community presents a common position in defense of its rights and interests
Identify and locate absentee landlord ⁶⁶		
Cooperate and negotiate⁶⁷		

⁶⁰ For guidance and methodology in documenting housing rights cases, see HLRN, Urgent Action! HLRN Guide to Practical Solidarity for Defending the Human Right to Adequate Housing [Arabic, English, French and Spanish versions] (Cairo: HLRN, 2003); and HIC Housing and Land Rights Network website: www.hlrn.org.

⁶¹ For guidance and methodology in building housing rights cases argumentation and mobilise solidarity, see HLRN, Urgent Action! HLRN Guide to Practical Solidarity for Defending the Human Right to Adequate Housing [Arabic, English, French and Spanish versions] (Cairo: HLRN, 2003); and HIC Housing and Land Rights Network website: www.hlrn.org.

⁶² Strategic Campaigning (London: Amnesty International, 2003).

⁶³ Youth in Unity for Voluntary Action--YUVA and University of Tasmania, "Settlement Upgrading Manual" [Sakkardara alterantive plan] (October 2000); UNCHS, Human Settlements Development through Community Participation (Nairobi, UNCHS, 1991); Nick Waters, The Community Planning Handbook: How People Can Shape Their Cities, Towns and Villages in Any Part of the World (London: Earthscan, 2001).

⁶⁴ Ibid.

⁶⁵ "Tenant organizing resources" on the National Alliance of HUD Tenants website: <http://www.saveourhomes.org/>. Practical steps for forming a tenants union can be found on http://www.radio4all.org/aia/pro_tenant.html.

⁶⁶ "Who is my landlord anyway?" (Seattle: The Tenants Union, 2004), go to <http://www.tenantsunion.org/research.html>.

⁶⁷ For a collection of popular experiences in government-nongovernment cooperation in the field of human settlements, see Habitat International Coalition, Building the City with the People: New Trends in Community Initiatives with Local Governments (Mexico City: Habitat International Coalition, 1997), contents also available on line at HIC General Secretariat website, at <http://www.hic-net.org/library.asp>.

Learn/use conflict resolution techniques and, including alternative dispute resolution ⁶⁸	Decriminalize actions taken to obtain elements of HRAH	Administrative recognition of tenure and the human right to adequate housing of people without economic access
Mobilize inhabitants	Organize squatter actions and squatter-empowerment interventions ⁶⁹	
Cooperate with National Human Rights Institutions ⁷⁰	Propose and lobby for the implementation of National Plans of Action for Human Rights ⁷¹	National housing shortage, upgrading needs and land conflicts addressed in a National Plan of Action with provision for law and policy reform
Negotiate with municipal authorities to include the community/civil society as a partner ⁷²	Increase community participation in design, planning, implementation and maintenance of housing ⁷³	Maintained and upgraded social housing
Train in negotiation and mediation skills ⁷⁴	Negotiation toward reconciling evictions/removals and land grabbing ⁷⁵	Indigenous peoples regain historic land claims

⁶⁸ American Arbitration Association (AAA), *Grievance Mediation Procedures* (New York: AAA, 1992); AAA, *Resolving Your Disputes* (New York: AAA, 1993); American Bar Association, *Alternative Dispute Resolution: An ADR Primer* (Washington: Standing Committee on Dispute Resolution, 1989); Carpenter, Susan L. and W.J.D. Kennedy, *Managing Public Disputes: A Practical Guide to Handling and Reaching Agreements* (San Francisco: Jossey-Bass Publisher, 1988); Cochrane, Michael G. ed., *Attorneys General and New Methods of Dispute Resolution* (Washington: American Bar Association, 1990); Costantino, Cathy, A. and Merchant, Christina, S. *Designing Conflict Management Systems* (San Francisco: Josey-Bass Publisher, 1996); Edelman, Lester, Frank Carr, and James L. Creighton, *The MiniTrial* (Ft. Belvoir VA: U.S. Army Corps of Engineers Institute for Water Resources, 1989); Edelman, Lester, Frank Carr, Charles Lancaster, and James L. Creighton, *Non-Binding Arbitration* (Ft. Belvoir VA: U.S. Army Corps of Engineers Institute for Water Resources, 1990); Fine, Erika S. and Elizabeth S. Plapinger, eds. for the CPR legal Program, *Containing Legal Costs: ADR Strategies for Corporation, Law Firms, and Government* (Butterworth Legal Publishers, 1988); ; Folberg, Jay and Alison Taylor, *Mediation: A Comprehensive Guide to Resolving Conflicts without Litigation* (San Francisco: Jossey-Bass Publishers, 1984). For a bibliography and resources guide on alternative dispute resolution, see Office of Personnel Management website: <http://www.opm.gov/er/adrguide/Section7.asp>.

⁶⁹ Diana Mitlin and David Satterthwaite eds., *Empowering Squatter Citizen: Local Government, Civil Society and Urban Poverty Reduction* (London: International Institute for Environment and Development, 2004), available from Earthprint at www.earthprint.com.

⁷⁰ OHCHR, *National Institutions for the Promotion and Protection of Human Rights* [Human Rights Series No. 19] (Geneva: OHCHR, undated), at <http://www.unhcr.ch/html/menu6/2/fs19.htm>.

⁷¹ Office of the High Commissioner for Human Rights, *Handbook on National Human Rights Plans of Action* [Professional Training Series No. 10] (Geneva and New York: OHCHR, 2002), at: <http://www.ohchr.org/english/about/publications/docs/nhrap.pdf>.

⁷² Janelle Plummer, *Municipalities and Community Participation: A Sourcebook for Capacity Building* (London: Earthscan, 2001); Janelle Plummer, ed., *Focusing Partnership: A Sourcebook for Municipal Capacity Building in Public-Private Partnerships* (London: Earthscan, 2002); Diane Warburton, ed., *Community and Sustainable Development: Participation in the Future* (London: Earthscan, 200X).

⁷³ UNCHS, *Human Settlements Development through Community Participation* (Nairobi, UNCHS, 1991).

⁷⁴ Scott Beattie, "Is Mediation a Real Alternative to Law? Pitfalls for Aboriginal Participants," *Australian Dispute Resolution Journal* 8 (1997) 57; Larissa Behrendt, *Aboriginal Dispute Resolution: A Step towards Self-Determination and Community Autonomy*. (Sydney: Federation Press, 1995).

⁷⁵ Michael Asch and Norman Zlotkin, "Affirming Aboriginal Title: A New Basis for Comprehensive Claims Negotiations," in Michael Asch, ed., *Aboriginal and Treaty Rights in Canada: Essays on Law, Equality, and Respect for Difference* (Vancouver: University of British Columbia Press, 1997).

Develop community/local government cooperation	Monitor transparency in decision-making processes	Obtain social housing (provided by government), based on need, with amortization based on minimum wage level (affordability)
	Design infrastructure projects	
	Reform public policy toward providing affordable housing	
	Propose and implement National Shelter Strategy ⁷⁶	
	Design national (comprehensive) development plans	
Develop the cooperative sector	Promote cooperative sector initiatives to provide affordable housing	
Use/lobby/cooperate with the international human rights system (interventions with factual, legal and political mechanisms of the UN and regional human rights systems) ⁷⁷	Undertake negotiations at international/ multilateral level (whereby negotiators representing the State assert their prior obligations under international human rights treaty law against IFI [World Bank, regional development bank, IMF, etc.] and WTO conditionalities leading to housing rights regressive / retrogressive violations) ⁷⁸	Obtain/ensure continuous regulation of housing market practices (e.g., to ensure tenure security, accessibility of housing, building materials, direct investment, etc.)
		End to practices of land confiscation through foreclosure, adverse possession and eminent domain without adequate, consensual alternatives
Develop / reform / enforce law⁷⁹		

⁷⁶ UNCHS, Developing a National Shelter Strategy: Lessons from Four Countries (Nairobi: UNCHS, 1990); OHCHR, Handbook on National Human Rights Plans of Action (Geneva: OHCHR, 2001)

⁷⁷ See "NGO participation in the activities of the Committee on Economic, Social and Cultural Rights," UN doc. E/C.12/2000/6, 7 July 2000, website: <http://www.hchr.un.ch>; and "Revised general guidelines regarding the form and contents of reports to be submitted by states parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights," UN doc. E/C.12/1991/1, 17 June 1991.

⁷⁸ INCHRITI, Trade, Investment, Finance and Human Rights: Essential Documents (Geneva: INCHRITI, 2001).

⁷⁹ Mario Rosário, "Action "Tsimba Ga Ku Aka" to build together" (1996); Janeth López, "Asesoría en vivienda para el proceso de reinserción en Colombia" (1996); K.A. Jayaratne, "Collaborative Partnership to Improve the Low Income Neighbourhoods," (1996); Michael Shapcott, "Rupert Pilot Project. A self-Help and Community Rehabilitation Project in Canada" (1996); Leopold Mutembei, "Struggles of the urban poor to improve their living conditions" (1996); Leonard Chileshe Mulenga, "The case of Bauleni Upgrading" (1995); Johan Silas, "The Improvement of Low Cost Housing and Environment" (1996); in Habitat International Coalition, Building the City with the People: New Trends in Community Initiatives with Local Governments (Mexico City: Habitat International Coalition, 1997), contents also available on line at HIC General Secretariat website, at <http://www.hic-net.org/library.asp>.

Initiate/reform legislation and regulatory processes in compliance with the human-right-to-adequate - housing framework	Undertake class action suits (with minimum of [e.g., at least 15] physical or legal persons undertaking a litigation action, generally in the name of a whole group of the population), or public-interest litigation (e.g., India) ⁸⁰	Law and policy enforced to respect, defend, promote and fulfill housing rights
		Law enforcement officers protect population from and implied protection
Collect sufficient data to determine material and nonmaterial losses to victims of housing and land rights violations		Violators prosecuted and punished
		Victims receive restitution and full compensation for violation and material and nonmaterial losses
Conduct national housing and land rights assessment ⁸¹	Lobby parliament	Law promotes housing and land acquisition and retention in disadvantaged communities consistent with international commitments to promote just patterns of land distribution
	Raise test cases, constitutional challenges through court system	
	Develop laws on properties left without will and testate in order to narrow the class of heirs and prevent fractionation of the ownership	
	Nationwide constitutional review campaign	Constitutional reform ⁸²
Institutional reform		
Establish and maintain an effective Land Trust to support communities subject to discrimination and dispossession		Land ownership expanded for disadvantaged communities on an affirmative-action basis

⁸⁰ "Public interest litigation" (PIL) is a form of litigation filed in a court of law, for the protection of "public interest." Most prominently used in the Indian context, it is not defined in any statute or act. It has been interpreted by judges to consider the intent of public at large. Although, the main and only focus of such litigation is public interest, PIL can be filed in cases involving, e.g., such issues as pollution, "terrorism," road safety, constructional hazards, violated human rights of the poor, the content or conduct of government policy, to compel municipal authorities to perform a public duty, etc. See, for example: Upendra Baxi, "Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India" [revised], in Upendra Baxi, ed., Law and Poverty: Critical Essays (Bombay: Tripathi 1988); Mario Gomez, In the Public Interest: Essays on Public Interest Litigation and Participatory Justice (Colombo: Legal Aid Centre, University of Colombo, 1993); Sampat Jain, Public Interest Legislation (New Delhi, Deep & Deep, 2002); Shri. V.S.Vadivel, "Public Interest Litigation (PIL) A Boon or Bane?" (Legal Services India, 2004),

<http://www.legalserviceindia.com/articles/pil.htm>; see also Help Line Law website:

<http://www.helplineinlaw.com/docs/main.php3?id=PIL11>.

⁸¹ Apply this HIC-HLRN Housing and Land Rights Monitoring Toolkit on a national scale to all elements of the human right to adequate housing.

⁸² See, for example, "The history of constitutional reform in Kenya," World History Archives (2004), <http://www.hartford-hwp.com/archives/36/index-bbh.html>.

Monitor and survey practices of public and private lending institutions for discrimination practices and patterns	Lobby for disciplinary action and rehabilitation of institutions to end discriminatory practices	Institutions apply uniform criteria in housing and community development programs, policies and transactions
International human rights system interventions		
Prepare and present collective parallel report to human rights treaty bodies (or submit cases under individual complaints procedures under Optional Protocols)		UN treaty body Concluding Observations coincide with community's evaluation of housing rights conditions and proposals for solutions
Raise cases and submit briefs before regional human rights courts and commissions ⁸³		State compelled to implement its treaty obligations to respect, defend, promote and fulfill the human right to adequate housing and land
Use Concluding Observations in public information and media campaigns, litigation		
Submit cases to UN Commission on Human Rights 1503 Procedure		States intervene to resolve impasse in housing rights violation case
Submit question/case to UNESCO complaints procedure		States intervene to resolve impasse in housing rights violation case
Legal defense		
Develop and deliver legal literacy and litigation strategy training ⁸⁴	Provide legal-aid services to defend individual and community housing and land rights	Judicial rulings include legal precedents for future litigation and law reform to ensure individual and group rights to adequate housing and land
Collect detailed data on violations, perpetrators,	Present admissible evidence in litigation on	

⁸³ Litigating Economic, Social and Cultural Rights: Achievements, Challenges and Strategies (Geneva: COHRE, 2004), available at <http://www.cohre.org/library/Litigating%20ESCR%20Report.pdf>; Amicus Curiae in Grupo Interdisciplinario por los Derechos Humanos v. Colombia [submitted by COHRE to Inter-American Commission on Human Rights on case of housing destruction by paramilitary groups in Ituango and El Aro, Colombia], on line at <http://www.cohre.org/downloads/amicuscolombia1.doc>; Amicus Curiae in Justiça Global, et al. v. Government of Brazil, Inter-American Commission on Human Rights [submitted by COHRE on actual and threatened violations of housing rights, including forced evictions, with the planned Alcântara Spaceport expansion, in Brazil] available at <http://www.cohre.org/downloads/amicusbrazil1.doc>; Amicus Curiae in CELS & CEJII v Argentina, Inter-American Commission on Human Rights [submitted by COHRE to Inter-American Commission on Human Rights on case local authorities conducting forced evictions in Barrio Ejército de los Andes, Provincia de Buenos Aires, Argentina], available at <http://www.cohre.org/downloads/amicusargentina1.doc>. See also COHRE Case Law Database on line at <http://www.cohre.org/lframe.htm>; Case law database for economic, social and cultural rights available on the ESCR-Net website at <http://www.escr-net.org/>; found in "Case Law" at http://www.escr-net.org/EngGeneral/Case_law.asp, or "Jurisprudencia" at http://www.escr-net.org/EspGeneral/Case_law.asp.

⁸⁴ Margaret Schuler and Sakuntala Kadirgamar-Rajasingham, Legal Literacy: A Tool for Women's Empowerment (Washington: Women, Law and Development, OEF International, 1992).

values of losses and other consequences ⁸⁵	behalf of victims ⁸⁶	Crimes and perpetrators prosecuted and punished
		Judicial remedies, including legal precedents for future litigation and law reform to ensure gender equality
Develop gender-awareness and gender-justice training for communities, police, lawyers, prosecutors and judges ⁸⁷	Provide legal-aid services to defend equal rights to housing and land for women and gender-discrimination victims	Victims receive restitution and full compensation for violation and material and nonmaterial losses ⁸⁸
Develop judicial procedures and expertise to provide for land-consolidation courts	Consolidate and reduce unstable “in-common” tenancy to maintain family and community land retention, especially to uphold land base for minority groups and indigenous peoples	Communities restore and retain their land base
Media cooperation and campaigns		
Conduct training for media professional in the human right to adequate, corresponding obligations, interviewing victims, quantifying victims’ losses and community follow-up ⁸⁹	Meet journalists and media professionals to follow-up on training and present new documentation and information on developments	Informed public supports community alternative-development and/or anti-eviction proposals
Provide media outlets with economic analyses of various possible alternatives (on-site upgrading v. relocation)		
Provide media outlets with alternative plans and community proposals for their development		

⁸⁵ See “Housing and Land Rights Violation Case Documentation Form” in this toolkit.

⁸⁶ Domestic Implementation of International Human Rights: Litigating Economic, Social and Cultural Rights, on Human Rights Internet website at http://www.hri.ca/forthecordCanada/vol1/guide-part_11.htm; Case Law Database for Economic, Social and Cultural Rights available on the ESCR-Net website at <http://www.escr-net.org/>; found in “Case Law” at http://www.escr-net.org/EngGeneral/Case_law.asp, or “Jurisprudencia” at http://www.escr-net.org/EspGeneral/Case_law.asp.

⁸⁷ Shelter Rights Initiative, Gender Specific Rights Litigation and Protection Strategies (Lagos: SRI, 1998); SRI, Manual on Judicial Protection of Economic, Social and Cultural Rights (Lagos: SRI, 2000).

⁸⁸ “Seminar on the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms,” Netherlands Quarterly on Human Rights Special Issue (1993); S. Nadasen, “Restitution, Reconstruction, Reconciliation and Restribution: Land Reform—Balancing the Interests of the Dispossessed, the Homeless and Development,” Stellenbosch Law Review (1997), 360–77. For a bibliography of global restitution and compensation experience, go to: <http://userpage.fu-berlin.de/~theissen/biblio/>.

⁸⁹ HIC-HLRN training module on “Housing and Land Rights for Media Professionals.”

Policy reform		
Reverse and prosecute discriminatory practices toward disadvantages individuals and communities by both public and private lending institutions		Fairness-in-lending policy formulated and enforced for housing and land purchase, rehabilitation and sustainability
Expand public-private initiatives to stimulate investment and multipurpose development communities		Integrated development with low-cost housing on public and donated lands
Provide housing and relief		
Exchange expertise in temporary housing and relief provision	Organize emergency relief (immediate provision of housing and/or housing resources at no cost to those denied: water, medical services, economic relief, housing resources and building materials, etc.)	Eviction and displacement victims receive emergency (temporary) housing
Resource mobilization		
Conduct an inventory (accounting) of community (human and material) resources	Design, adapt and implement alternative-finance schemes; (e.g., small savings toward common projects) and self-financing for needy inhabitants (with freehold tenure options) ⁹⁰	Upgrading and generally improved living conditions on site, as alternative to relocation
	Establish and operate nonbank institutions as lenders and builder of adequate, low-income housing ⁹¹	

⁹⁰ Alternative Financing Models: Hybrids of Homeownership Mutual Housing (The Enterprise Foundation, 2003); "Capitalizing on Collaboratives: New Partners for Comm. Dev. Finance" (Washington: Center for Policy Alternatives, July 1996); Enrique Ortíz, FONHAPO: The Experience of the National Fund for Low Income Housing in Mexico (London: International Institute for Environment and Development, 1998), available from Earthprint at www.earthprint.com.

⁹¹ Jeffrey Carmichael and Michael Pomerleano, The Development and Regulation of Non-Bank Financial Institutions (Washington: World Bank, 2002); Indonesia: Housing Finance for the Urban Poor (Manila: Asia Development Bank, 2001); Peer Smet, "Indian Housing Finance Alliances and the Urban Poor," Global Built Environment Review Vol. 2, No. 1, 58–66, <http://www.edgehill.ac.uk/qber/pdf/vol2/issue1/Eight.pdf>.

	Organize self-help cooperation through rotating community credit (building & upgrading infrastructure, social production of housing ⁹²)	
	Immediate, diligent and effective increase in advice-and-lending services, on an affirmative-action basis within public lending institutions	
	Develop microcredit schemes (for upgrading and construction, but with social and legal components providing HRAH content) ⁹³	
Analyze economic costs of the various possible alternatives (on-site upgrading v. relocation)		
Raise material support (raise funds) from private, public and intergovernmental donors), including microcredit ⁹⁴		
Plan/undertake reconstruction, ⁹⁵ upgrading and general improvement of living conditions (with multiple parties cooperating)		
Restoration and increase housing subsidy programs for low-income people, including by tax reform (e.g., reversal of tax cuts for the wealthiest tax payers)		Low-income people pay no more than 30% of monthly incomes for adequate housing

⁹² Joseph Schechla, ed., [Anatomies of a Social Movement](#) (Cairo: HIC-HLRN, 2004); Habitat International Coalition, [Building the City With the People. New Trends in Community Initiatives in Cooperation with Local Governments](#) (Mexico City: Habitat International Coalition, 1997); Prem Pangora, [Citizen's Initiatives for environmental improvements: The case of River Sabarmati, Ahmedabad, India](#) (Mexico City: Habitat International Coalition, 1997); Joël Audefroy, [Construyendo la Ciudad con la Gente. Nuevas tendencias en la colaboración entre las iniciativas comunitarias y los gobiernos locales](#) (Mexico City: Coalitón Internacional para el Habitat, 1998); Gustavo Romero, La producción social del hábitat: reflexiones sobre su historia, concepciones y propuestas (2000), available on line at http://www.hic-net.org/online/Romero_PSH-intro.pdf; Eike Jacob, [Social Production of Habitat in Latin America](#) (2003); Habitat International Coalition-América Latina, "Social Production of Habitat. Conceptual framework" (2003); Enrique Ortíz, Social Production of Habitat: Marginal option or reality-transforming strategy? (2003), available on line at http://www.hic-net.org/online/Ortiz_SPH.pdf; Enrique Ortíz, [Vivitos y Coleando. 40 años trabajando por el hábitat popular en América Latina](#) (2002).

⁹³ Nazrul Islam, [Grameen Bank Bangladesh. A credit institution for housing](#) (1996); Jaffer Murtaza, [The Tanzania-Bondeni Community Lands Trust](#) (1996).

⁹⁴ Nazrul Islam, [Grameen Bank Bangladesh. A credit institution for housing](#) (1996); Jaffer Murtaza, [The Tanzania-Bondeni Community Lands Trust](#) (1996).

⁹⁵ See York University Postwar Reconstruction and Development Unit, website: <http://www.york.ac.uk/depts/poli/prdu>.

Conduct an inventory of community financial and material resources	Develop community savings schemes	Social production of habitat: Community/self-financed upgrading of housing and improvement of living conditions
Conduct public budget analysis from the housing rights perspective ⁹⁶	Develop participatory budgeting ⁹⁷ (ensuring that necessary programs and projects are budgeting according to housing rights obligations)	Public budgets comply with State's housing rights obligations to ensure "progressive realization" with "maximum of available resources"
Training other actors (outside community)		
Train civil servants in HRAH (including international treaty obligations upon the State and local authorities)	Reform urban/land planning criteria, procedures and objectives to harmonize with local community needs and criteria ⁹⁸	Physical planning integrates human rights obligations, language and priorities directed to needy and vulnerable communities
Train lawyers in HRAH, (including international treaty obligations upon the	Legal argument, litigation and judicial decisions invoke international norms and treaty obligations	Legal recognition of traditional legal and tenure systems and provision of secure title ¹⁰⁰

⁹⁶ Ravikant Joshi, *A Case for Reform: how municipal budgets can change our cities* (Mumbai: YUVA Books, 2001); Maria Socorro I. Diokno, "A Rights-based Approach towards Budget Analysis" (Washington: International Human Rights Internship Program, 1999); Institute for Development Policy Analysis and Advocacy—IDPAA (Atiur Rahman et al.), *Alternative Budget Analysis: A Series of Studies on the National Budget for the Perspective of Poverty Eradication* [three volumes: Budget and the Poor, The Budget-making Process, People's Budget: An Alternative Exercise Using Participatory Tools] (Dhaka: University Press Ltd., 2002).

⁹⁷ Rebecca Abers, 1998, "From clientelism to cooperation: Local government, participatory policy, and civic organizing in Porto Alegre, Brazil"; *Politics and Society*. 26(4)c 511–37; Rebecca Abers, *Inventing Local Democracy: Grassroots Politics in Brazil* (Boulder: Lynne Rynner, 2000); Baierle, Sergio, 1998, "The Explosion of Citizenship: The Emergence of a New Ethical-Political Principal in Popular Movement in Porto Alegre, Brazil," in Sonia E. Alvarez, Evelina Dagnino and Arturo Escobar, *Cultures of Politics/Politics of Cultures: Revisioning Latin America Social Movements* (Boulder: Westview Press, 1998); Sousa Boaventura de Santos, "Participatory Budgeting in Porto Alegre: Toward a Redistributive Democracy." *Politics and Society* 26(4) (1998), 461–509; *Quem é o público do Orçamento Participativo: se perfil, porque participa, e o que pensa do processo* (Porto Alegre: Cidade de Porto Alegre, 1999); Luciano Fedozzi, *Orçamento Participativo: Reflexões sobre a experiência de Porto Alegre* (Porto Alegre: Tomo Editorial, 1998); Pedro Jacobi and Macro Antonio Carvalho Teixeira, "Orçamento Participativo: co-responsabilidade na gestão das cidades," *São Paulo em Perspectiva*, 10 (3) (1996) 119–28; Brain Wampler, "Orçamento Participativo: Os paradoxos da participação e governo no Recife," *Cadernos de Estudos Sociais*, 15(2) (1999), 343–73; Brian Wampler, *A Guide to Participatory Budgeting* (October 2000). Internet sources: Participatory budget: The Case of Porto Alegre (Brazil) at:

<http://www.goethe.de/br/poa/buerg/en/framebag.htm> (2004);

World Bank: http://www.worldbank.org/html/fpd/urban/urb_age/porto.htm,

<http://www.worldbank.org/wbiep/decentralization/Topics13.7.htm>, <http://www.worldbank.org/participation/>; Inter-American

Development Bank: <http://www.iadb.org/exr/IDB/stories/2000/eng/JAN00E/c200c1.htm>,

<http://www.iadb.org/exr/idb/sidebars/2000/eng/c200c4.htm>; Conference Proceedings on Participatory Budgeting:

<http://www.idre.ca/lacro/docs/conferencias/stren.html>, <http://www.ssc.wisc.edu/~wright/deliberative.html>,

<http://www.pgualc.org>.

⁹⁸ UNCHS, *Developing a National Shelter Strategy: Lessons from Four Countries* (Nairobi: UNCHS, 1990); OHCHR, *Handbook on National Human Rights Plans of Action* (Geneva: OHCHR, revised draft May 2001).

⁹⁹ Shelter Rights Initiative, *Gender Specific Rights Litigation and Protection Strategies* (Lagos: SRI, 1998); SRI, *Manual on Judicial Protection of Economic, Social and Cultural Rights* (Lagos: SRI, 2000).

¹⁰⁰ Peter R. Grose, "An Indigenous Imperative: The Rationale for the Recognition of Aboriginal Dispute Resolution Mechanisms." *Mediation Quarterly* 12 (4) (summer 1995), 327–38.

State, as well as litigation strategies) ⁹⁹		Legal recognition of tenure and the human right to adequate housing of people without economic access
Train judges in HRAH (including international treaty obligations upon the State) ¹⁰¹		Judge issues restraining orders halting forced evictions and removals, land confiscation, property destruction and other housing and land rights
Train law enforcement officials in the human right to adequate housing (including international treaty obligations upon the State)	Quantify losses/costs of housing rights violations	Judicial decision orders return, restitution and compensation for evictees, IDPs, refugees ¹⁰²
Transitional justice (post conflict)¹⁰⁴		Victims compensated for losses ¹⁰³

¹⁰¹ Shelter Rights Initiative, Manual on Housing Rights Protection Strategies for Lower Court Judges (Lagos: SRI, 2000).

¹⁰² UNCHS, Housing and Property Rights in Kosovo (Pristina: UNCHS, March 2000).

¹⁰³ For elaboration of the principles of compensation to victims of human rights violations, see Theo Van Boven, "Basic Principles and Guidelines on the Right to Reparation for Victims of Gross Violations of Human Rights and Humanitarian Law, Appendix 8 ("The van Boven Principles"), Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, E/CN.4/Sub.2/1996/17; also E/CN.4/1997/104, annex and subsequently revised as "Basic principles and guidelines on the right to a remedy and reparation for victims of violations of international human rights and humanitarian law," by Cherif Bassiouni, independent expert, Commission on Human Rights (E/CN.4/2000/62, annex). John Dugard, "Is the Truth and Reconciliation Process Compatible with International Law? An Unanswered Question," South African Journal on Human Rights Vol. 13, 258–68. For quantification methodology, see HIC-HLRN Loss Matrix in this Housing and Land Rights Monitoring Toolkit, or go to www.hlrn.org; for implementation, see to UNCHS, Housing and Property Rights in Kosovo (Pristina: UNCHS, 2000).

¹⁰⁴ For a general bibliography on transitional justice, go to <http://www.peacemakers.ca/bibliography/bib26reconciliation.html> or <http://userpage.fu-berlin.de/~theissen/biblio/> (on experiences of Germany and South Africa).

Document details on violations, perpetrators, values of losses and other consequences ¹⁰⁵	Present evidence to truth (and reconciliation) commission ¹⁰⁶	Public aware of population transfer, mass dispossessions and other crimes committed during conflict
	Issue amnesty for past crimes and perpetrators of forced evictions/removals ¹⁰⁷	Social reconciliation
	Present evidence to Truth and Justice Commission	Social reconciliation
		Crimes and perpetrators prosecuted and punished
Present evidence to “mixed courts”	Return, restitution and compensation for evictees, IDPs, refugees ¹⁰⁸	

Of course, an illustrative list of potential interventions does not sufficiently convey the wealth of local governmental and nongovernmental experience available for review and exchange. Moreover, it is, as always, at the local level of implementation where human rights, including the human right to adequate housing, are transformed from moral suasion and legal theory to implementable reality. Therefore, both the practical, case-based perspective and the theoretical-and-comparative perspective become mutually dependent, mutually reinforcing and, hence, equally needed.

1.10. Evaluation & follow-up

Evaluation of any action you choose should be an ongoing function parallel to the events and development as they happen. This note offers some simple guidance on the specific

¹⁰⁵ Use “Housing and Land Rights Violation Case Documentation Form” in this toolkit.

¹⁰⁶ Kerry Able, and Jean Friesen, eds., *Aboriginal Resource Use in Canada: Historical and Legal Aspects* (Winnipeg: University of Manitoba Press, 1991); Alfred, Gerald R., and Franke Wilmer. “Indigenous Peoples, States and Conflict,” in D. Carment and P. James, eds., *Wars in the Midst of Peace: The International Politics of Ethnic Conflict* (Pittsburg: University of Pittsburgh Press, 1997); Michael Coyle, “Claims Resolution: A Healing Process?” in J. Oakes, R. Riewe, K. Kinew and E. Maloney, eds., *Sacred Lands: Aboriginal World Views, Claims and Conflicts* (Calgary: Canadian Circumpolar Institute, 1998); Robert Rotberg and Dennis Thompson, eds., *Truth v. Justice: The Morality of Truth Commissions* (Princeton: Princeton University Press, 2000); Truth and Reconciliation Commission of South Africa Report, Vols. 1–5 (Cape Town: Juta, 1998); Theo van Boven, “Study Concerning the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms” [final report of Special Rapporteur] (Geneva: Commission on Human Rights, Subcommission on Prevention of Discrimination and Protection of Minorities) E/CN.4/Sub.2/1993/8. For an extensive bibliography of sources, go to: <http://userpage.fu-berlin.de/~theissen/biblio/>.

¹⁰⁷ John Dugard, *Dealing with Crimes of a Past Regime: Is Amnesty Still an Option?* [The Third Manfred Lachs Memorial Lecture] (1999); Carla Edelenbosch, “Human Rights Violations - A Duty to Prosecute?” *Leiden Journal of International Law* Vol. 7, No. 2 (1994), 5–22; Dianne F. Orentlicher, “Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime,” *The Yale Law Journal* Vol. 100, No. 8 (1991) 2537–615.

¹⁰⁸ Uma Dhupelia Mesthrie, *The Truth and Reconciliation Commission and the Commission on Restitution of Land Rights: Some Comparative Thoughts* [“The TRC: Commissioning the Past” conference] (Johannesburg: University of the Witwatersrand, 1999); S. Nadasen, “Restitution, Reconstruction, Reconciliation and Redistribution: Land Reform: Balancing the Interests of the Dispossessed, the Homeless and Development,” *Stellenbosch Law Review* (1997) 360–77; David B. Southern, “Restitution or Compensation: The Land Question in East Germany,” *International and Comparative Law Quarterly* Vol. 42, No. 3 (1993), 690–97; David B. Southern, “Restitution or Compensation: The Open Property Question,” *German Politics* Vol. 2, No. 3, 436–49. For a bibliography of global restitution and compensation experience, go to: <http://userpage.fu-berlin.de/~theissen/biblio/>.

evaluation tasks you will face. They are described in stages, with particular emphasis on the final stages and the vision for the future.

For our purposes, evaluation and follow-up imply two levels of assessment: (1) evaluation the action and (2) following the situation after the action concludes. The former is internal in nature and helps your organization, community or network become a learning institution by building on the lessons (successes, near-successes, failures and unanticipated results) of your efforts. The latter enables you, your organization, community or network to test the outcome to ascertain whether or not it has tangible benefits for those persons, communities, populations and peoples affected and targeted in your action. Ultimately, the follow-up process should lead you to the necessary conclusion as to what, if anything, to do next.

✓ Evaluating the action

Evaluation your action includes three integrated but conceptually distinct processes: (1) monitoring progress, (2) formative evaluation and (3) measuring the development impact.

1. Monitoring implementation progress

Monitoring the implementation of your action is the most frequent—indeed constant—aspect of the learning process. This should involve periodic reports on production of outcomes, financial accounting and levels and nature of inputs (e.g., technical assistance, training, social production of habitat). The periodicity of the reporting could be quarterly, if the action is expected to proceed for a year or more. Alternatively, reporting could be more frequent, especially if it is a short-term action, or if it takes place in a fast-paced environment such as a threatened eviction or natural disaster situation, and particularly if extreme deprivation of human well-being is at stake.

The responsibility for monitoring is to be shared by a group of actors. Remembering that, like in the “Toolkit” guide for strategic planning, the more participation, the more-favorable the result (“more participation = more dignity”).

Reporting on the action, based on the monitoring of implementation progress, should be specifically assigned, most probably to the coordinator of the action or the chief executive officer of the principal body organizing the action. The audience of the reports should be both internal, for the benefit of those engaged, and external, depending on the obligations you have to supporters, members and/or funders. The assignment of duties, division of labor and timing of evaluation events should be completed also in the planning stage of your activity (see “[Strategic planning](#)” link above).

2. Formative Evaluation Indicators of Accomplishments

Midway in the process of your action, you should conduct an assessment of the *quality and adequacy* of the tasks undertaken by assessing the actual outcomes against the standard of expected results you already have set out for yourselves.

You should develop an evaluation plan and data collection instruments as part of the project implementation. That means, you should plan ahead to collect information that will verify your intended results, whether that be in the form of documents, press reports, opinion surveys, affidavits, water-quality test results, etc. The formative evaluation activities probably will require site visits, rapid assessment and low-cost data collection techniques such as

focus groups, interviews, training evaluation forms, and simple targeted studies to identify key issues for action management.

3. Development-impact Assessment and Indicators

Development-impact assessments that you and your organization/community undertake less frequently, perhaps on an annual basis, will track changes in the outcomes, in order to determine the degree to which the larger environment of the human right to adequate housing is improving—or deteriorating, as the case may be.

Your action could—and should—produce an initial baseline report at the initial stage that coincides with your first inventory, site visits and/or assessment arising from your first use of this “Toolkit.” That report should record what you consider to be the key assumptions going into the activity, and will serve you in the subsequent stages of your action, especially at the final stages, to test those assumptions and adjust strategies to incorporate the knowledge you have created.

For the purpose of your organization’s integrity and the tactical responses you may require in the future, your action should be seen critically in the light of the purposes and goals you set out in your planning process (see “**Strategic planning**” link above). Some sample questions to include in your evaluation include the following:

- How does the action relate to your purpose statement of your organization/ community?
- How does the action relate to the goals(s) of your organization/community?
- Was the action planned or spontaneous?
- What was the expected result?
- Was that result achieved? If not, why?
- Were unintended results achieved?
- What were the lessons learned from this activity?
- How did this activity build/strengthen/develop your organization? What gains did you and others realize?
- How did your organization/community record and report the experience?
- How did your organization/community share and exchange the experience and lessons learned with others? Who? When? Where? What was the result?
- Has there been follow-up? Why? What? Who? When? Where?
- Click on “Following up the situation” for guidance on the last point.

✓ **Following up the situation**

Each successful or unsuccessful action needs to be tested further for at least two reasons: (1) in order to determine if the achievement is real or merely theoretical and (2) to determine what your next move is going to be.

The now famous *Irene Grootboom and Others v. Oostenberg Municipality*¹⁰⁹ case before the South African Constitutional Court (1999) found in favor of the plaintiffs by applying the principles of international law on the human right to adequate housing and the legal strictures on the practice of forced eviction. The Court ordered the Western Cape Provincial Government and the Oostenberg Municipality to grant housing and utilities to the 390 adults and 510 children wrongfully evicted community at Wallacedene their right to return and

¹⁰⁹ Irene Grootboom and Others versus Oostenberg Municipality, Cape Metropolitan Council, the Premier of the Province of the Western Cape, National Housing Board, and Government of the Republic of South Africa, Constitutional Court of South Africa Case No: 6826/99..

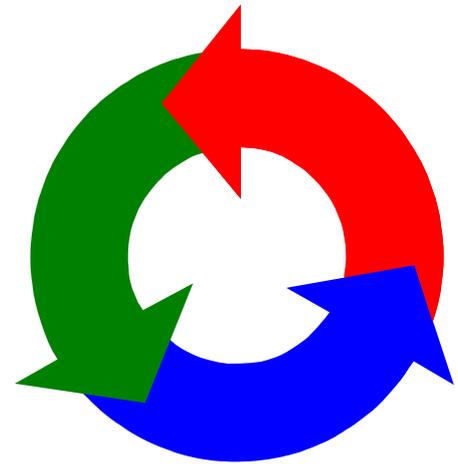
remain and to benefit from public services corresponding to that right. Until today, that decision has not been fully implemented.

Likewise, the landmark case of *Qa'dan v. Katzir*,¹¹⁰ in Israel, resulted in the 2000 High Court ruling that Katzir (a settlement built on Palestinian land, directed and funded in large part by the Jewish Agency) acted unlawfully when discriminating on the basis of "nationality" by excluding a non-Jewish from obtaining housing there. Until this day, that decision has not been honored, the indigenous Adil and Iman Qa'dan family of Arab citizens of Israel do not have their home in Katzir, and the Jewish Agency continues to provide land and housing benefits only to those holding "Jewish nationality," and to the exclusion of others.

There are numerous examples of slum clearance and resettlement that result in the promised secure tenure of housing, but fail to comply with other elements of the human right in their implementation. [Note: HLRN and this "Toolkit" do not advocate slum clearance or resettlement.] Inhabitants in resettlement often lack access to public goods and services, suitable location, are denied compensation for losses and are subject to a process inconsistent with the over-riding principle of self-determination.¹¹¹

All such gaps and shortcomings in the outcome of any housing rights defense effort remain to be addressed, even though some advocates and service-providing NGOs may consider these developments to be victorious at some level. The true test remains, however, to determine the tangibility of the results within the framework of the human right to adequate housing, and over the long term.

With all of its emphasis on the law, this "Toolkit" is intended to assist in the realization of the human right to adequate housing as a complement to the theoretical elaboration of the right in law. Implementation is the ultimate objective of human rights, as well as this "Toolkit." Therefore, the tools provided here should serve also as the final evaluation criteria to examine whether or not the composite dimensions of the human rights are implemented and present or not.



You should use the elements (entitlements) of the human right to adequate housing here as your guide; these are also the binding criteria for all State parties and their representatives to apply as well. If you and your organization/community determine that certain criteria have been breached or neglected, then, alas, further remedial action will be required.

The bad news, perhaps, is that there may yet be more work to be done. However, even if one has to go back to the drawing board, at least the needed tools are available to the cyclical task. So, now, you can just do it.

¹¹⁰ Qa'adan versus Israel Lands Administration (ILA), Ministry of Construction and Housing, Tal-Iron Local Municipal Council, Jewish Agency for the Land of Israel (JA), KATZIR: Cooperative Association for Community Settlement in Samaria Ltd., and the Farmers Association; Case No. 6698/95 of the Israeli Supreme Court, sitting as the High Court of Justice.

¹¹¹ See Housing and Land Rights Network, *Restructuring New Delhi's Urban Habitat: Building an Apartheid City?* (HIC-HLRN: New Delhi, 2002).

2. Public goods and services

2.1. Concept and meaning

The right to adequate housing cannot be effectively realized without access to public goods and services, including, water, health-care, transport, fuel, sanitation, lighting and electricity, sewerage and waste disposal. The services must be adequate in that they are based on the needs of the community and the government must effectively regulate service distribution so as to avoid corruption. It must also ensure sufficient infrastructure. Where private industry is contracted for either provision or maintenance, government remains responsible for the effective functioning of private actors.

2.2. Sources

In this section, your **Step 2**, the HLRN “Toolkit” provides the most important international legal basis and the popular claims that ground each element of the human right to adequate housing. This compilation attempts to be as comprehensive as possible; however, additional popular sources and legal developments will augment this inventory in the future.

It is vital to establish both the established sources in international law and the popular claims. The authority of the legal sources carries corresponding obligations on most States, and applies universally to all people on the planet as *human* rights. The popular sources advance claims that are “emerging” with human rights language eventually to be codified in the law. All legally established human rights norms originated as popular claims carried forth through various forms of historic struggle.

The Legal Authority

Please note that the legal instruments cited here carry differing levels of obligation, and they are organized for you accordingly. Customary law is made up of those norms and principles that legal opinion and interstate institutions consider so basic and so repeatedly affirmed as to be binding on all legal personalities. The Universal Declaration of Human Rights, the antecedent to all subsequent human rights treaties, is the most relevant example of customary law for our purposes, even though it does not establish a monitoring and enforcement mechanism to ensure compliance.

The ratified treaties (Covenants, Charters, Conventions, etc.) are binding on all their ratifying States parties, and each establishes an independent body to monitor and guide implementation. The treaty-monitoring process provides an opportunity for civil society, States and the international legal bodies each to play a role. These international treaties are also characterized as hard law (*lex lata*), because of their binding nature. Treaty law, by definition, is any agreement between two or more States. The treaties considered here are those of both international and regional nature.

The “soft-law” instruments (*lex feranda*) include the Declarations, Basic Principles, Minimum Rules, General Comments, etc., that are the multilateral commitments arising from international conferences, assemblies, summits, congresses and other specialised meetings. Also included in this category are the general and country-specific guidance that the treaty-monitoring bodies issue to guide and specify treaty obligations, as well as those instruments of inter-State agreement (decisions and resolutions) arising from the various political bodies of the international system (e.g., UN Commission on Human Rights, International Labour Organisation General Assembly, etc.). These instruments contain standards that are declaratory of already-binding international law, reflect the collective political will of States and provide specificity to the general articles in the binding instruments. However, these

form legal and policy guidance without the corresponding obligations of treaty law and without the corresponding legal monitoring mechanisms.

Thus, the list of legal sources in this section of the HLRN “Toolkit” maintains a corresponding priority order such that presents the binding instruments first (in chronological order of their adoption), and follows with the nonbinding, declaratory sources (in their chronological order):

- ***International Treaty Law***
- ***Regional Treaty Law***
- ***Declaratory Instruments and Jurisprudence***

The Moral Argument

The popular sources are useful especially in demonstrating ground-level recognition of the various elements of adequate housing as rights in and of themselves, but also provide a list of human rights that reflect common human needs, but await codification as *bona fide* rights. The “emerging rights” include elements inextricable from the human right to adequate housing: water, land and energy, among others. The popular sources are indicators of the ever-evolving specificity of human rights law and the legal and problem-solving horizons toward which social movements and the human rights community are heading.

The relevant excerpts from these collective moral are listed in the “Toolkit” Sources (Step 2) as *Popular Sources*. These are moral, rather than legal, in nature. However, as claims, they bear legal dimensions in the sense that they are the substance of future legal standards. We continue to include these claims in the HLRN “Toolkit” as they emerge from popular struggles, natural and social sciences, nongovernmental forums, social movements, campaigns and labour action (strikes), as well as other forms of popular and collective problem-solving initiatives.

In this “Toolkit,” *Popular Sources* are distinguished from the legal sources by their presentation in *italic* script.

Another source of the human right with a legal dimension is the jurisprudence of course-based decisions on cases involving housing and land rights. These also could provide the basis for legal argument even in distant jurisdictions. Examples include the case-specific—but internationally relevant—rulings in famous decisions in favor of housing rights claims such as those arising from legal struggles in Cyprus, Palestine/Israel and South Africa:

Qa’adan versus Israel Lands Administration (ILA), Ministry of Construction and Housing, Tal-Iron Local Municipal Council, Jewish Agency for the Land of Israel (JA), KATZIR: Cooperative Association for Community Settlement in Samaria Ltd., and the Farmers Association; Case No. 6698/95 of the Israeli Supreme Court, sitting as the High Court of Justice.

Irene Grootboom and Others versus Oostenberg Municipality, Cape Metropolitan Council, the Premier of the Province of the Western Cape, National Housing Board, and Government of the Republic of South Africa, Constitutional Court of South Africa Case No: 6826/99 (1999).

Loizidou versus Turkey (Article 50 and Merits), European Court of Human Rights Case 40/1993/435/514 (18 December 1996).

✓ Legal sources

Customary International Law

Universal Declaration of Human Rights (UDHR) (1948)

Articles 21.b & 22. “Everyone has the right to equal access to public service in his country... Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.”

International Treaty Law

International Covenant on Economic, Social and Cultural Rights (1966)

Article 9. “The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.”

International Covenant on Civil and Political Rights (1966)

Article 25 (c) “To have access, on general terms of equality, to public service in his country.”

Convention on the Elimination of All Forms of Racial Discrimination (1965)

Article 5. “...States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of... **(iv)** The right to public health, medical care, social security and social services...”

Regional Treaty Law

European Charter of Fundamental Rights (2000)

Article 34. Social security and social assistance

1. “The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Community law and national laws and practices.” **2.** “Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Community law and national laws and practices.”

3. “In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Community law and national laws and practices.”

European Social Charter (1961)

Part I. “The Contracting Parties accept as the aim of their policy, to be pursued by all appropriate means, both national and international in character, the attainment of conditions in which the following rights and principles may be effectively realised:

14. Everyone has the right to benefit from social welfare services. **15.** Disabled persons have the right to vocational training, rehabilitation and resettlement, whatever the origin and nature of their disability....”

Article 14. “The right to benefit from social welfare services: With a view to ensuring the effective exercise of the right to benefit from social welfare services, the Contracting Parties undertake:

1. to promote or provide services which, by using methods of social work, would contribute to the welfare and development of both individuals and groups in the community, and to their adjustment to the social environment; 2. to encourage the participation of individuals and voluntary or other organisations in the establishment and maintenance of such services....”

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

Declaratory Instruments and Jurisprudence

World Summit on Sustainable Development Plan of Implementation (2002)

7(c) “Develop national programmes for sustainable development and local and community development, where appropriate within country-owned poverty reduction strategies, to promote the empowerment of people living in poverty and their organizations. These programmes should reflect their priorities and enable them to increase access to productive resources, public services and institutions, in particular land, water, employment opportunities, credit, education and health;”

10(a) “Improve access to land and property, to adequate shelter and to basic services for the urban and rural poor, with special attention to female heads of household;”

54(b) “Promote equitable and improved access to affordable and efficient health-care services, including prevention, at all levels of the health system, essential and safe drugs at affordable prices, immunization services and safe vaccines and medical technology;”

96.[States should] Take steps with a view to the avoidance of, and refrain from, any unilateral measure...that impedes the full achievement of economic and social development by the population...In particular women and children, that hinders their well-being or that creates obstacles to the full enjoyment of their human rights, including the right of everyone to a standard of living adequate for their health and well-being and their right to food, medical care and the necessary social services.”

Habitat Agenda, adopted by the second United Nations Conference on Human Settlements (Habitat II) (1996)

39:“We reaffirm our commitment to the full and progressive realization of the right to adequate housing, as provided for in international instruments. In this context, we recognize an obligation by Governments to enable people to obtain shelter and to protect and improve dwellings and neighbourhoods. We commit ourselves to the goal of improving living and working conditions on an equitable and sustainable basis, so that everyone will have adequate shelter that...includes basic services, facilities and amenities, and will enjoy freedom from discrimination in housing...We shall implement and promote this objective in a manner fully consistent with human rights standards”

40:“We further commit ourselves to the objectives of:... **(I)** Promoting shelter and supporting basic services and facilities for education and health for the homeless, displaced persons, indigenous people, women and children who are survivors of family violence, persons with disabilities, older persons, victims of natural and man-made disasters and people belonging to vulnerable and disadvantaged groups...”

100. “Urges States to establish, on the basis of statistical information, national programmes, including affirmative or positive measures, to promote the access of individuals and groups of individuals who are or may be victims of racial discrimination to basic social services, including primary education, basic health care and adequate housing...”

Committee on Economic, Social and Cultural Rights (CESCR) General Comment No. 14, “The right to the highest attainable standard of health” (2000)

43. “In General Comment No. 3, the Committee confirms that States parties have a core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights enunciated in the Covenant... Accordingly, in the Committee's view, these core obligations include...to ensure the right of access to health facilities, goods and services on a nondiscriminatory basis, especially for vulnerable or marginalized groups...”

United Nations Millennium Declaration (2000)

Goal 7, Target 11. [To] Halve achieved by 2020 a significant improvement in the lives of at least 100 million slum dwellers

“Slums are the stage to the most acute scenarios of urban poverty, physical and environmental deprivation. Approximately one-third of the urban population globally live in these conditions. Typical slums in developing countries are unplanned informal settlements where access to services is minimal to nonexistent and where overcrowding is the norm.”

Sub-Commission on the Promotion and Protection of Human Rights resolution 1998/26, “Housing and property restitution in the context of the return of refugees and internally displaced persons”

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

Arab Declaration on Sustainable Development for Human Settlements (Rabat Declaration) (1995)

General Principles and Goals...

8. Adequate housing is a fundamental rights and requirement of the human being, who must be enabled to secure it in both urban and rural areas within a healthy and sound environment equipped with all services and utilities.

The right to adequate housing: progress report submitted by Mr. Rajindar Sachar, Special Rapporteur Sub-Commission on the Promotion and Protection of Human Rights (E/CN.4/Sub.2/1993/15)

44. “‘Adequate housing’ is defined in the unanimously adopted Global Strategy as meaning: 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.”

Declaration on the Right to Development (GAR 41/128 [1986])

Article 8.1. "States should undertake, at the national level, all necessary measures for the realization of the right to development and shall ensure, *inter alia*, equality of opportunity for

all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income. Effective measures should be undertaken to ensure that women have an active role in the development process. Appropriate economic and social reforms should be carried out with a view to eradicating all social injustices.”

International Labour Organisation Recommendation No. 162 concerning Older Workers (1980)

Article 5. “Older workers should, without discrimination by reason of their age, enjoy equality of opportunity and treatment with older workers as regards, in particular... (g) access to housing, social services and health institutions, in particular when this access is related to occupational activity or employment.”

Declaration on Social Progress and Development (1969)

Article 18(d) “The adoption of measures to introduce, with the participation of the Government, low-cost housing programmes in both rural and urban areas.”

Part II. Article 10. “Social progress and development shall aim at the continuous raising of the material and spiritual standards of living of all members of society, with respect for and in compliance with human rights and fundamental freedoms, through the attainment of the following main goals:... (f) The provision for all, particularly persons in low-income groups and large families, of adequate housing and community services.”

✓ Popular sources

African Charter of Partnership between Inhabitants and Local Collectivities (2002)

“After having exchanged our experiences between inhabitants of West, East, and Southern Africa, we take note of the diversity and the intelligence of the initiatives undertaken by the people to address their needs: access to land, the right to shelter, provision of basic services, a clean environment...These remain the core essential for a good life, of which many communities throughout Africa provide themselves. These initiatives need the support recognition and institutionalisation of local authorities. Where local authorities do provide these services, partnership with community groups may ensure maintenance and sustainability of the services provided.”

The European Charter for Human Rights in the City (2000)

Article XVI. *“Right to a Home 2. The municipal authorities endeavour to ensure the existence of an appropriate offer of homes and district amenities for all their inhabitants, without distinction by reason of their resources. These amenities must include structures of welcome for those who are homeless which will guarantee their safety and dignity, and structures for women who are victims of violence, particularly domestic violence, ill-treatment and for those who are attempting to escape from prostitution....”*

Article XXIII. *“Efficiency of Public Services 1. The local authorities ensure the efficiency and effectiveness of the public services, and that these are adequate to the requirements of the users and watch to avoid any situation of discrimination or abuse. 2. The municipal authorities will have available instruments of evaluation of their municipal action and will take into account the results of this evaluation.”*

2.3. Over-riding principles

Principles found in the initial Articles common to all the major international human rights treaties affirm standards of justice arising from the major legal systems of the world. These

include principles of immediate application, such as the inalienable rights to self-determination; non-discrimination, in general; gender equality; and the rule of law, including access to justice and domestic application of the human rights contained in each treaty, particularly by adopting legislative measures.

In the case of economic, social and cultural rights, the International Covenant on Economic, Social and Cultural Rights (ICESCR) is the principle source of these rights in treaty form. The Covenant also clarifies that the State party's treaty obligation entails ensuring the "progressive realisation" of the rights "to the maximum of its available resources" (Article 2.1), including the human right to adequate housing (Article 11). Therefore, a process of realising the rights should not regress, but should ensure "the continuous improvement of living conditions" (Article 11).

The ICESCR's Article 2.1 also requires States to undertake steps, individually and through international assistance and cooperation, especially economic and technical, progressively to achieve the full realization of the covenanted rights by all appropriate means. Thus, States party to the Covenant bear an obligation to apply these principles extraterritorially and in their international relations. Therefore, "international cooperation" forms an important practical aspect of ESC rights application and, therefore, one of the principles over-riding States' duties to implement human rights.

Comprehensive monitoring of the human right to adequate housing requires assessing each entitlement (element) in light of the rights and corresponding obligations arising from these over-riding legal principles:

- **Self-determination**
- **Nondiscrimination**
- **Gender equality**
- **Rule of law**
- **Progressive realization (nonregressivity/nonretrogression)**
- **International cooperation**

The normative approach provided in the international human rights system prevails upon the monitor to pose a number of relevant questions related to implementation not only of the specific content of the particular right, but also these over-riding principles common to the principal human rights treaties and applicable to all rights. This section will guide the monitor in applying these six over-riding principles in the respect, defense, promotion and fulfilment of the human right to adequate housing and land.

✓ **Self-determination**

General description

The principle of equal rights and self-determination of peoples is considered to have been a general principle of international law arising from common State practice already at the founding of the League of Nations. However, self-determination was first codified in the Charter of the United Nations in 1945, which sets forth the purposes of the United Nations as:

2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace...¹¹²

The Charter's Article 55 stipulates further:

With a view to the creation of conditions of stability and well-being, which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

- a. higher standards of living, full employment, and conditions of economic and social progress and development;¹¹³
- b. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and
- c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

Every State has the duty, therefore, through unilateral, bilateral and multilateral action to promote universal respect for, and observance of human rights and fundamental freedoms in accordance with the Charter. Its Article 2.2 clarifies the universal duty of State membership such that:

All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with the present Charter.

The principle of self-determination has been progressively reaffirmed and legally defined throughout the UN system since its founding.¹¹⁴ The material significance of self-determination is further elaborated in the Covenants on human rights adopted in 1966.¹¹⁵ The common Article 1(2) of both the ICCPR and ICESCR sets forth that:

All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

How concerned persons/communities exercise an effective role in determining the terms by which they realize the human right to adequate housing is also a subject of the inalienable right of self-determination. Self-determination is the right of peoples, not of States. It is the State, however, that is the legal personality obliged to ensure the protection, defense,

¹¹² Charter of the United Nations, 26 June 1945, Article 1(2).

¹¹³ *Ibid.*, Chapter IX, "International Economic and Social Co-operation," Article 55.

¹¹⁴ For example, see Declaration on the Granting of Independence to Colonial Countries and Peoples (1960), preamble and Article 7; "Permanent sovereignty over natural resources," General Assembly resolution 1803 (XVII) (1962), preamble and paras. 1–2, 5–7; International Convention on the Elimination of All Forms of Racism and Racial Discrimination (1965), Articles 1 and 5; Declaration on Social Progress and Development (1969), Articles 2, 3 and Part II; Declaration on Principles of International Law (1970), preamble and, esp., "The principle of equal rights and self-determination of peoples"; ECOSOC Declaration on Race and Racial Prejudice (1978), Articles 1, 3, 5 and 9 Declaration on the Right to Development (1986) preamble and Article 1, 6 and 8.

¹¹⁵ International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI), 16 December 1966 (entered into force 3 January 1976 in accordance with Article 27); Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI), 16 December 1966 (entered into force 23 March 1966 1976 in accordance with Article 49).

promotion and fulfillment of self-determination as a duty under international public law, as well as the essential legitimizing factor of the State itself.¹¹⁶

The concept of, and right to self-determination manifest in a spectrum of types and expressions of effective local control over developments and relations within a community and territory may involve either external or internal self-determination; that is, national independence as in the formal distinction of a self-determination unit with its own internationally recognized borders, a self-determination unit within the internationally recognized borders of a unitary State, or a community's¹¹⁷ effective control over developments and relations affecting it as an independent State.¹¹⁸

In its General Comment No. 12 on "the right of self-determination of peoples" (1984), The UN Human Rights Committee (HRC) gave its guidance on the corresponding obligations of States, with the following:

1. In accordance with the purposes and principles of the Charter of the United Nations, Article 1 of the International Covenant on Civil and Political Rights recognizes that all peoples have the right of self-determination. The right of self-determination is of particular importance because its realization is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights. It is for that reason that States set forth the right of self-determination in a provision of positive law in both Covenants and placed this provision as Article 1 apart from and before all of the other rights in the two Covenants.

2. Article 1 [of ICCPR] enshrines an inalienable right of all peoples as described in its paragraphs 1 and 2. By virtue of that right they freely "determine their political status and freely pursue their economic, social and cultural development". The Article imposes on all States parties corresponding obligations. This right and the corresponding obligations concerning its implementation are interrelated with other provisions of the Covenant and rules of international law.

3. Although the reporting obligations of all States parties include Article 1, only some reports give detailed explanations regarding each of its paragraphs. The Committee has noted that many of them completely ignore Article 1, provide inadequate information in regard to it or confine themselves to a reference to election laws. The Committee considers it highly desirable that States parties' reports should contain information on each paragraph of Article 1.

4. With regard to paragraph 1 of Article 1, States parties should describe the constitutional and political processes which in practice allow the exercise of this right.

5. Paragraph 2 affirms a particular aspect of the economic content of the right of self-determination, namely the right of peoples, for their own ends, freely to

¹¹⁶ Consistent with the principle of the Universal Declaration of Human Rights, Article 21, which states that "the will of the people shall be the basis of the authority of government."

¹¹⁷ While a standard legal definition of nation and people remains a subject of debate, the International Court of Justice has offered criteria for a community, having distinct rights as "a group of persons living in a given country or locality, having a race, religion, language and traditions of their own and united by the identity of race, religion, language and traditions in a sentiment of solidarity, with a view to preserving their traditions, maintaining their form of worship, insuring the instruction and upbringing of their children in accordance with the spirit and traditions of their race and rendering mutual assistance to each other," Permanent Court of International Justice, The Greco-Bulgarian "Communities" Advisory Opinion No. 17, 13 July 1939 (Leyden: Sijthoff, 1930), 21.

¹¹⁸ For a comprehensive consideration of the human right of self-determination and its applications, see Hurst Hannum. *Autonomy, Sovereignty, and Self-Determination: The Accommodation of Conflicting Rights* (Philadelphia: University of Pennsylvania Press, 1996).

"dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence." This right entails corresponding duties for all States and the international community. States should indicate any factors or difficulties which prevent the free disposal of their natural wealth and resources contrary to the provisions of this paragraph and to what extent that affects the enjoyment of other rights set forth in the Covenant.

6. Paragraph 3, in the Committee's opinion, is particularly important in that it imposes specific obligations on States parties, not only in relation to their own peoples but *vis-à-vis* all peoples which have not been able to exercise or have been deprived of the possibility of exercising their right to self-determination. The general nature of this paragraph is confirmed by its drafting history. It stipulates that "The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations". The obligations exist irrespective of whether a people entitled to self-determination depends on a State party to the Covenant or not. It follows that all States parties to the Covenant should take positive action to facilitate realization of and respect for the right of peoples to self-determination. Such positive action must be consistent with the States' obligations under the Charter of the United Nations and under international law: in particular, States must refrain from interfering in the internal affairs of other States and thereby adversely affecting the exercise of the right to self-determination. The reports should contain information on the performance of these obligations and the measures taken to that end.

7. In connection with Article 1 of the Covenant, the Committee refers to other international instruments concerning the right of all peoples to self-determination, in particular the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, adopted by the General Assembly on 24 October 1970 (General Assembly resolution 2625 (XXV)).

8. The Committee considers that history has proved that the realization of and respect for the right of self-determination of peoples contributes to the establishment of friendly relations and cooperation between States and to strengthening international peace and understanding.

Self-determination applied to communities

The over-riding principle of self-determination in this "Toolkit" is inspired by classic (customary and treaty) law criteria, as well as popular claims to the same. In both senses, the claim is legally fixed in the common Article 1 of the human rights treaties. Using the ICESCR as a basic and integrated instrument, the "ToolKit" especially applies this over-riding principle to Article 11, which guarantees the human right to housing.

In making the case for ultimate "self-determination" at the community level, this "Toolkit" draws on a number of popular instruments (mostly written and collectively endorsed statements, but also those rooted in oral traditions) asserting the "right" of communities to determine their own destiny. "Community" also enjoys a legal definition (see below).

Self-determination becomes as vital as any other need that grounds other human rights, including those other over-riding principles of rule of law, nondiscrimination, gender equality and international cooperation consistent with all human rights. In their collective dimension, these all become community "needs" and, consequently, "rights" insofar as their absence leads to erosion and violation of a bundle of individual, stand-alone rights and can lead to the deprivation or demise of a community as such.

It should be noted that States and others have recognized the real problem of "ethnocide" and "cultural genocide" resulting from assimilation policies so as to compel the rewriting of the International Labour Organisation (ILO) Convention No. 107 on Indigenous and Tribal Populations in Independent Countries (1956), eventually to adopt the Indigenous and Tribal Peoples Convention No. 169 (1989). Relevant to the practice of self-determination is the question of land tenure, which ILO Convention No. 169 treats in Articles 13–19, while at the same time disclaiming that the term "people" in the Convention does not convey implications as a term of international law (i.e., conferring the right of self-determination).

However, it is the human consequence of the deprivation, rather than the legal "peoplehood," that makes self-determination vital for any putative victims. Therefore, collective self-determination becomes the right of communities as necessary, even if they are not (or not yet) internationally recognized as a "people" or "nation." To avoid the horrendous consequences of deprivation and demise, and to ensure survival of communities as a "right", local self-determination is vital, no matter what assimilationist governments individually or jointly say. In human rights, it is the human who has the first and final subject of respect, protection, promotion and fulfillment.

That having been said, and recognizing that self-determination can be either internal or external, the international public law term of art "internal self-determination unit" applies in the case of a group or community, and is subject to case-by-case interpretation. This could refer to the rightful place of a minority or an indigenous people. It could conceivably apply also to a community of urban poor, particularly if their survival and/or well-being is threatened and their self-determination then becomes a need/right and requisite to the realization of other rights (life, adequate housing, culture, health, etc.).

In any case, the claimant of self-determination, whether an external or internal type, must meet the challenge and legal test of asserting that the claim at any level does not conflict with—or at least is balanced with—the rights of others. That may mean, of course, ensuring that self-determination claims do not negate general ecological values, others' self-determination rights, the rights of women to gender equality, security of person, regional peace and security, etc.

What are the criteria for *bona fide* claimants to local self-determination in the terms of international law as developed? The criteria presented by Martinez-Cobo (*Study of Discrimination against Indigenous Peoples*, UN document E/CN.4/Sub.2/1986/7/Add.4) has grounded much of the self-determination thinking about indigenous peoplehood and the rights arising. Based on his criteria for indigenous "people," the characteristics constituting a community with the right to claim external or internal self-determination could also be that the community (1) predate the influx of "others," (2) possess distinct cultural attributes, (3) occupy an identifiable territory and (4) identify itself as a people/community having the right to self-determination.

Legally defining the subjects of self-determination

Definitions of “people” or “nation,” the legal self-determination rights holders, are generally unpopular with States and their sitting governments, unless the definition applies to an existing “nation-state.” Of course, very few States can claim adherence to this definition, that is, to contain a single native people or nation (except, perhaps, Portugal, excluding immigrants). The General Assembly has assumed the task of defining self-determination (particularly in resolution 1514(XV), 14 December 1960). That has been construed typically as applying to cases of decolonization (Angola, Algeria, Namibia, Mozambique, Palestine, Puerto Rico, etc.). In its Advisory Opinion on Namibia, the International Court of Justice recognized Namibians as a “people” and “nation” in light of the value of, and for the purpose of decolonization. Despite this legal reference, the actual definition of “people” and “nation” remains under debate for political and practical reasons.

In addition to the guidance on “people,” including indigenous peoples, as explicit self-determination rights holders, we have an international law definition of what constitutes a “community.” The “community” definition does not deviate significantly from the four-part construct that Martínez-Cobo offered (above). It comes to us from the first International Court in a case sorting out criteria for transferring the ethnically Greek and Turkish communities between the Republic of Turkey and Greece after the First World War:

A group of persons living in a given country or locality having a race, religion, language and tradition of their own and united in the identity of race, religion, language and tradition in a sentiment of solidarity, with a view to preserving traditions, maintaining their form of worship, insuring the instruction and upbringing of their children in accordance with the spirit and traditions of their race and rendering mutual assistance to each other.¹¹⁹

Leaving aside the probability that the purpose of the Court’s opinion (population transfer) would be legally impermissible today,¹²⁰ the legal definition of “community” it provided is actually less ambiguous than that of “people” or “nation.” The “people” definition remains elusive largely because some States find it a political Pandora’s box that could challenge their jurisdiction and/or effective control over territory. Until now, some governments instead persist in proffering the legally vacuous term “indigenous populations,” so that the legally more-significant term “people/s” would wane into disuse, as would also the corresponding rightful and self-preserving claims of its subjects to self-determination. However, if one is looking for a way to apply self-determination to “communities,” one has this definition of the ICJ’s predecessor as a reference.

Significant also is the fact that the Court’s definitive Advisory Opinion was intended for a narrow and specific purpose. That was not to recognize an external self-determination right, but to rationalize a population transfer scheme that today would be considered a clear violation of international public law. That is not only because of the absence of consent and the obvious human suffering population transfer causes, but also because it deviates from the most basic concept of contemporary statecraft and democratic governance, which is that the State administer—including by way of implementing the right to self-determination—for *all* of its citizens. Population transfers and external self-determination claims, therefore, serve as a seismograph of a government’s failure at effective statecraft.

This dissertation on self-determination has admittedly merged concepts and definitions of communities with peoples/nations, as the Permanent Court of International Justice

¹¹⁹ Permanent Court of International Justice, The Greco-Bulgarian “Communities,” Advisory Opinion No. 17, 31 July 1930 (Leyden: Sijthoff, 1930), p. 21.

¹²⁰ See report of the Special Rapporteurs Aun al-Khasawneh and Ribot Hatano, “The human rights dimensions of population transfer, including the implantation of settlers and settlements,” E/CN.4/Sub.2/1993/17.

effectively has done. Nonetheless, the values that sustain them are akin, and so should the safeguards that promise to prevent the worst of consequences arising from human rights violations against any identifiable group. In summary, self-determination has a local and community-based expression and basis as a right. For the purposes of advancing human rights through the “Toolkit,” both “communities” as well as “nations/peoples” hold the right and responsibility to determine their own habitat, the essence of a people and/or community's survival and sustainability with dignity in its dwelling place.

Applied to public goods and services

Applied to public goods and services, the over-riding principle of self-determination, in its classical expression, means that every people has the inalienable right to determine the terms of how public goods and services, including land and water, is managed and distributed in its administrative and territorial unit(s). This determination must be made according to local specificity, reflecting the consent of the people subject to self-determination, but also within the obligations provided in the ICESCR and the CESCR's General Comment No. 4 (cited above). Therefore, for peoples, as such, or for other affected communities, a measure of self-determination, assured through “genuine consultation,” is required to realize the equitable management and distribution of public goods and services.

Privatization of public goods and services can reduce the degree of self-determination exercised in their management and use, while often increasing the cost to the client/citizen and diminishing the social function of public goods and services in the sense that the rightful beneficiaries have a declining degree of control over the management and distribution of public goods and services. Moreover, the State consequently withdraws from its customary role and legal duty to ensure equitable provision of services and use of social goods. At the same time that the State relinquishes its function, it also declines in its effective authorities in the sphere of public goods and services.

✓ Nondiscrimination

General description

Like self-determination, an inalienable human right common to the major legal systems throughout the world, a fundamental requisite of justice is the absence of discrimination on any arbitrary basis. Discrimination typically results in deprivation of human needs and rights.

Given its centrality, the principle of nondiscrimination, consequently, is an over-riding human rights principle embodied in the first Articles of each major human rights treaty. Nondiscrimination, and its corresponding State obligation to ensure nondiscrimination, are enshrined in the preamble of all international declarations and resolutions concerned with human rights matters, governance and the relations between and among States, nations and peoples.

Common to Article 2 in both the Covenants, nondiscrimination stands out as an over-riding principle with *immediate* application to all the rights contained in those instruments.¹²¹ The Covenants prohibit arbitrary preferential or punitive treatment and oblige States parties to undertake steps to ensure that rights be exercised without distinction or discrimination “of

¹²¹ For further guidance on the legal obligations to immediate implementation of the nondiscrimination principle applied to housing rights, see the report of the Special Rapporteur on Adequate Housing E/CN.4/2002/59.

any kind [as to] race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”¹²²

The International Convention on the Elimination of All Forms of Racial Discrimination (1965) defines discrimination as:

any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.¹²³

Article 5 of that Convention actually offers the historic first codification of the human right to housing, with particular reference to the over-riding principle of nondiscrimination. It reads:

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

In the Convention and its negotiation history, an important distinction emerges: While it is the obligation of States' parties and their governments to combat both “racism” and “racial discrimination,” the former is a state of mind that should be eradicated through measures including education and other efforts to bring about a cultural and social transformation toward antidiscrimination. The latter, “racial discrimination” is the actual activation of prejudice which, in its manifestation, is a material violation of the rights of others. Any official action or omission of practicing or condoning racial discrimination is a violation of an *immediate* obligation of the State, not subject to “progressive realization.”

This distinction between (1) theoretical racism and (2) racial discrimination in practice has historic roots. It is found also in moral systems, as reflected in the Holy Qur'an, which recognizes the existence of prejudice, but, nevertheless, entreats against putting that into practice:

O, you who believe, be upright for God, bearers of witness with justice; and let not hatred of a people incite you not to act equitably. Be just, [for] that is nearer to the observance of duty [the nearest thing to piety].¹²⁴

This moral distinction was found relevant nearly one millennium later, during the French Revolution. Then, the revolutionary slogan and moral call to the Human Rights of Man and Citizen was “*liberté, égalité, fraternité*. While all three qualities were found desirable and necessary to build a new, democratic society, only liberty and equality could actually be legislated. Fraternity (or sorority) could be developed and encouraged by the State and civil society much more likely than it could be enforced. Nonetheless, a range of practical measures can be undertaken to nondiscrimination in actual practice.

¹²² ICESCR, Article 2.2; ICCPR, Article 2.1.

¹²³ Article 1, International Convention on the Elimination of All Forms of Racial Discrimination, adopted by General Assembly resolution 2106 (XX) of 21 December 1965, entered into force, 4 January 1969.

¹²⁴ Chapter 5: The Food [al-Ma'da], Section 2: “Duty of Uprightness,” verse 8. Maulana Muhammad Ali, transl. The Holy Qur'an (Lahore: Ahmadiyya Anjuman Isha'at Islam, 1963), p. 243.

Inherent in the principle of nondiscrimination is the understanding that programs formally providing advantages to persons and groups historically subject to discrimination are not considered to constitute unlawful discrimination. On the contrary, international public law calls upon States to provide additional assistance to those persons and groups subject to past and/or present discrimination, as in corrective/positive discrimination or affirmative action programs that redress foregoing patterns of deprivation.¹²⁵

Applied to public goods and services

Applied to public goods and services, the nondiscrimination principle ensures that individuals and groups are not deprived of opportunities to access public goods and services, including legal enforcement, protection and remedy, nor denied this entitlement on the basis of race, color, creed, gender, sex, sexual orientation, political opinion, social or economic status, language, physical ability/disability, property, form of legitimate work, descent, or any other origin or arbitrary criterion. For indigenous, tribal or other land-based peoples, the State has the obligation to recognize in law and in administrative matters their particular systems of managing their public goods and services. Likewise, no State possesses the legal authority to practice or condone *de jure* or *de facto* discrimination that leads to the deprivation or denial of public goods and services to any member of any group, particularly to the unfair advantage of another. This applies to the practice of nepotism and other forms of corruption that allow disproportionate benefits to family members or political partisans, as well as preferences given to groups such that ignite sectarian, territorial, class or intercommunity conflict.

International public law calls States to provide special assistance to persons and groups who have been subject to past and/or present discrimination, as in affirmative action programs that redress foregoing patterns of deprivation.¹²⁶

✓ Gender equality

General description

Despite the universal acceptance of the principle of gender equality in international law, many women are denied equal treatment and discriminated against in their housing on the basis of sex or gender. Approximately one-third of the world's women may be homeless, living in inadequate housing and own less than one percent of the world's property.¹²⁷ The intersectionality of poverty or other factors (i.e., class, indigenous, refugee, migration, caste, sexual orientation, ethnic minority, age, disability, widowhood, citizenship or nationality status, etc.) further marginalize women. In the context of the increased feminization of poverty, decreased access to public services, and destruction of natural environments, all of which are accelerating with the process of globalization, women are increasingly placed in situations where they do not have adequate housing.

The denial of adequate housing for women is a violation of women's human rights. It can also result in the violation of women's other human rights such as rights to life, livelihood, adequate food, employment and political participation (e.g., voting rights). In particular, the lack of adequate housing also can make women more vulnerable to various forms of

¹²⁵ See Marjorie Cohn, "Affirmative Action and the Equality Principle in Human Rights Treaties: United States' Violation of Its International Obligations," *Virginia Journal of International Law*, Vol. 43 (2002), 249–74.

¹²⁶ For further guidance on the legal obligations to immediate implementation of the nondiscrimination principle applied to housing rights, see the report of the Special Rapporteur on Adequate Housing E/CN.4/2002/59.

¹²⁷ COHRE Fact Sheet on Women's Right to Housing, Land and Property.

violence against women (e.g., domestic violence, trafficking, sexual and gender-based violence against migrant workers etc.).

The right to nondiscrimination in gender relations, as an over-riding principle in human rights implementation, is generally stated in UDHR, Article 2 (nondiscrimination) and throughout the Declaration in its language of human rights for “everyone” and “all are equal before the law.” More specifically, gender equality has emerged as a binding, over-riding principle in the two Covenants’ common Article 3:

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all... rights set forth in the present Covenant.

This principle is further elaborated in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).¹²⁸ Article 13 obliges States parties to take all appropriate measures to eliminate discrimination against women in areas of economic and social life, and to ensure women's equal right to bank loans, mortgages, and other forms of social credit. In Article 14, paragraph 2, CEDAW specifically addresses women’s equal rights in human settlements as the right of women in rural areas to enjoy adequate standard of living conditions, particularly, in relation to housing sanitation, electricity and water supply, transportation, education, communications and access to credit. This extends explicitly to women’s “equal treatment in land and agrarian reform as well as in land resettlement schemes.” Article 15 also addresses women's equal right to conclude contracts and administer property; while Article 16, paragraph 1 (c) guarantees women's equal rights and responsibilities during marriage and its dissolution, including equal rights for both spouses in respect of ownership, acquisition, management, administration, enjoyment and disposition of property.

This legal norm is carried forward in the Beijing Platform for Action (BPFA), which calls on Governments to remove all obstacles for women in obtaining affordable housing and access to land.¹²⁹ This remains standard in the subsequent multilateral agreements formulated in the Istanbul Declaration and the Habitat Agenda (1996)¹³⁰ and the World Summit on Sustainable Development (WSSD) Plan of Implementation (2002).¹³¹

The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (1997), which were developed for understanding and determining violations of economic, social and cultural rights, affirmed that, in order to eliminate discrimination against women’s rights recognized in the Covenant, the State party should face the need and legal obligation to eliminate discrimination against women that arises out of social, cultural and other structural advantages.¹³²

Typically, for women the home is the single most important place in the world. Beyond shelter, it is a place for the vast majority of woman to generate income, care for children, and seek respite from violence and patriarchy in the community at large. For many still, it is the only place where women can participate fully in decisions and social activities.

¹²⁸ Adopted and opened for signature, ratification and accession by General Assembly resolution 34/180, 18 December 1979; entered into force, 3 September 1981, in accordance with Article 27(1).

¹²⁹ Para 58(m).

¹³⁰ Para 40 (b), 78 (e) and (g).

¹³¹ Para 67 (b).

¹³² Related sources of gender equality for women in human settlements can be found in CEDAW Articles 1, 2(f), 3 and 5 (a); UDHR, Articles 2, 16, 17 and 25; UDHR, Articles 5 (d) (v) and (vi), 5 (e) (iii); ICERD, Article 2, para 1, Articles 3, 9, 16, 17, Article 23, para 4, ICCPR, Article 26; ICESCR, Article 2, para 2, Article 3, and Article 11, para 1; and CRC, Article 1, 16, para 1 and Article 27.

Applied to public goods and services

The intersectionality of poverty or other factors (i.e., class, indigenous, refugee, migration, caste, sexual orientation, ethnic minority, age, disability, widowhood, citizenship or nationality status, etc.) further marginalize women as client/citizens accessing public goods and services. Similar forms of gender discrimination are also common against men and transgendered persons on the basis of their presumed sexual roles. Women historically live in the context of feminized poverty, characterized by decreased access to public services and destruction of natural environments. All of these phenomena are accelerating under economic globalization, where women are increasingly in situations where they do not have adequate housing, including by denying their access to public goods and services, or simply passing them over in the scramble for ever-scarcer resources.

Freely exercising one's own culture (cultural adequacy) is understood to mean allowing for cultural choice and expression within the human rights framework; that is, within limits beyond which the rights of others are adversely affected. Preserving a practice of unequal access to public goods and services related to adequate housing and other economic/social/cultural rights are not consistent with the present framework and likely would violate both the gender-equality provisions of the Covenant, as well as provisions of the Vienna Convention on the Law of Treaties (1969).¹³³

✓ Rule of law

General description

In the over-riding principles pertaining to previously discussed forms of discrimination, human rights are, by their nature, equal, inalienable and universal. By this is meant that the criteria for applying the standards and norms are to be inconsistent in their application. One way to ensure that is through the formal and institutionalized rule of law.

As enshrined in UDHR, Article 6, "Everyone has the right to recognition everywhere as a person before the law." This right is codified in the ICCPR (Article 16), and is supported by regional instruments affirming the same.¹³⁴ The equal inalienable and universal right to a fair trial, including the presumption of innocence, is enshrined in ICCPR,¹³⁵ as well as the regional instruments.¹³⁶

The law-abiding State and its officers must not withhold or impede remedies, apply the law inconsistently or arbitrarily, or exercise any form of discrimination that affects the human right to adequate housing. Inhabitants who have lost or undergone damage to their housing unjustly or illegally have the right to unobstructed access to legal remedy, including compensation for victims, which the State bears the corresponding obligation to respect, defend, promote and fulfill.

¹³³ The Vienna Convention sets forth, in Article 27, that "[A] party may not invoke the provisions of its internal law as justification to perform a treaty," and the customary law principle, arising from Article 8 of the Universal Declaration of Human Rights, states that "everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him [her] by the constitution or by law."

¹³⁴ African Convention on Human and Peoples' Rights, Article 5; Inter-American Convention on Human Rights, Article 3.

¹³⁵ Article 10 reads: "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his[her] rights and obligations and of any criminal charge before him[her]." [Bracketed text added.] Article 14.2 sets forth that "Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to the law."

¹³⁶ African Charter, Article 7; Inter-American Convention, Article 8; European Convention on Human Rights, Article 6.

States are required to maintain the rule of law in order to ensure a consistent, predictable and accessible resolution of disputes with remedy and compensation for the victims. This covers the right of equal access to public services, such as law enforcement, public defense and judicial services. The conduct of law enforcement officers, prosecutors and judges can determine whether or not the rule of law is respected or violated. Therefore, there is a tremendous need for the State to train, discipline and rehabilitate legal enforcers and practitioners. In the case of police services, the use of force is required to follow strictly the principle of presumed innocence and the criteria of necessity and proportionality in case where State force is used.¹³⁷ Where local statutory law may be silent on housing rights safeguards, lawyers and judges bear an extra professional duty to apply the human rights norms to the extent possible.

The principles of remedy and reparation have been firmly established in instruments declaratory of the human right to access to justice. Culminating the development of international law derived from the major legal systems in the world, the revised Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law (2003) outline the right and corresponding State obligations as follows:

VII. Victim's Right to Remedy

Remedies for violations of international human rights and humanitarian law include the victim's right to:

- (a) Access justice;
- (b) Reparation for harm suffered; and
- (c) Access the factual information concerning the violations.

VIII. Victims' Right to Access Justice

A victim's right of access to justice includes all available judicial, administrative and other public proceedings, mechanisms and modalities that exist under domestic laws, as well as under international law. Obligations arising under international law to secure the individual or collective right to access justice and fair and impartial proceedings should be made available under domestic laws. To that end, States should:

Make known, through public and private mechanisms, all available remedies for violations of international human rights and humanitarian law;

Take measures to minimize the inconvenience to victims, protect their privacy as appropriate, and ensure their safety from intimidation and retaliation, as well as that of their families and witnesses, before, during, and after judicial, administrative, or other proceedings that affect the interests of victims;

Facilitate assistance to victims seeking access to justice.

Make available all appropriate diplomatic and legal means to ensure that victims can exercise their rights to a remedy and reparation for violations of international human rights or humanitarian law.

In addition to individual access to justice, adequate provisions should also be made to allow groups of victims to present collective claims for reparation and to receive reparation collectively.

¹³⁷ Code of Conduct for Law Enforcement Officials, adopted by General Assembly resolution 34/169, 17 December 1979, Article 3; Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted at the Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August–7 September 1990, preamble and Articles 1–11.

The right to an adequate, effective and prompt remedy against a violation of international human rights or humanitarian law includes all available international processes in which an individual may have legal standing and should be without prejudice to any other domestic remedies.¹³⁸

The restitution of housing and property is one form of restitutive/restorative justice sought in the rule of law applied to housing rights violation victims. Efforts continue to develop these methods and disparate efforts, not least in the development of draft guidelines on restitution for refugees.¹³⁹

Applied to public goods and services

In the case of a dispute over the management, use or distribution of public goods and services, the State bears an obligation to ensure that the rule of law is applied in a context of equality, inalienability and universality of rights, particularly with regard to the human right to adequate housing. In the case where the State (e.g., courts or police) assume a role in a dispute public goods and services, the State bears the responsibility to abide by its human rights obligations and refrain from violations of the right to housing. The human rights principles applicable to public goods and services include prohibition of the use of violence or other punitive measures inconsistent with the principles of (1) presumption of innocence until proven guilty and, in the use of force, (2) necessity and (3) proportionality.

The law-abiding State, its agents and offices must not withhold public goods and services arbitrarily or exercise any form of arbitrary discrimination against inhabitants. Those inhabitants who have lost their access to public goods and services unjustly or illegally have the right to unobstructed access to legal remedy, including compensation for victims, for which the State bears the corresponding obligation.

✓ Nonretrogression/progressive realization

General description

ICESCR's Article 2 identifies the State party's obligation to ensure the "progressive realisation" of ESC rights. That is widely interpreted to mean that the State party breaches this provision if it tolerates or causes "regressivity" in the enjoyment of the right. The relevant jurisprudence has established that, even in the case of scarce resources, the State must exert good-faith efforts, including through international cooperation, to advance—and not derogate—the enjoyment of ESC rights, including adequate housing and its constituent entitlements.

The treaty bodies have clarified further that neither political processes, domestic legislation, scarcity of resources, or agreements with other parties can be invoked to justify nonimplementation of human rights treaty obligations.¹⁴⁰ For example, the binding nature of a treaty obligation is further clarified in the Vienna Convention on the Law of Treaties (1969), clarifying in its Articles 27 and 46, that invoking an internal law is not admissible as a

¹³⁸ As revised in accordance with UN Commission on Human Rights resolution E/CN.4/2003/34 (2003).

¹³⁹ Progress report of the Special Rapporteur, Paulo Sérgio Pinheiro, "Housing and property restitution in the context of the return of refugees and internally displaced persons," E/CN.4/Sub.2/2004/22, 2 June 2004.

¹⁴⁰ Letter of CESCR Chairperson Mme. Virginia Bonoan-Dandan to S.E. M. Yaakov Levy, Permanent Representative, Permanent Mission of Israel to the United Nations Office and Specialized Agencies at Geneva, 11 May 2001, annex to Letter by the Chairperson of the Committee on Economic, Social and Cultural Rights to the President of ECOSOC (11 May 2001).

justification for nonimplementation of a treaty obligation.¹⁴¹ To harmonize treaty obligations with local implementation, human rights obligations arising from the treaties and case law should guide policy formulation and decision-making processes in law-abiding States. Therefore, a process of realising the rights should not regress, but should ensure “the continuous improvement of living conditions” (Article 11).

This over-riding principle of “nonregressivity” has been reaffirmed in the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights (1986) and Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (1997),¹⁴² as well as numerous cases of international jurisprudence through the monitoring functions of CESCR.

The many examples of globalization-era economic reforms demonstrate how the withdrawal of the State from its obligations to fulfill economic/social/cultural rights can lead to deprivation. The State nonetheless bears a covenanted obligation to ensure that economic policies do not make tenure more precarious and insecure, whether arising from domestic political change or pressures of an external actor, such as an international financial institution. In order to ensure “progressive realization,” therefore, it is vital to ensure that the human right to adequate housing forms a part of the overall human rights framework for development policy, especially guiding international cooperation arrangements. This civilizing process requires improved coordination among the relevant government bodies, such as ministries of Justice, Finance and Foreign Affairs. This is not only out of domestic duty toward citizens for States to ensure that development partnerships effect “progressive realization,” but also an extraterritorial obligation of the State party under ICESCR, Article 2.

The CESCR has commented also on the “core obligations” of States to implement the human right to adequate housing. It noted that, regardless of the state of development of any country, certain steps must be taken immediately, in addition to the over-riding principles of human rights law. These include abstaining from measures that would impinge upon the right, as well as to engage positively in practices to facilitate the people’s processes of groups seeking to improve their living conditions, in accordance with the specific elements outlined above.¹⁴³

Applied to public goods and services

In applying the nonregressivity (nonretrogression) principle to public goods and services, one is drawn to the examples of globalization-era economic reforms that typically lead to derogation of economic/social/cultural rights. The State bears a covenanted obligation to ensure that economic policies do not make the enjoyment of access to public goods and services more precarious and insecure, whether arising from domestic political change or

¹⁴¹ Article 27 (Internal law and observance of treaties): “A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to Article 46.” Article 46 (Provisions of internal law regarding competence to conclude treaties) states that: 1. A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance. 2. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith.”

¹⁴² Text available at <http://ip.aaas.org/escrdocs.nsf/>.

¹⁴³ “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.” General Comment No. 4, para. 10.

pressures of an external actor, such as an international financial institution. In order to ensure “progressive realization,” therefore, it is vital that the State ensure that the human right to adequate housing forms an integral part of the overall human rights framework for development policy, especially guiding international-cooperation arrangements. This civilizing process naturally requires improved coordination among the relevant government bodies, such as ministries of Justice, Finance and Foreign Affairs. This is not only out of domestic duty toward citizens that States ensure that development partnerships effect “progressive realization,” but also as an extraterritorial obligation of the State party under ICESCR (Article 2).

✓ International Cooperation

General description

States parties to both Covenants bear an obligation to implement human rights within a context of “international economic cooperation.”¹⁴⁴ The ICESCR’s Article 2.1 requires States party to undertake steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

In the spirit of the numerous multilateral agreements on human rights and development, “progressive realization of ESC rights,” as a borderless objective, logically engages “international cooperation” duties for States to conduct themselves accordingly through their relations with other States, nations and peoples:

In fraternity and solidarity
Domestically and extraterritorially
Individually, jointly and/or collectively.

The preamble of the United Nations Charter specifies the purposes of the world organization insofar as “we the peoples of the United Nations” are determined “to promote social progress and better standards of life in larger freedom.” Article 1, para. 3 of the Charter sets out one of the UN’s purposes as “to achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.”

Linking international cooperation and self-determination as essential to the peaceful order of the United Nations, the Charter’s Article 55 reads:

With a view to the creation of conditions of stability and well-being[,] which are necessary for peace and friendly relations among nations based on respect for the principles of equal rights and self-determination of peoples, the United Nations shall promote universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

The Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations considers as essential:

¹⁴⁴ Common Article 1.2.

the progressive development and codification of the following principles:... (d) the duty of States to cooperate with one another in accordance with the Charter;...(g) the principle that States shall fulfill in good faith the obligations assumed by them in accordance with the Charter, so as to secure their more-effective application within the international community would promote the realization of the purposes of the United Nations;...¹⁴⁵

The UN States members share a duty to cooperate with one another, irrespective of their differences, to maintain international peace and security and promote international economic stability and progress, the general welfare of nations and international cooperation free from discrimination. To this noble end, the Declaration embodied by UN members commitments such that:

(c) States shall conduct their international relations in the economic, social, cultural, technical and trade fields in accordance with the principles of sovereign equality and nonintervention;

(d) States Members of the United Nations have the duty to take joint and separate action in cooperation with the United Nations in accordance with the relevant provisions of the Charter.

States should cooperate in the economic, social and cultural fields as well as in the field of science and technology and to the promotion of international cultural and educational progress. States should cooperate in the promotion of economic growth throughout the world, especially that of the developing countries.¹⁴⁶

In addition to its Article 2, ICESCR also sets out to identify the UN systems itself as a vehicle for international cooperation to uphold the Covenant. The Covenant empowers ECOSOC to raise the Covenant-monitoring reports as a guide for UN technical assistance.¹⁴⁷

Other instruments of international public law are dedicated to specifying norms for international cooperation agreements between and among States. Consistent with human rights norms and other *jus cogens* principles of law, the Vienna Convention, Article 53, provides clarity:

A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

States parties adhering to the international law principles of international cooperation are required to behave extraterritorially consistent with the progressive realization of

¹⁴⁵ Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly in its resolution 2625 (XXV) of 24 October 1970 Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly in its resolution 2625 (XXV) of 24 October 1970

¹⁴⁶ Ibid.

¹⁴⁷ Article 22 reads: "The Economic and Social Council may bring to the attention of other organs of the United Nations, their subsidiary organs and specialized agencies concerned with furnishing technical assistance any matters arising out of the reports referred to in this part of the present Covenant which [sic] may assist such bodies in deciding, each within its field of competence, on the advisability of international measures likely to contribute to the effective progressive implementation of the present Covenant."

economic/social/cultural rights. For our purposes, this extends especially to the human right to adequate housing and land.

As a donor country, a State must ensure that the projects and programs it supports do not erode any of the entitlements contained in their right to adequate housing for inhabitants in beneficiary countries. That includes avoiding any action that leads to forced evictions, confiscation or demolition of housing. In the case of development assistance resulting in dislocation of inhabitants, all aspects of the undertaking are to be the subject of consultation with the affected persons, and the efforts should enhance legal security of tenure as a result within the covenanted human rights framework.

As a recipient country, structural adjustment, deregulated foreign investment, privatization and related measures typified by today's bilateral and multilateral arrangements assistance agreements and programs must be compatible with the human rights obligations of the affected State. Measures that deny or reduce tenure security would be illegal and unaccepted as a condition of the assistance. States parties to the human rights instruments have a self-preserving opportunity and responsibility to uphold their prior treaty obligations as a form of (moral, legal and practical) resistance to negotiation pressures or conditionalities that may derogate the terms of legal security of tenure for inhabitants.

As all human rights implementation ultimately is a local matter, regional instruments can be a source a greater specificity in determining of State obligations and practical measures needed to uphold economic, social and cultural rights. For example, the African Charter on Human and Peoples' Rights (1981) provides a broad agreement on the term of international cooperation in its Article 21: 1, which establishes that:

All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it. 2. In case of spoliation, the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation. 3. The free disposal of wealth and natural resources shall be exercised without prejudice to *the obligation of promoting international economic cooperation based on mutual respect, equitable exchange and the principles of international law*. 4. State Parties to the present Charter shall individually and collectively exercise the right to free disposal of their wealth and natural resources with a view to strengthening African Unity and solidarity. 5. *State Parties to the present Charter shall undertake to eliminate all forms of foreign exploitation particularly that practised by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources.*
[Emphasis added.]

States Parties are required to review multilateral agreements on investment, trade-related intellectual property arrangements, poverty-reduction strategy papers (PRSPs), bilateral and multilateral relations in the World Trade Organization context, World Bank lending and assistance terms, and the International Monetary Fund programs operating in, or otherwise affecting the State, in order to ensure consistency with covenanted obligations and avoid either retrogressivity or violations of its citizens' ESC rights. The State party is obliged to apply the Covenant *a priori* to ensure that any such conditionality would be subject to the ESC rights safeguards for its own inhabitants, and for those of another State party.

Privatization programs may lead to deprivation of the housing rights entitlement to tenure security. In the event of workers living in administrative housing who become laid off as part of a privatization or State-enterprise sell-off arrangement may lose their tenure altogether.

Even in cases where local legislation is silent, international treaty obligations remain for the State party to defend the workers' human right to adequate housing by legal and enforceable protection for their secure tenure and all other housing rights entitlements.

As an extreme example of international cooperation conducted in explicit violation of ESC rights applying to adequate housing and secure tenure would be a scenario wherein a State engaged in, or condoning third parties to engage in acts or omissions that would contribute to population transfer or any of its related international crimes, such as mass deportations, ethnic cleansing, destruction of civilian or private property, implantation of settlers and settler colonies, or other forms of demographic manipulation of an internal or external self-determination unit. Duty prohibits States party from allowing public or private resources to accrue to settler colonies in an occupied territory, for example, or engage in any other acts or omissions that would facilitate another State party's violations of the Covenant or Convention in this way. There are numerous examples today in countries where these forms of violation continues unaddressed with the accomplice and collaboration of other States. Impunity still characterizes the conduct of many of these crimes, as the perpetrators have not yet been prosecuted at any level, including at the International Criminal Court.

A State's participation in international economic sanctions or blockades that lead to violations of the ESC rights of persons other than the State Party's own residents, citizens and nationals may lead to conditions that undermine housing rights. CESCR has provided guidance to States parties of the Covenant on ESCRs affected by sanctions regimes and subject to protection measures to avoid regressivity and violation.¹⁴⁸

Direct provision, or participation in multilateral programs of development and financial assistance actually may lead to violations of rights embodied in the Covenant (e.g., stagnation, deterioration or denial of work, education, health or housing rights, forced eviction, etc.) and constitute a breach of treaty obligations. Specifically, ICESCR and its enshrined rights should guide and govern a State's policies and conduct in any multilateral institution that imposes economic conditionalities on other States or their agents that bring about a negative consequences effect inhabitants housing rights conditions. The legacy of development banks' support for forced evictions of all possible scales and levels of deprivation has become notorious, and States that promote, finance or engage directly or indirectly in making decisions or executing these policies may be in breach of their human rights treaty obligations.

Applied to public goods and services

Improved protection of the entitlement to access public goods and services should result from international development cooperation, whether through the enhancement of administrative capacity, governance, service provision or technical cooperation of a material nature. Any cross-border cooperation and investment in human settlements and/or in other sector should not affect access to public goods and services negatively.

✓ Other principles of application

The principles discussed above are those explicitly stated in the major international human rights treaties. At the same time, we can consider additional principles and concepts that also guide the application of the human right to adequate housing. These arise from the international jurisprudence of individual State party reviews by the treaty-monitoring bodies,

¹⁴⁸ See CESCR General Comment No. 8, "the relationship between economic sanctions and respect for ESC rights."

as well as from their General Comments and General Recommendations. They also come to us from popular claims of people's movements, from the political resolutions of the multilateral organizations, from expert opinions found in the legal literature, and from the evolving experience at implementing human rights. Three such principles of application for us to consider are known as the "indivisibility of rights," "minimum core obligations" and "universality."

Indivisibility

The concept of all human rights as indivisible is as practical as it is theoretical. It arises from the realization that, when we unpack the contents of a right, we encounter aspects of the other rights as well.

Take, for example, the "habitability" entitlement contained in the human right to adequate housing. The deterioration of the structural features of the home leaving the inhabitants exposed to the elements, or pollution in the immediate vicinity of the housing surely effect the enjoyment of the human right to "a standard of living adequate for the health and well-being of himself and of his family," as recognized in Article 25 of the 1948 Universal Declaration of Human Rights (UDHR), and codified as the "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health" in Article 12 of the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR).

Likewise, homelessness is a status synonymous with the denial of voting rights in most States, where registration and voting require a *domicile fixe*. Thus, the human right to adequate housing is linked with everyone's "right to take part in the government of his [sic] country, directly or through freely chosen representatives," as promised in UDHR (Article 21), and codified in the Covenant on Civil and Political Rights (ICCPR), in 1966, as everyone's "right to take part in public life, directly or through freely chosen representatives" (Article 25). Incorporating the experience of HIC members and others around the globe, it has become clear that our monitoring methodology calls our attention also to the "congruent" human right to participation and self-expression among the constituent entitlements of the human right to adequate housing.

Sorting, categorizing and distinguishing subjects of any kind can be a useful exercise that makes manageable order out of complexity and facilitates understanding. Human rights are no exception. However, in practice, we find that human rights are interdependent, and categorical separation can become artificial and actually impede understanding. One example is in the division of human rights found in the UDHR into the two, separate Covenants. The reason for adopting two basic Covenants, instead of one, is largely attributed to the divergent Cold War ideologies that dominated the General Assembly when it adopted the Covenants in 1966. Ideology is also the reason that one of the largest and wealthiest industrialized States has failed to ratify the ICESCR until today, and ideology also prevailed to exclude a "human right to own property" from that Covenant, although that right is included in the UDHR (Article 17). Despite the false impression left by the Covenants dividing human rights into two instruments camps, the ICCPR's nonetheless recognizes, in its preamble, that:

... in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights.

Without appreciating the over-riding principle of indivisibility, other distortions can arise. With civil and political rights traditionally gaining from more attention and specificity than economic/social/cultural rights (consistent with some Western Bloc preferences), some authors have proposed that we consider “generations” of rights.¹⁴⁹ Presenting distinct rights in such a priority order perpetuates the historic neglect of economic/social/cultural rights and promotes a logic that may culminate in violations. Nominating civil and political rights in a hierarchical order as “first generation” rights classifies economic/social/cultural rights as secondary: the “second generation” of rights. Group rights, as distinct from individual rights, environmental rights and, in certain cases, self-determination thus become degraded as “third generation.” This view is kept alive by a simple misunderstanding of “progressive” realization, required in ICESCR, such that slow realization of economic/social/cultural rights is acceptable and that all aspects of economic/social/cultural rights, as such, are subject to gradual implementation. The indivisibility of human rights belies such gradualist or generational notions. Therefore, this toolkit cannot accommodate the divisive, generational approach to human rights not for ideological reasons, but for the fact that theories neatly segregating rights are not sustained in practice.

It is with this recognition of the indivisibility of rights that CESCR commented:

...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....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.¹⁵⁰

Core obligations

Alone, the very general reference to the human rights in treaty texts does not provide the specific guidance needed for States parties around the world to know their precise obligations. ICESCR’s English-language version requires States to “take steps.” The French

¹⁴⁹ French jurist Karel Vasak is attributed with first proposing the division of human rights into three generations, while at the International Institute of Human Rights (Strasbourg), in 1979. His division adapted the French Revolution’s slogan of “Liberté, Égalité, Fraternité” as ordinal categories. The three generations are subsequently reflected in some of the rubrics of the European Charter of Fundamental Rights.

First-generation human rights deal essentially with liberty. In Vasak’s view, these are seen as fundamentally civil and political in nature and serve to protect the individual from excesses of the State. First-generation rights include, inter alia, freedom of speech, the right to a fair trial, and freedom of religion, as enshrined in Articles 3–21 of UDHR and ICCPR.

Second-generation human rights would be those related to equality, and are supposedly the social, economic, and cultural rights. This theory sees these essentially as positive rights; that is, actions that the State is required to provide to the people under its jurisdiction, as opposed to actions from which the State should refrain—e.g., forced eviction—in order to realize rights.

Third-generation human rights correspond with fraternity, or involving “solidarity.” They include group and collective rights, such as self-determination, economic and social development, sovereignty over natural resources, and the right to participate in the common heritage of mankind. Treated as third generation, the generational theory of rights presumes that these rights are not yet binding and dubiously judicial.

In an alternative explanation for the three-generational approach rests on the political divisions of the Cold War, where the West promoted allegedly first-generation (civil and political) rights, and the East promoted second-generation (economic, social and cultural) rights. The Third World (i.e., third priority in the putative hierarchy) promoted (third-generation), solidarity rights, as in the decolonization struggles of the 1970s, including decolonization processes delayed until today.

¹⁵⁰ General Comment No. 4: “the right to adequate housing” (1991), para. 9.

texts calls on States “to act” (*s’engage à agir*) and, in Spanish, the Covenant requires States “to adopt measures” (*a adoptar medidas*), but offers little about what those steps/actions/measures should be, except to say that these should be “appropriate,” “progressive” (nonregressive/ nonretrogressive), nondiscriminatory (nondiscrimination), involve international cooperation and include legislative measures (rule of law). Therefore, the treaty-monitoring bodies bear the task of issuing General Comments and General Recommendations to supply the needed specificity, based on international public law and the implementation experience of all States parties.

In its General Comment No. 3: “The nature of States parties’ obligations,”¹⁵¹ CESCR addressed the principle of “minimum core obligations”:

...a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party. Thus, for example, a State party in which any significant number of individuals is deprived of ...basic shelter and housing...is, *prima facie*, failing to discharge its obligations under the Covenant. If the Covenant were to be read in such a way as not to establish such a minimum core obligation, it would be largely deprived of its *raison d’être*.¹⁵²

The General Comment, like the Covenant, takes into consideration material limits of States. However, the Covenant’s Article 2 (1) obligates each State party to take the necessary steps “to the maximum of its available resources,” and the treaty body has determined that the nature of treaty obligations are such that a State bears a heavy burden of proof to demonstrate that “every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations.”¹⁵³

The “minimum core obligations” also include those appropriate steps to respect, defend, promote and fulfill the human right to adequate housing, like other economic/social/cultural rights, as a matter of immediate application. Among the appropriate measures, in addition to harmonizing domestic legislation with the covenanted rights, is to provide judicial remedies to victims within the national legal system. That would be among the most effective measures to ensure compliance with obligations to implement certain aspects of economic/social/cultural rights *immediately*, such as by ensuring nondiscrimination. The Committee has determined that it is “difficult to sustain” any suggestion that these immediate obligations are inherently non-self-executing. This legal authority is consistent also with the terms of the Vienna Convention on the Law of Treaties (1969), which provides that “A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.”¹⁵⁴ The treaty bodies have clarified further that neither political processes, domestic legislation, scarcity of resources, nor agreements with other parties could be invoked to justify nonimplementation of human rights treaty obligations.¹⁵⁵

¹⁵¹ Adopted by the CESCR in its fifth session (1990), E/1991/23.

¹⁵² *Ibid.*, para. 10.

¹⁵³ *Ibid.*

¹⁵⁴ Vienna Convention on the Law of Treaties, signed at Vienna, 23 May 1969; entered into force, 27 January 1980, Article 27: “Internal law and observance of treaties.” The Article also goes on to state that “this rule is without prejudice to Article 46.” Article 46: “Provisions of internal law regarding competence to conclude treaties” states that “1. A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance. 2. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith.”

¹⁵⁵ Letter of CESCR Chairperson Mme. Virginia Bonoan-Dandan to S.E. M. Yaakov Levy, Permanent Representative, Permanent Mission of Israel to the United Nations Office and Specialized Agencies at Geneva, 11 May 2001, annex to Letter by the Chairperson of the Committee on Economic, Social and Cultural Rights to the President of ECOSOC (11 May 2001).

Nondiscrimination is perhaps the most obvious and urgent of the immediate principles in implementing the human right to adequate housing. CESCR has provided specific guidance such that, among other things, “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.”¹⁵⁶

The measures needed for States parties to comply with obligations of immediate application include negative obligations. That is, many of the measures to realize the human right to adequate housing would require little more than the State and its agents to refrain from certain harmful practices, such as arbitrary house demolitions and forced eviction, or a meaningful commitment to enabling “self-help” or “social production of habitat” by affected groups. Such changes in State behavior would not require significant expenditure of public resources.

Universality

The principle of human rights “universality” is simply expressed in the UDHR’s recognition that “All human beings are born free and equal in dignity and rights” (Article 1). Everyone, without exception, is entitled to human rights by virtue of belonging to the human family. From a moral point of view, the universality of human rights is an essential principle if the human civilization is to advance for the better. In international law, the text of ICESCR also speaks consistently of right of “everyone,” which obliges States not to discriminate in adherence to minimum core obligations. In the field of housing, in particular, States are not permitted to interpret its minimum core obligations to apply selectively, that is, only to citizens, or only certain citizens, but also to ensure the human right to adequate housing is realized also for “everyone,” including residents, immigrants and migrant workers, etc. The only conditionality permitted in law is that the subjects of human rights qualify as members of the human family.

Before the Universal Declaration, the social movements, revolutions, antislavery struggles and intellectual contributions of the past have served as vehicles for the promotion of human rights that eventually have been incorporated into local and international law and practice. However, many of these famous accomplishments were limited in their substance or application, geographically or socially, or were subject to reversal. Social science and philosophy have contributed greatly to the recognition of human rights, but have not carried the force of law. The recognition of the universality of human rights overcomes the shortcomings left by these otherwise-significant accomplishments:

Limits in scope of application:

- The rights and ethics delivered through the world’s moral systems, especially those found in the religions, also are limited in scope by the fact that they apply to adherents to a particular faith group, not applying universally;
- The Magna Carta of 1215 imposed limits on royal impunity that equate as new rights for citizens, especially property-owning citizens. However, this historical achievement had only local application in the geographical realm of the English king.

¹⁵⁶ General Comment No. 3: “The nature of States parties’ obligations,” adopted by the CESCR in its fifth session (1990), E/1991/23, para. 11.

Exclusion of social sectors and substantive rights:

- The “American Revolution,” in the English colonies that eventually became the original United States of America, realized the right to self-determination as a legal right and *raison d'état*. However, the right to self-determination, as inalienable as it is, applied in the American Revolution case as a right limited only to the white colonizers who identified themselves as a distinct people. The remaining indigenous peoples—whom the settlers mostly largely and replaced—have yet to achieve their self-determination to this day;
- The French Revolution, for all its achievements, realized rights for individuals. French farmers and workers sought recognition of their group rights in the context of the revolution; however, its leadership rejected those expansive notions of rights and insisted on *liberté, égalité and fraternité* with an individual focus;
- The results of the Bolshevik Revolution institutionalized recognition of group rights for workers, etc.; however, rejected a right to property ownership. However ethically grounded the rationale for that omission, the denial of property rights also has emerged as a common tool for depriving persons, communities and entire peoples of their means of subsistence, thereby demonstrating, by its violations, the importance of that neglected human right.

Retrogression:

- The antislavery movement in Haiti at the end of the 18th Century resulted in a democratic regime and Constitution under the leadership of former slave and eventual General Toussaint Louverture. However, the same France that produced the world-changing Revolution only 12 years before saw the French General Napoleon I crush the new democracy in 1801 for reasons of imperial interest, reversing the accomplishments of Haitian antislavery democracy, with consequences extending to this day.



Despite their shortcomings, these episodes in the gradual achievement of rights through local struggle all have contributed to the accumulation of human rights recognition as universally applicable. Human rights law today embodies that cumulative recognition into an international and universal code that seeks to leave no human group, geographical region or human need without mutual protection in the multilateral legal regime.

Universality of human rights now means that it is impermissible to neglect certain rights as if they were intended selectively for certain cultures, as if and people of other cultures deserve an inferior standard. Universality also means that no State or government is exempt from its obligations, either for reasons of specificity of local law, as the Vienna Convention has addressed, or to uphold traditional practices that violate rights or their over-riding principles of application.

Interpreting rights consistent with one's own culture (as in the cultural adequacy of housing) means applying locally specific options and idiomatic expressions consistent with the human rights framework. However, practices that preserve or condone unequal rights to secure tenure, inheritance or other entitlements of the human right to adequate housing are not consistent with the present framework and likely to violate both the gender-equality

provisions of the Covenant, as well as essential provisions of the Vienna Convention on the Law of Treaties (1969).¹⁵⁷

While local experience of application and struggle continue to provide specificity on how to realize human rights, reveal a variety of possible strategies and define emerging rights (such as the rights to water, land and energy), cultural specificity does not mean allowance for the derogation of rights to something short of the over-riding principles and entitlements reflected in this toolkit. As affirmed by moral arguments and legal authority, adequate housing is the right of everyone, everywhere.

Conclusion

The over-riding principles featured in the monitoring steps of this toolkit are those explicitly mentioned in the major human rights treaties. The “Other principles of application” are implied in the human rights instruments or recognized in international jurisprudence, but are not less important to keep in mind.

The HLRN toolkit attempts to go further than merely encouraging the monitor to keep these additional principles in mind, however. The toolkit’s design actually incorporates all of these three principles, but without culling them out as additional steps in the monitoring process.

The indivisibility of rights is already present in the 12 entitlements; whereas, the first eight derive directly from the CESCR’s General Comment No. 4 specifically on the right to housing. The “Congruent rights” derive from rights whose sources and concepts arise from the ICCPR, Refugee Convention and other instruments. Therefore, the housing rights entitlements themselves embody the indivisibility concept in a practical form.

The core minimum obligations applying in the case of the human right to adequate housing also are consistent with those entitlements outlined in the General Comment No. 4, which are embedded in this methodology (human right to adequate housing entitlements A–H). Naturally, the local specificity as to the nature and level of effort required to realize the human right to adequate housing is precisely your contribution through your monitoring effort, your critical process and by posing your solutions to problems in the field.

The universality of the human right to adequate housing is also inherent to this toolkit, by design. That is manifest in the wide range of international and regional instruments guaranteeing the right and incorporated into the Step 2 presentation of both the Legal Sources and Popular Sources.

The good news is that, with these principles integrated in the design of the toolkit, you are able to apply them as a matter of course. Therefore, it would be unnecessary and redundant to create corresponding, additional tasks. By applying the methodology in this Housing and Land Rights Monitoring Toolkit, you will be putting all of these inter-related and interdependent principles into living practice.

2.4. Guarantees

¹⁵⁷ The Vienna Convention sets forth, in Article 27, that “[A] party may not invoke the provisions of its internal law as justification to perform a treaty,” and the customary law principle, arising from Article 8 of the Universal Declaration of Human Rights, states that “everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him [her] by the constitution or by law.”

Guarantees of the Human Right to Adequate Housing

We will now determine the existing assets guaranteeing the entitlements of the human right to adequate housing in your country situation. We can begin by making our assessment at the general and international level, then proceeding to the more instrumental and local level. The “guarantees” do not mean only legal provisions, but also institutional, policy and other assets that function to ensure, or at least contribute to implementation of the various contents of our human right to adequate housing.

Therefore, one should assess first the State’s current obligations by its ratification of international (and then also any regional) treaties recognizing the human right to adequate housing, its over-riding principles and its specific entitlements. Then this method would have us determine any similar guarantees in the national constitution (or equivalent). At the more-specific level of legislation, the inquiry should have us identify which statutes, regulations and even municipal ordinances actually guarantee the right or any entitlement within the right. Presumably, institutions, public policies, programs, projects and budgets in place should form the practical implementation vehicles to complement these legal criteria and the respect, defense, promotion and fulfillment of the human right at the most-localized operational level.

Inquiry Begins Here

Following this logic, our line of inquiry on “guarantees” poses a number of questions for the monitor to provide the answer. Now your role will become more active. Accordingly, we will follow the method of assessing the guarantees in your country situation for implementation of the human right to adequate housing from general to specific, thus, focusing on:

- Ratifications and multilateral commitments:** Obligations arising from multilateral (international and regional) ratification of relevant treaties;
- Constitutional provisions** relevant to the human right to adequate housing and land;
- National legal system:** Legislation and other local law;
- Institutions:** both binding and bonding institutions, whether as a formal structure, or a more-customary, social character;
- Policies:** having nationwide application;
- Programs:** long-term, policy-based and systematic efforts;
- Projects:** having more temporary and localized application; and
- Budgets** of public institutions.



In that order, our line of inquiry will explore these guarantees for each of the twelve entitlements of the human right to adequate housing and land. You will likely find that you may already have the answers to many of these questions from the previous sections on “**Sources**” and “**Over-riding Principles**.” For instance, you have already learned about, and identified many multilateral treaty instruments guaranteeing the human right to adequate housing. Now, you will be able to fill in the rest of the guarantees to complete the picture of how these norms translate into legal and functional assurances locally for this and every entitlement of our human right that you choose to monitor and assess.

This method ensures that the monitor take into consideration also the guarantees of the over-riding human rights principles (as explained above in “**Over-riding principles applied to public goods and services**” in Step 3 of this toolkit). These principles, found in the first articles of all the major human rights treaties, are to be generally and universally applied in order to ensure a context for the realization of all rights, not least the human right to adequate housing and land. Since these principles over-ride, or sit on top of the human rights framework applied to housing and land, they appear first in the list of questions in our line of inquiry. These questions include a list of legal instruments and commitments by States to guarantee these over-riding principles. (Please note that these are illustrative lists; they are not exclusive lists. You may know of other such guarantees, and/or you may find that some listed do not apply to your country situation.)

In the same way that we proceed from the general to the specific, the inquiry about the guarantees of the over-riding principles is followed by the more precise, practical guarantees that ensure the human right to adequate housing and land is made real in practice. Therefore, the systematic questions here include a test of (1) the present (general and contextual) guarantees for applying the over-riding principles of international human rights law in the case of the entitlement legal security of tenure and freedom from dispossession (i.e., self-determination, nondiscrimination, gender equality, rule of law, nonregressivity/nonretrogression and international cooperation), as well as (2) the (functional and specific) local guarantees of legal security of tenure and freedom from dispossession deriving from the guaranties listed above.

✓ **Guarantees of the over-riding principles**

Self-determination

Which international treaties has the State ratified, acceded to or succeeded to that guarantee that the principle of self-determination be applied, including in the housing context?

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention on the Elimination of All Forms of Racial Discrimination (1965)
- Convention on the Rights of the Child (1989)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- ILO No. 107 concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (1957)
- ILO Convention No. 169 concerning Indigenous Peoples in Independent Countries (1989)
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee that the principle of self-determination be applied, including in the housing context?

- Declaration on the Right to Development (1986)
- Declaration on Social Progress and Development (1969)
- Habitat II Agenda (1996)
- Istanbul Declaration (1996)

- Social Summit Declaration and Programme of Action (1995)
- Universal Declaration of Human Rights (1948)
- United Nations Commission on Human Rights resolutions
- UN General Assembly resolutions [various]
- Vienna Declaration and Programme of Action (1993)
- Durban Declaration and Programme of Action [of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] (2002)
- Johannesburg Declaration of the World Summit on Sustainable Development and Plan of Implementation (2001)

Which regional treaties has the State ratified, acceded to or succeeded to that guarantee that the principle of self-determination be applied, including in the housing context?

- African Charter on Human and Peoples Rights (1981)
- American Convention on Human Rights (1969)
- American Declaration of Human Rights (1948)
- Arab Charter on Human Rights (1994)
- (European) Convention for Protection of Human Rights and Fundamental Freedoms (1950)
- European Social Charter (1961)

Has the State participated in the adoption of multilateral agreements in the form of regional conferences, summits, or congresses, etc., or voted in favor of resolutions in regional organizations that guarantee that the principle of self-determination be applied, including in the housing context?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (2000)
- Rabat Declaration (1995)

Nondiscrimination

Which international treaties has the State ratified, acceded to or succeeded to that guarantee that the over-riding principle and human right to freedom from discrimination be applied, including also in the housing context?

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention on the Elimination of All Forms of Racial Discrimination (1965)
- Convention on the Rights of the Child (1989)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- International Labour Organisation Convention No. 107 concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (1957)

- International Labour Organisation Convention No. 117 *on Social Policy (Basic Aims and Standards)* (1962)
- ILO Convention No. 169 concerning Indigenous Peoples in Independent Countries (1989)
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)
- Refugee Convention (1951)
- Convention relating to the Status of Stateless Persons (1954)
- Convention on the Reduction of Statelessness (1961)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee that the over-riding principle and human right to freedom from discrimination be applied, including also in the housing context?

- Declaration on Asylum (1967)
- Declaration on the Right to Development (1986)
- Declaration on Social Progress and Development (1969)
- Declaration on the Elimination of Violence against Women (1993)
- Habitat II Agenda (1996)
- Declaration on Cities and Other Human Settlements in the New Millennium [Habitat II+5 UNGAR S-25/2] (2001)
- UN Guidelines on Internally Displaced Persons (1998) [vote in favor of adoption in UNHRCR E/CN.4/1998/53/Add.2, dated 11 February 1998]
- International Labour Organisation Recommendation No. 162 concerning Older Workers (1980)
- Istanbul Declaration (1996)
- Rio Declaration and Agenda 21 (1992)
- Social Summit Declaration and Programme of Action (1995)
- Universal Declaration of Human Rights (1948)
- UN General Assembly resolutions [various]
- United Nations Commission on Human Rights resolutions [various]
- Vancouver Declaration Human Settlements (1976)
- Vienna Declaration and Programme of Action (1993)
- Durban Declaration and Programme of Action [of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] (2002)
- Johannesburg Declaration of the World Summit on Sustainable Development Plan of Implementation (2001)

Which regional treaties has the State ratified, acceded to or succeeded to that guarantee that the over-riding principle and human right to freedom from discrimination be applied, including also in the housing context?

- African Charter on Human and Peoples Rights (1981)
- American Convention on Human Rights (1969)
- Arab Charter on Human Rights (1994)
- (European) Convention for Protection of Human Rights and Fundamental Freedoms (1950)
- European Social Charter (1961)

Has the State participated in the adoption of multilateral agreements in the form of regional-level conferences, summits, or congresses, etc., or voted in favor of resolutions in regional organizations that guarantee application of the over-riding principle and human right to

freedom from discrimination, including also in the housing context?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (2000)
- Rabat Declaration (1995)

Gender equality

Which international treaties has the State ratified, acceded to or succeeded to that guarantee the application of the over-riding principle of gender equality be applied, including also in the housing context?

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention on the Rights of the Child (1989)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- International Labour Organisation Convention No. 117 *on Social Policy (Basic Aims and Standards)* (1962)
- International Labour Organisation Convention No. 131 Concerning Minimum Wage Fixing, with Special Reference to Developing Countries (1970)
- International Labour Organisation Convention Recommendation No. 115 concerning Workers' Housing (1961)
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee the application of the over-riding principle of gender equality be applied, including also in the housing context?

- Declaration on Asylum (1967)
- Declaration on the Right to Development (1986)
- Declaration on Social Progress and Development (1969)
- Habitat II Agenda (1996)
- Declaration on Cities and Other Human Settlements in the New Millennium [Habitat II+5 UNGAR S-25/2] (2001)
- International Labour Organisation Recommendation No. 162 concerning Older Workers (1980)
- Istanbul Declaration (1996)
- Rio Declaration and Agenda 21 (1992)
- Social Summit Declaration and Programme of Action (1995)
- Universal Declaration of Human Rights (1948)
- United Nations Commission on Human Rights resolutions
- Vienna Declaration and Programme of Action (1993)

- Durban Declaration and Programme of Action [of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] (2002)
- Johannesburg Declaration of the World Summit on Sustainable Development and Plan of Implementation (2001)

Which regional treaties has the State ratified, acceded to or succeeded to that guarantee the application of the over-riding principle of gender equality be applied, including also in the housing context?

- African Charter on Human and Peoples Rights (1981)
- American Convention on Human Rights (1969)
- American Declaration of Human Rights (1948)
- Arab Charter on Human Rights (1994)
- (European) Convention for Protection of Human Rights and Fundamental Freedoms (1950)
- European Social Charter (1961)

Has the State participated in the adoption of multilateral agreements in the form of regional conferences, summits, or congresses, etc., or voted in favor of resolutions in regional organizations that guarantee the application of the over-riding principle of gender equality be applied, including also in the housing context?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (2000)
- Rabat Declaration (1995)

Rule of law

Which international treaties has the State ratified, acceded to or succeeded to that guarantee the State's application of the over-riding principle of the rule of law, which also extends to the housing sphere?

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention on the Elimination of All Forms of Racial Discrimination (1965)
- Convention on the Rights of the Child (1989)
- Rome Statute on the Establishment of the International Criminal Court (1998)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- International Labour Organisation Convention No. 107 concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (1957)
- International Labour Organisation Convention No. 117 *on Social Policy (Basic Aims and Standards)* (1962)
- International Labour Organisation Convention No. 131 Concerning Minimum Wage Fixing, with Special Reference to Developing Countries (1970)

- ILO Convention No. 169 concerning Indigenous Peoples in Independent Countries (1989)
- International Labour Organisation Convention Recommendation No. 115 concerning Workers' Housing (1961)
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)
- Refugee Convention (1951)
- Convention relating to the Status of Stateless Persons (1954)
- Convention on the Reduction of Statelessness (1961)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee the State's application of the over-riding principle of the rule of law, which also extends to the housing sphere?

- Declaration on Asylum (1967)
- Declaration on the Right to Development (1986)
- Declaration on Social Progress and Development (1969)
- Habitat II Agenda (1996)
- Declaration on Cities and Other Human Settlements in the New Millennium [Habitat II+5 UNGAR S-25/2] (2001)
- International Labour Organisation Recommendation No. 162 concerning Older Workers (1980)
- Istanbul Declaration (1996)
- Rio Declaration and Agenda 21 (1992)
- Social Summit Declaration and Programme of Action (1995)
- Universal Declaration of Human Rights (1948)
- United Nations Commission on Human Rights resolutions
- Vancouver Declaration Human Settlements (1976)
- Vienna Declaration and Programme of Action (1993)
- Durban Declaration and Programme of Action [of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] (2002)
- Johannesburg Declaration of the World Summit on Sustainable Development and Plan of Implementation (2001)

Which regional treaties has the State ratified, acceded to or succeeded to that guarantee the State's application of the over-riding principle of the rule of law, which also extends to the housing sphere?

- African Charter on Human and Peoples Rights (1981)
- American Convention on Human Rights (1969)
- American Declaration of Human Rights (1948)
- Arab Charter on Human Rights (1994)
- (European) Convention for Protection of Human Rights and Fundamental Freedoms (1950)
- European Social Charter (1961)

Has the State participated in the adoption of multilateral agreements in the form of regional conferences, summits, or congresses, etc., or voted in favor of resolutions in regional organizations that guarantee the State's application of the over-riding principle of the rule of law, which also extends to the housing sphere?

- American Declaration on the Rights and Duties of Man (1948)

- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (2000)
- Rabat Declaration (1995)

Nonregressivity/nonretrogression

Which international treaties has the State ratified, acceded to or succeeded to that guarantee the State's implementation of the principle of nonregressivity/nonretrogression in the respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human right to adequate housing and land?

- Convention on the Elimination of All Forms of Racial Discrimination (1965)
- Convention on the Rights of the Child (1989)
- International Covenant on Economic, Social and Cultural Rights (1966)
- International Labour Organisation Convention No. 117 *on Social Policy (Basic Aims and Standards)* (1962)
- International Labour Organisation Convention Recommendation No. 115 concerning Workers' Housing (1961)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee the State's implementation of the principle of nonregressivity/nonretrogression in the respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human right to adequate housing and land?

- Declaration on the Right to Development (1986)
- Declaration on Social Progress and Development (1969)
- Habitat II Agenda (1996)
- Declaration on Cities and Other Human Settlements in the New Millennium [Habitat II+5 UNGAR S-25/2] (2001)
- Istanbul Declaration (1996)
- Rio Declaration and Agenda 21 (1992)
- Social Summit Declaration and Programme of Action (1995)
- Universal Declaration of Human Rights (1948)
- United Nations Commission on Human Rights resolutions
- Vancouver Declaration Human Settlements (1976)
- Vienna Declaration and Programme of Action (1993)
- Durban Declaration and Programme of Action [of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] (2002)
- Johannesburg Declaration of the World Summit on Sustainable Development and Plan of Implementation (2001)

Which regional treaties has the State ratified, acceded to or succeeded to that guarantee the State's implementation of the principle of nonregressivity/nonretrogression in the respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human right to adequate housing and land?

- American Declaration on the Rights and Duties of Man (1948)

- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (200)
- Rabat Declaration (1995)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee the State's implementation of the principle of nonregressivity/nonretrogression in the respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human right to adequate housing and land?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (2000)
- Rabat Declaration (1995)

International Cooperation

Which international treaties has the State ratified, acceded to or succeeded to that guarantee the State's implementation of the principle of international cooperation to ensure respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human rights to adequate housing and land?

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention on the Elimination of All Forms of Racial Discrimination (1965)
- Convention on the Rights of the Child (1989)
- Rome Statute on the Establishment of the International Criminal Court (1998)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- International Labour Organisation Convention No. 107 concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (1957)
- International Labour Organisation Convention No. 117 *on Social Policy (Basic Aims and Standards)* (1962)
- International Labour Organisation Convention No. 131 Concerning Minimum Wage Fixing, with Special Reference to Developing Countries (1970)
- ILO Convention No. 169 concerning Indigenous Peoples in Independent Countries (1989)
- International Labour Organisation Convention Recommendation No. 115 concerning Workers' Housing (1961)
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)
- Refugee Convention (1951)

- Convention relating to the Status of Stateless Persons (1954)
- Convention on the Reduction of Statelessness (1961)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee the State's implementation of the principle of international cooperation to ensure respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human rights to adequate housing and land?

- Agenda 21 (1992)
- Declaration on Environment and Development (1992)
- Declaration on Asylum (1967)
- Declaration on the Right to Development (1986)
- Declaration on Social Progress and Development (1969)
- Habitat II Agenda (1996)
- Declaration on Cities and Other Human Settlements in the New Millennium [Habitat II+5 UNGAR S-25/2] (2001)
- International Labour Organisation Recommendation No. 162 concerning Older Workers (1980)
- Istanbul Declaration (1996)
- Rio Declaration and Agenda 21 (1992)
- Social Summit Declaration and Programme of Action (1995)
- Universal Declaration of Human Rights (1948)
- United Nations Commission on Human Rights resolutions
- Vancouver Declaration Human Settlements (1976)
- Vienna Declaration and Programme of Action (1993)
- Durban Declaration and Programme of Action [of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] (2002)
- Johannesburg Declaration of the World Summit on Sustainable Development and Plan of Implementation (2001)

Which regional treaties has the State ratified, acceded to or succeeded to that guarantee the State's implementation of the principle of international cooperation to ensure respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human rights to adequate housing and land?

- African Charter on Human and Peoples Rights (1981)
- American Convention on Human Rights (1969)
- American Declaration of Human Rights (1948)
- Arab Charter on Human Rights (1994)
- (European) Convention for Protection of Human Rights and Fundamental Freedoms (1950)
- European Social Charter (1961)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee the State's implementation of the principle of international cooperation to ensure respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human rights to adequate housing and land?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)

- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (2000)
- Rabat Declaration (1995)

What additional multilateral commitments has the State made to guarantee nondiscrimination in the respect, protection, promotion and fulfillment of the human right to adequate housing and, by extension, legal security of tenure and freedom from dispossession?

Do not forget that the body of the binding international treaties that the State already has ratified contains binding human rights obligations that take precedence over nonbinding declarations of mere intent or political will. Monitoring these obligations is the covenanted task of the treaty parties [ratifying States], which has been delegated to neutral treaty-monitoring bodies that are supported in their task by government and civil-society monitors.

Keep in mind also that some multilateral declarations and many agreements with international financial and development institutions may contain standards less protective of human rights and freedoms than those of a binding nature under human rights treaties. Those agreements may even impede the enjoyment of economic/social/cultural rights. Such agreements are to be evaluated subject to prior human rights treaty obligations—not vice versa.

✓ Local guarantees

Ratifications and international commitments

Which international treaties has the State ratified (acceded or succeeded to) that guarantee the human right to adequate housing, in particular security of tenure and freedom from dispossession?

Constitutional provisions

- Does the State have a Constitution, or equivalent, guaranteeing the right to human right to housing and land, including public goods and services?
- Does the State have a Constitution, or equivalent, guaranteeing the right to local self-determination?
- Does the State have a Constitution, or equivalent, guaranteeing the right to freedom from discrimination?
- Does the State have a Constitution, or equivalent, guaranteeing gender equality?
- Does the State have a Constitution, or equivalent, guaranteeing the rule of law, including access to justice and democratic participation and representation?
- Does the State have a Constitution, or equivalent, guaranteeing the right to the continuous improvement of living conditions?

- Does the State have a Constitution, or equivalent, providing that international relations be conducted within the framework and objectives of human rights, including economic, social and cultural rights?

National legal system

- Is the right to adequate housing, including public goods and services recognized as a distinct right in the country's legal system?
- Is national and local legislation consistent with the human rights right to housing and land, including public goods and services?
- Is national and local legislation consistent with the principle of local self-determination?
- Is national and local legislation consistent with the right to freedom from discrimination? What statutes has the State/government legislated, and are in force, to ensure nondiscrimination in the respect, defense, promotion and implementation of the human right to adequate housing, in particular, public goods and services?
- Do the concerned persons or community have the sense that the terms of their entitlement to public goods and services are equal and consistent with others'?
- Does national and local law maintain the principle of gender equality, particular as it relates to housing, land and public goods and services?
- Do local and national laws and regulations uphold the rule of law, including access to justice and democratic participation and representation in matters related to housing, land and public goods and services?
- Does the State's legal system maintain the right to the continuous improvement of living conditions?
- Are the laws and regulations of the State consistent with the principle that international relations, including international entities operating locally, conduct themselves within the framework and objectives of human rights, including economic, social and cultural rights, in particular, the human right to adequate housing and land, including public goods and services?
- Does the performance of the law-enforcement services guarantee the practice and enforcement of the respect, defense, promotion and implementation of the human right to adequate housing, including public goods and services?
- Are judges and lawyers performing sufficiently and consistently to uphold the human right to adequate housing, including the entitlement of public goods and services? What are some examples?

Institutions

- Is there a sense in the community that the State and government institutions represent their aspirations to self-determination?

- What State and public institutions exist as a guarantee of nondiscrimination in the respect, defense, promotion and implementation of the human right to adequate housing, in particular, public goods and services?
- Do the concerned persons or community have the possibility to exercise an effective role in determining the terms and conditions of public goods and services?
- What State and public institutions exist as a guarantee of gender equality in the defense, promotion and implementation of the human right to adequate housing, in particular, public goods and services?
- What private and nongovernmental institutions exist as a guarantee of gender equality in the defense, promotion and implementation of the human right to adequate housing, in particular, public goods and services?
- What informal institutions (including social norms) function so as to help implement the human right to adequate housing and, in particular, public goods and services?¹⁵⁸
- What social institutions and consistent social practices exist as a guarantee of gender equality in the defense, promotion and implementation of the human right to adequate housing, in particular, public goods and services?
- How have these institutions actually improved capacity to protect, or actual protection of public goods and services for those in need?

Policies

- What statewide policies are in place and implemented to guarantee of the human right to adequate housing and, in particular, public goods and services?

Keep in mind that the body of the binding international treaties that the State has ratified contain provisions that call for human rights to be implemented in the presence of the over-riding principles of self-determination, nondiscrimination, gender equality, the rule of law, international cooperation in the implementation of human rights, and progressive realization (nonregressivity/ nonretrogression) and the continuous improvement of living conditions.

- How have national policies enhanced local self-determination so as to ensure acceptable levels of public goods and services?
- How have national policies to ensure nondiscrimination positively affected public goods and services in the country?
- How have national gender policies led to improvements in the conditions of public goods and services in the housing sphere, especially for those in need?

¹⁵⁸ The operative concept of institutions here encompasses both bonding and bridging institutions. "Institutions," in this sense, involve the rules of the game under which formal and informal activity is conducted, and include public institutions, private institutions, collective practices and norms, as well as changing norms (e.g., brought about through the youth, technology, economic or demographic shifts, and other emerging behaviours). According to Douglas C. North, 1993 Nobel economics laureate, institutions are "humanly devised constraints that shape human interaction."

- How have the State's policies on access to justice enhanced conditions of public goods and services, especially for those in need?
- How have national housing policies ensured the continuous improvement of living conditions, in particular the housing rights entitlement of public goods and services, especially for those in need?
- In what ways have national housing policies ensured that international relations and international entities operating within the country respect, defend, promote and fulfil the human right to housing, in particular the entitlement of public goods and services for those in need?
- To what extent have external parties positively influenced your country's official policies or practices in guaranteeing the entitlement to public goods and services?

Programs

- What progressive steps has the State made on a national scale in the past period (year[s], or since your last assessment) to improve housing rights, especially the entitlement of public goods and services? (These may include: law reforms, improved infrastructure, more effective implementation methods, population registry programs, programs to consider ratification of international covenants, and evaluations of housing rights implementation, etc.)

Keep in mind that the body of binding international treaties that the State has ratified contain provisions that call for human rights to be implemented in the presence of the over-riding principles of self-determination, nondiscrimination, gender equality, the rule of law, international cooperation in the implementation of human rights, and progressive realization (nonregressivity/ nonretrogression) and the continuous improvement of living conditions.

- What private-sector or NGO programs are in place and implemented to guarantee the human right to adequate housing and, in particular, public goods and services?
- How have these national programs enhanced local self-determination in a way that has improved the conditions of public goods and services?
- What national programs are completed, ongoing, or planned to ensure nondiscrimination positively affected public goods and services in the country?
- Are there any national gender programs completed, ongoing or planned with the purpose and effect of improving the conditions of public goods and services in the housing sphere, especially for those in need? Do they cover land rights and inheritance issues?
- What are have the State's recent, present or future programs to enhance access to justice that are intended to improve housing and living conditions, especially for those in need? How have those programs implemented to date succeeded in enhancing public goods and services of housing?
- How have national housing programs ensured the continuous improvement of living conditions, in particular the housing rights entitlement of public goods and services, especially for those in need?

- In what ways have national housing programs ensured that international relations and international entities operating within the country respect, defend, promote and fulfil the human right to housing, in particular the entitlement of public goods and services for those in need?
- Has the government in the concerned State cooperated with other State or non-State parties to find identify and adapt good practices locally to improve public goods and services for all those living there?

Projects

- What progressive actions has the State undertaken in the way of limited-scale or pilot projects in the past period (year[s], or since your last assessment) to improve housing rights, especially the entitlement of public goods and services?
- What private-sector or NGO projects are in place and implemented to guarantee the human right to adequate housing and, in particular, public goods and services?
- How have such local projects enhanced local self-determination in a way that has improved the conditions of public goods and services?
- What projects completed, ongoing, or planned to ensure nondiscrimination positively affected public goods and services in the country?
- Are there any gender-based projects completed, ongoing or planned with the purpose and effect of improving the conditions of public goods and services in the housing sphere, especially for those in need? Do they cover land rights and inheritance issues?
- What are have the State's recent, present or future projects to enhance access to justice that are intended to improve housing and living conditions, especially for those in need? How have those programs implemented to date succeeded in enhancing public goods and services of housing?
- How have these projects ensured the continuous improvement of living conditions, in particular the housing rights entitlement of public goods and services, especially for those in need?
- In what ways have public or private projects ensured that international relations and international entities operating within the country respect, defend, promote and fulfil the human right to housing, in particular the entitlement of public goods and services for those in need?
- Has the government in the concerned State cooperated with other State or non-State parties to find identify and adapt good practices locally through projects that actually improve public goods and services for all those living affected?
- Are there foreign State or foreign private interests operating projects affecting the housing and human settlements sector in the country and affecting the situation under review? Are their roles positively affecting the enjoyment of public goods and services?

Budgets

- What public budgets are in place to guarantee the human right to adequate housing and, in particular, public goods and services? How does the budget correspond to actual spending and implementation targets?
- Is the necessary public budget information available to conduct a multiyear assessment of the financial performance of policies, programs and projects affecting housing and living conditions of those vulnerable and needy inhabitants of the country?
- Does the public have access to the budgets of private companies and organizations operating in the housing sphere and having an effect on the housing rights entitlement of public goods and services?
- Does the reliable budget information support the public claims of those responsible for the budgets intended for improvement of living conditions of the needy, particularly in the housing rights entitlement of public goods and services?
- What international obligations and commitments affect the public budget with ramifications on the housing sector, including the entitlement of public goods and services?
- What national obligations and commitments affect the public budget with ramifications on the housing sector, including the entitlement of public goods and services?
- What financial policies affect the public budget with ramifications on the housing sector, including the entitlement of public goods and services?

2.5. Obstacles, impediments, barriers

At the present stage in the monitoring process, you have well identified the elements arising from the human right and legal concept of adequate housing. You have completed the necessary review of international minimum standards that codify the right, along with the corresponding obligations on the ratifying State. Your process has taken you through the moral arguments of social movements and others, who are the very source of human rights throughout history. Those sources fill legal gaps and provide specificity to local human rights priorities and application. In your context, you also have identified which of the binding instruments and other theoretical guarantees apply to the case at hand.

At this point, you are advancing beyond the theoretical dimensions of the human right to adequate housing, its constituent elements and its guarantees. As a housing-and-land-rights monitor, you will now enter the practical dimension and assess the most difficult challenge in the field of human rights: implementation. The following sample questions guide the monitor to prepare needed data and arguments by detailing the present obstacles, impediments, barriers, threats and constraints that have brought about, or threaten to bring about a violation or deprivation of the right and the element of access to public goods and services, which you are currently addressing.

When monitoring documenting any stage of this toolkit inquiry, or assessing the conditions affecting any right, it is essential to ensure the highest quality of information possible. It has been said often that information is power. In our case, this is especially true, but the degree of that power will depend largely on the following qualities of your information:

- Completeness
- Level of detail and specificity
- Date (freshness) of the information
- Integrity of the information (i.e., lack of contradictions)
- Effective (articulate, concise, understandable and correct) use of language
- Relevance: linkage to the question of housing and land rights implementation
- Credibility of source (reputation, effective presentation, link to issue and community)

In order to begin assessing the compatibility of the theoretical affirmations of the human right to housing and land with the local reality, you will determine now whether, and to what extent barriers, contradictions, obstacles, and impediments contribute to actual and/or potential violations of the entitlement to access to public goods and services. This process is aided with the following battery of questions:

✓ **Obstacles to over-riding principles**

Self-determination

- Are the people dissatisfied with the terms of their access to public goods and services, including access to water, sanitation and energy?
- Do the concerned persons or community lack the possibility to exercise an effective role in determining the terms of access to public goods and services, including access to water, sanitation and energy?
- Does the community lack sufficient information or capacity sufficiently to enjoy the human right to adequate housing, in particular, the entitlement of legal security of tenure and freedom from dispossession? [See the “**Information, education, capacity and capacity building**” entitlement in this toolkit.]
- Is illiteracy an impediment to the community’s access to sufficient information to enjoy the human right to adequate housing, in particular, the entitlement of legal security of tenure and freedom from dispossession? [See the “**Information, education, capacity and capacity building**” entitlement in this toolkit.]

Nondiscrimination

- To what extent is discrimination an issue in realizing the entitlement to access to public goods and services, including access to water, sanitation and energy?
- Is there (does the affected community report) any type of discrimination practiced randomly, occasionally or on the social level, or institutionalized in some form, affecting access to public goods and services, including access to water, sanitation and energy?
- What are the nature of the discrimination and its effects of the entitlement of access to public goods and services, including access to water, sanitation and energy?

Gender equality

- Is there any gender-based discrimination applied in realizing the entitlement to access to public goods and services, including access to water, sanitation and energy?
- Is the discrimination practiced randomly, occasionally or on the social level, or is it institutionalized in some form such that affects access to public goods and services, including access to water, sanitation and energy?
- Does local law on inheritance, divorce or other specialization fail to provide equal rights to males and females of all ages? How?

Rule of law

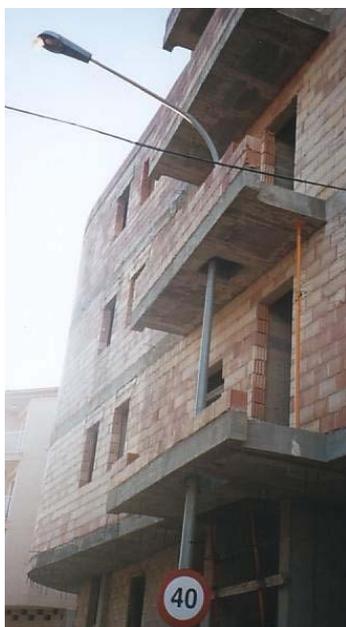
- Has the State failed to ratify any of the relevant international or regional treaties guaranteeing the human right to adequate housing?
- Has the State issued any reservations, declarations or understandings to international or regional treaties that possibly limit the affect of human right to adequate housing guarantees, particularly so as to affect the entitlement of access to public goods and services, including access to water, sanitation and energy?
- Has the State government failed to conduct a legal evaluation of housing rights implementation?
- Has the State government failed to present timely reports to the relevant treaty-monitoring bodies covering the human right to adequate housing?
- Has the State and its government failed to implement in good faith the Concluding Observations of the various treaty bodies concerning implementation of the human right to adequate housing?
- Do the three branches of government (judiciary, legislative and executive) operate with autonomous authority?
- Do the three branches of government coordinate to uphold and enforce a single system of law?
- Does the State lack a Constitution, or equivalent, guaranteeing gender equality?
- Does the State lack a Constitution, or equivalent, guaranteeing the rule of law, including access to justice and democratic participation and representation?
- Does the State lack a Constitution, or equivalent, guaranteeing the right to the continuous improvement of living conditions?
- Does the State lack a Constitution, or equivalent, providing that international relations be conducted within the framework and objectives of human rights, including economic, social and cultural rights?
- Does the country's legal system lack recognition of the human right to adequate housing, including access to public goods and services, including access to water, sanitation and energy?

- Do legal or procedural shortcomings impede the admissibility of claims invoking international treaty obligations in the defense of human right to adequate housing, in particular, the entitlement to public goods and services, including access to water, sanitation and energy?
- Has the State failed to ratify the Rome Statute on the International Criminal Court, limiting the options to seek justice and remedy for gross violations of the human right to adequate housing?
- Does the political system in the country lack coordination among branches of executive, legislative and judicial government?
- Does the State lack a Constitution, or equivalent, guaranteeing the rule of law, including access to justice and democratic participation and representation?
- Has the legislature failed to harmonize national laws with international human rights treaty obligations in the formulation of policies affecting the human right to adequate housing, in particular, with affect on public goods and services, including access to water, sanitation and energy?
- Are there contradictions in the national law affecting access to public goods and services, including access to water, sanitation and energy?
- Is there insufficient enforcement of laws and/or policies against arbitrary eviction enforced, including safeguards for vulnerable groups, such as: women, children, orphans, etc.?
- Do local authorities fail to recognize explicitly the application of the international human rights treaties that the State has signed and/or ratified and that guarantee the human right to adequate housing, including the entitlement of access to public goods and services, including access to water, sanitation and energy?
- Is national and local legislation inconsistent with the human rights right to housing and land, including access to public goods and services, including access to water, sanitation and energy?
- Is law enforcement inadequate to ensure enjoyment of the entitlement of access to public goods and services, including access to water, sanitation and energy?
- Are law enforcement officers in need of training in, and information about the human right to adequate housing in order to uphold the entitlement of access to public goods and services, including access to water, sanitation and energy?
- Do lawyers, prosecutors and/or judges lack awareness and training in the housing and land rights law in order to uphold and defend the entitlement of access to public goods and services, including access to water, sanitation and energy?
- Has the national court system failed in any way to admit claims of housing and land rights victims, including those whose entitlement to access to public goods and services has been violated?

- Do the rule-of-law, regulations, or their enforcement fail to govern market forces effectively to ensure the respect, protection, promotion and fulfillment of the right to adequate housing (e.g., governing monopolies, procedures for legal redress)? How does fact affect the enjoyment of the housing rights entitlement to access to public goods and services, including access to water, sanitation and energy?
- Does local law restrict civil society associations from advocating rights or providing services that would advance the respect, defense, promotion and fulfillment of the human right to housing, including public goods and services, including access to water, sanitation and energy?

Nonregressivity / nonretrogression

- Has the State failed to take steps to improve housing rights, especially affecting access to public goods and services, in the past period (year[s], or since your last assessment)?



- Have new laws degraded protection of human right to adequate housing in the recent period, particularly affecting access to public goods and services, including access to water, sanitation and energy?
- Have new policies degraded protection or enjoyment of human right to adequate housing in the recent period, particularly affecting access to public goods and services, including access to water, sanitation and energy?
- Have national programs led to a decline in the enjoyment of human right to adequate housing in the recent period, particularly affecting access to public goods and services, including access to water, sanitation and energy?
- Have infrastructure or physical features of the built or natural environment led to a decline in the enjoyment of human right to adequate housing, particularly affecting access to public goods and services, including access to water, sanitation and energy?
- Have nationwide programs failed to improve, or led to a decline in, the enjoyment of human right to adequate housing, in particular the terms of access to public goods and services, including access to water, sanitation and energy?
- Have local projects supported by State or local authorities failed to improve, or led to a decline in, the enjoyment of human right to adequate housing, in particular the terms of access to public goods and services, including access to water, sanitation and energy?
- Have public budget allocations failed to improve, or led to a decline in, the enjoyment of human right to adequate housing, in particular the terms of access to public goods and services, including access to water, sanitation and energy?
- To what extent has the State government's efforts fallen short in the improvement the terms of access to public goods and services, especially of the poor, vulnerable and minorities?

International cooperation

- Are foreign State or non-State interests operating in the housing and human settlements sector in the country and affecting the entitlement of access to public goods and services, including access to water, sanitation and energy? Are their roles negatively affecting the enjoyment of access to public goods and services, including access to water, sanitation and energy?
- To what extent have external parties (States, or international financial institutions) negatively influenced your country's official policies or practices in guaranteeing the right to access to public goods and services, including access to water, sanitation and energy?
- Has the State neglected to take steps, "individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources" and capacities to ensure (especially poor and vulnerable) people's access to public goods and services, including access to water, sanitation and energy?

✓ Local obstacles

Institutions

- As far as human right to adequate housing and access to public goods and services are concerned, are there gaps or shortcomings in the State, government and other public institutions positioned to improve living conditions, including the housing-rights entitlement of access to public goods and services, including access to water, sanitation and energy?
- What State and public institutions exist as a guarantee of gender equality in the defense, promotion and implementation of the human right to adequate housing, in particular, legal access to public goods and services, including access to water, sanitation and energy?
- Has there been a recent decrease in the quantity or quality of civil society institutions upon which the community now relies.
- Do the concerned private and nongovernmental institutions fail to guarantee gender equality in the defense, promotion and implementation of the human right to adequate housing, in particular, access to public goods and services, including access to water, sanitation and energy?
- What informal institutions (including social norms) function so as to impede the enjoyment of the human right to adequate housing and, in particular, access to public goods and services, including access to water, sanitation and energy?¹⁵⁹
- Do these institutions actually lack the will or capacity to protect legal access to public goods and services for those in need?

¹⁵⁹ The operative concept of institutions here encompasses both bonding and bridging institutions. "Institutions," in this sense, involve the rules of the game under which formal and informal activity is conducted, and include public institutions, private institutions, collective practices and norms, as well as changing norms (e.g., brought about through the youth, technology, economic or demographic shifts, and other emerging behaviours). According to Douglas C. North, 1993 Nobel economics laureate, institutions are "humanly devised constraints that shape human interaction."

- Do these institutions actually lack the will, knowledge or capacity to use the relevant treaty body Concluding Observations in work of monitoring and lobbying officials

Policies

- Do the relevant ministries omit to incorporate international human rights treaty obligations in the formulation of policies affecting the human right to adequate housing, in particular, with affect on public goods and services, including access to water, sanitation and energy?
- What statewide policies are still needed to guarantee of the human right to adequate housing and, in particular, access to public goods and services, including access to water, sanitation and energy?
- Have the relevant national policies neglected to ensure acceptable levels of self-determination in determining the terms and conditions of access to public goods and services, including access to water, sanitation and energy? How and why?
- Have national policies failed to reach their targets (even despite announcements of official intent) positively to affect access to public goods and services, including access to water, sanitation and energy? How and why?
- Have national gender policies led to improvements in the conditions of legal access to public goods and services in the housing sphere, especially for those in need? How and why?
- Have the State's policies on access to justice failed to improve conditions of legal access to public goods and services, especially for those in need?
- Have national housing policies failed to ensure the continuous improvement of living conditions, in particular, by stagnating or degrading the housing rights entitlement of access to public goods and services, especially for those in need? How and why?
- Do national housing policies lack consideration of, and/or reference to the international human rights instruments relevant to the human right to adequate housing and access to public goods and services, and to which the State is bound?
- To what extent have external parties negatively influenced your country's official policies or practices in guaranteeing the access to public goods and services, including access to water, sanitation and energy?
- Have State housing-policy implementing institutions omitted to seek international cooperation in the human right framework by conditioning international entities operating within the country also to respect, defend, promote and fulfil the human right to housing, in particular the entitlement of access to public goods and services, including access to water, sanitation and energy?

Programs

- What negative steps has the State taken on a national scale in the past period (year[s], or since your last assessment) to improve housing rights, especially the entitlement of

access to public goods and services, including access to water, sanitation and energy? These may include declining legal assistance laws, deteriorating infrastructure without repair, declining implementation efforts?

- What related private-sector or NGO programs have failed to enhance the enjoyment of the human right to adequate housing, in particular, access to public goods and services, including access to water, sanitation and energy?
- Is there a lack of, and need for national gender programs completed, ongoing or planned with the purpose and effect of improving the conditions of legal access to public goods and services in the housing sphere, especially for those in need?
- Do existing programs omit to cover land and inheritance rights?
- Have the intergovernmental relations declined between your State and others leading to a decline on options for international cooperation in advancing the respect, defense, promotion and/or fulfilment of the human right to adequate housing, in particular access to public goods and services, including access to water, sanitation and energy?
- Has the government in the concerned State declined to cooperate with other States, intergovernmental agencies, or foreign non-State parties to identify and adapt good practices locally to improve the entitlement to access to public goods and services, including access to water, sanitation and energy?
- How has privatization led to the decline of economic access to public goods and services, especially for the impoverished residents of the State?



Projects

- What relevant State actions or omissions have led to the failure of limited-scale or pilot projects in the past period (year[s], or since your last assessment) to improve housing rights, especially the entitlement of access to public goods and services, including access to water, sanitation and energy?
- What private-sector or NGO projects have failed to seek, or fallen short of their intended goal to guarantee the human right to adequate housing and, in particular, access to public goods and services, including access to water, sanitation and energy?
- Have such local projects undermined local self-determination with negative effect on the conditions of access to public goods and services, including access to water, sanitation and energy? How and why?
- Are foreign State or foreign private interests operating projects negatively affecting the housing and human settlements sector in the country and affecting the entitlement of access to public goods and services, including access to water, sanitation and energy? How and why?

- Have projects conducted by local or international entities in the country privatized the provision of housing or public services replaced the role and responsibility of the State and local authorities to fulfil the human right to adequate housing, in particular the entitlement of access to public goods and services for those in need?

Budgets

- Are there obstacles to obtaining adequate information about public expenditures in the housing sector, or in areas affecting the enjoyment of the human right to adequate housing, including access to public goods and services, including access to water, sanitation and energy?
- Is there a lack of legal and actual protection of the right to information, including information and documentation on public budget expenditures in the housing sphere related to the entitlement of access to public goods and services, including access to water, sanitation and energy?
- Are public budgets inadequate to guarantee the human right to adequate housing and, in particular, access to public goods and services, including access to water, sanitation and energy?
- Is there underspending of the budget such that impedes the achievement of policy, program or project implementation targets, affecting access to public goods and services, including access to water, sanitation and energy?
- Do public budget items and actual financial performance reflect a lack of sufficient priority given to implementing policies, programs and projects to improve housing and living conditions, affecting also access to public goods and services, of those vulnerable and needy inhabitants of the country?
- Does the public have access to the budgets and financial performance data of private companies and organizations operating in the housing sphere and having an effect on the housing rights entitlement of access to public goods and services, including access to water, sanitation and energy?
- Does the reliable budget information contradict the public claims of officials and institutions responsible for the continuous improvement of living conditions of the needy, particularly in the housing rights entitlement of access to public goods and services, including access to water, sanitation and energy?
- Do international obligations and commitments negatively affect the public budget with ramifications on the housing sector, including with negative affect on the entitlement of access to public goods and services, including access to water, sanitation and energy?
- What national obligations and commitments affect the public budget with ramifications on the housing sector, including the entitlement of access to public goods and services, including access to water, sanitation and energy?
- What financial policies constrain the public budget with negative consequences on the housing sector, including the entitlement of access to public goods and services, including access to water, sanitation and energy?

- Is the achievement of access to public goods and services accompanied by an inordinate economic burden?
- Is the State failing to regulate effectively the terms and conditions of housing market, so as to avoid corruption, collusion, fraud, discrimination, nepotism and any arbitrary criteria? How is this affecting the entitlement of access to public goods and services, including access to water, sanitation and energy?
- Is the State prohibiting or impeding individual and community initiatives toward obtaining access to public goods and services, individually as well as collectively?
- Are State authorities permitting other parties to interfere with community efforts toward obtaining access to public goods and services, individually as well as collectively?
- Are present government mechanisms and structures inefficient at assisting the needy population from gaining access to access to public goods and services, including access to water, sanitation and energy?
- Does the State lack needed resources to ensure access to public goods and services, especially for the poor, vulnerable and needy?
- Does national political disharmony impede enjoyment of the human right to adequate housing and access to public goods and services, including access to water, sanitation and energy?
- Is there armed conflict in the country impeding the private and/or public institutions from carrying out development and delivering services that safeguard and improve access to public goods and services conditions?
- Has a natural disaster inflicted parts of the country, creating conditions that negatively affect the human right to adequate housing, including the entitlement to access to public goods and services, including access to water, sanitation and energy? Do these conditions impede relief or reconstruction assistance by public and private actors?

2.6. The victims and vulnerable persons: the actors

At this step in the housing and land rights monitoring process, you will have to provide relevant facts and figures concerning the people who already have been affected and those who remain vulnerable. You should also identify and describe precisely which part of the population is affected.

Those affected (victims or vulnerable) individuals and groups could be, for example, an indigenous community historically undergoing discriminatory treatment and land confiscation. It is essential to report the number of affected people, among them proportions of children, women and other groups having special needs, such as the elderly, who may be particularly affected.

In your inquiry into the identities of the victims and the vulnerable inhabitants, it is vital that you determine the place and time, as well as the characteristics of the affected persons in the case. The numbers and any demographic data of the composition of the affected population are critical to understanding the case and characterizing the type of violations. The violation or vulnerability may be multidimensional (or intersectional), involving more than

one form of discrimination. Knowing the victims and vulnerable persons can help determine which combinations of housing rights elements are simultaneously affected. In describing the population, knowing the particular vulnerabilities and special needs of the affected persons or community (whether arising from historical factors, gender, age or other demographics) complete the picture that you eventually will present to your intended audience.

✓ Distinguishing between the victims and vulnerable

It is also important for the monitor to distinguish between those victims, whom already have been violated, and those who are vulnerable to future violation or deprivation. Of course, this distinction will be strategically important later in the process, when the housing and land rights monitors and defenders choose an action in response to the violation. You will have to determine then if your intervention is to be remedial or preventive. In any case, an eye to those who remain vulnerable even after the principal violation, as well as after a particular solution to a case, will maintain the monitors focus—as necessary—on the further interventions needed toward the ultimate realization of the human right to adequate housing and land.

The following sample questions guide the monitor to prepare needed data and arguments, in the case of any present obstacles, but focusing on the human dimension in the case of a violation of the housing rights entitlement of access to public goods and services.

Victims

- Identify the type and form of violation of the entitlement to access to public goods and services:
 - Homelessness
 - Forced eviction
 - Arbitrary demolition
 - Denial of equal inheritance rights
 - Confiscation of property by public officials and bodies
 - Confiscation by private actors (criminal gang, settlers, armed groups)
- Who has been affected by the violation of the entitlement of access to public goods and services, including access to water, sanitation and energy?
- How many people have been affected in the same way in the last year (any time period)? Does it demonstrate a pattern?
- Identify and provide demographic details of the victims, for example:
 - Numbers and proportions of refugees
 - Numbers and proportions of migrant workers
 - Numbers and proportions of minority persons
 - Numbers and proportions of males and females
 - Numbers and proportions of indigenous and/or tribal and semitribal people
 - Numbers and proportions of elderly, disabled, medically challenged persons with special needs
 - Numbers and proportions of members of groups subject to (current and historic) discrimination
 - Numbers and proportions of impoverished inhabitants, including those subject to discrimination on the basis of their economic status or work (e.g., Dalits)

- Numbers and proportions of any other relevant group identity of victims
- Where does the violation of this right mostly occur (i.e., rural, urban, slums)?
- When does this violation mostly occur? Day or night? Weekend? Certain times of the year? Why does the violator choose this timing?

Vulnerable individuals and groups

- Identify the type and form of vulnerability to future violation of the entitlement to access to public goods and services:
 - Homelessness
 - Forced eviction
 - Arbitrary demolition
 - Denial of equal inheritance rights
 - Confiscation of property by public officials and bodies
 - Confiscation by private actors (criminal gang, settlers, armed groups)
- Who are the populations most likely to experience the violation of the right to access to public goods and services, including access to water, sanitation and energy? Why are they vulnerable?
- Provide demographic details of the concerned vulnerable persons or groups:
 - Numbers and proportions of refugees
 - Numbers and proportions of migrant workers
 - Numbers and proportions of minority persons
 - Numbers and proportions of males and females
 - Numbers and proportions of indigenous and/or tribal and semitribal people
 - Numbers and proportions of elderly, disabled, medically challenged persons with special needs
 - Numbers and proportions of members of groups subject to (current and historic) discrimination
 - Numbers and proportions of impoverished inhabitants, including those subject to discrimination on the basis of their economic status or work (e.g., Dalits)
 - Numbers and proportions of any other relevant group identity of vulnerable persons
- Explain the insecurity of their situation and give details about the naturally vulnerable populations (women, children, indigenous, slum dwellers, refugees, workers/migrant workers, farmers, etc.).

Focus on multidimensional / intersectional affects

Your case will be enhanced when your information includes emphasis on the particular types of victimization or vulnerability by focusing on the social groups typically subject to multidimensional, or intersectional types of deprivation. The monitor should identify such multiple forms of deprivation for each of the groups already identified in this section (above). This step allows you to identify the nature and causes of the particular affects on certain groups who may be made vulnerable already in addition to, or in advance of the specific housing land rights violation, or anticipated violation. The following sample questions will lead you to clarify this point.

Women

- Are women in the given community or case subject to deprivation of their entitlement to access to public goods and services, including access to water, sanitation and energy?
- What are the reasons for this condition? Is it by some custom, religion or other ideological motivation?
- Does the practice of domestic or social violence against women somehow impede women's enjoyment of their entitlement to access to public goods and services, including access to water, sanitation and energy?
- Are the formal or informal terms of inheritance already biased against women in a way that negatively affects the enjoyment of the entitlement to access to public goods and services, including access to water, sanitation and energy?

Children

- Do housing conditions impede acceptable access to public goods and services as an element of the RAH, so as to obviate violence and abuse, including psychological & sexual abuse, within the home or community?
- Are housing conditions, in particular, the rights element of access to public goods and services, suitable for children to carry out their studies?
- Are housing conditions, including access to public goods and services, conducive to achieving the highest attainable standard of physical and mental health?

Racial, ethnic or other groups

- Who are the victims or vulnerable persons or community subject to discrimination that includes denial of access to public goods and services, including access to water, sanitation and energy?
- Have the affected persons or groups (either the vulnerable or the victims) been denied their right to suitable housing, and particularly to access to public goods and services, because they belong to a specific minority, ethnic or indigenous group?
- How has historic discrimination, if any, affected the current situation?

✓ Victims' case documentation form

2.7. Losses/consequences

✓ Quantification methodology

Quantifying violations to the right to adequate housing: a tool for evaluating the effects of demolitions, confiscations and forced evictions

The purpose of this tool is to help determine the value of costs and losses that victims incur as a consequence of the violation their housing rights. Using this tool will aid in the various necessary stages of proper monitoring of specific violations of the right to housing, including:

1. Documentation and recording
2. Monitoring and reporting
3. Quantifying/evaluating
4. Identifying and solving problems
5. Follow-up assessments
6. Fact-finding missions
7. Public information and campaigns
8. Social mobilization
9. Media work
10. Compensation efforts
11. Legal defense and prosecution
12. Monitoring international obligations

The quantification methodology and “Loss Matrix” are designed to aid human rights workers responsible for each stage in the monitoring process, including interventions that are both preventive and remedial. These stages may involve the same individual human rights worker at each stage, or may involve a division of team labor. In either case, this tool also can serve as a vehicle for organizing tasks in a coordinated and complementary way, when more than one individual or organization is involved in the process. For instance, if different teams or organizations are specializing in respective geographical areas, applying this tool commonly aids the process to avoid duplication and the discrediting contradiction of facts.

Whether or not your monitoring objective is legal defense, policy analysis, compensation or public information, the quantification of the effects of the violation strengthen your argument and, consequently, help mobilize support for the movement to end, redress and compensate/obtain restitution for the violations. In particular, your findings will substantiate the assertion that many housing rights violations actually widen and deepen poverty, having a de-development effect on the community and country.

The material and otherwise-calculable costs resulting from the violation are determined for each unit (household) affected and then totaling them. Alternatively, in the case of multiple units affected, a representative sample should be obtained to determine the average values, which then are to be multiplied by actual numbers of units affected.

Other incalculable losses still have to be recorded and reported in narrative terms. Such narrative explanation and analysis will be useful as an accompaniment to this quantification table.

Both short-term and long-term values are to be assessed.(You can follow examples of traffic dispute jurisprudence, or the law pertaining to insurance or divorce cases in your country to come up with a methodology of determining personal injury and pain-and-suffering damages claims for compensation purposes.) Accurate and thorough quantification of costs and losses calls for both a great deal of cooperation between the monitor and the affected community, and a continuous relationship over time.In order to capture many of the values, sustained monitoring and calculation are required over time. It is, therefore, recommended that such monitoring effort be undertaken or coordinated by those who maintain a program and commitment to the affected community over the long term.

This tool seeks to quantify the costs of victims, as well as public, or social costs. For our purposes, the principal victim(s) would be those persons whose property and lives are directly affected by the act, be it a demolition, confiscation and/or eviction, etc. (This tool would be used for any and all categories of violation.) Ancillary or indirect victims would be those who undergo the cost or other harm as a result of an act intended or directed at others. The indirect victims' losses and damage should be included in the overall assessment of the violation's effects.

The middle column, entitled "Methodology," in the quantification table found at the "**Loss Matrix**" link contains commentary on the contents of the calculated costs/losses and provides guidance on how to calculate them. It is there where you will record in your applied version of the "Loss Matrix" the type of items or values totaled under the particular type of cost/loss. There, too, you could cite whether or not the values are losses/costs to the principal victims only, or include those of indirect victims, such as those enduring collateral damage from a house demolition. The "Methodology" description should be as complete but concise as possible, within a short line or two.

It is possible to modify "Loss Matrix" to the user's discretion. (However, we emphasize that any modifications be shared among the community of monitors to ensure compatibility of findings.) For example, certain direct and indirect victims' losses may need to be separately calculated for some reason. In that case, an additional column can be added. In any case, however, it is important to arrive at a global cost figure for the violations under review. The column at the far right under each category of cost should be totaled using the imbedded Excel formula.

Follow the links to access the details of the quantification methodology and "**Loss Matrix**."

- Victim's material losses
- Victim's nonmaterial losses
- Other than victim's material losses (public costs)
- Other than victim's nonmaterial losses (including social costs)

Contents and methodology for determining each category of loss/costs

Victims' Material Losses

The Structure

The fair market value of the house, shelter or other structure(s). This is probably greater than the cost, as indicated in official records of the most recent tax assessment, for example. That price may be a guide, but is likely to be out of date with the value that would be obtained if the property were to be sold on the market. The market value would also likely be less than the "speculative value," which is considered to be that value (price) that a speculator, investor or other interested party would anticipate after the demolition/eviction and after converting the structure—if partially retained—for eventual exchange or reassessment. The reference for determining the market value would be reliable real estate agents, banks, or other parties involved in the sale and exchange of such properties. The standard methodology would involve collecting three quotes/estimates and selecting the average, or taking the middle quote as the fair market value.

In the likely event that no such property market is actively issuing quotes on the value of the affected property. The remaining alternative method for determining market value would be the estimated cost of replacing the property at current market values.

Note that the victim incurring the loss in this case would be the owner(s) and or title holder(s), including those owning the property individually, or collectively, under formal title, or by traditional tenure systems.

Plot

The plot and the structure are considered separately in this methodology to accommodate systems where the two aspects of property value are determined separately, or by different methods. For example, a cooperative arrangement may provide for outright title to the structure, but a “share” of the land area under it. It also allows for disaggregating these values in the event of a dispute over one and not the other. In the event that the structure and the land are both held in title by the same owner and the values are customarily assessed in combination, the structure and plot values could be combined in the matrix.

The eviction and/or demolition may not involve the dispossession of land title or ownership of the plot on which the structure stands. In that case, the evaluator would proceed to the next categories and not enter a value for the plot. However, in some cases, such as in Israel, the land plot under a demolished structure may, perforce, be assumed by, or “revert to” the state as “state land” or “national land.” The evaluator must be familiar with the local laws and regulations to determine if that is the case in the event of an eviction or demolition. That may determine whether or not a value is entered in this category of the matrix or not.

In the case of a housing plot being confiscated by the state, determining the value of that plot may be difficult if, again, no market value can be determined for the affected area. In that case, the methodology would involve determining the cost at current market value of a comparable site in another location.

Contents

Each affected party should cooperate with the field workers to provide an inventory of the actual contents lost and damaged in the demolition. The value of those contents for this quantification purpose is the **replacement value** of the items, not the market value. The contents (furniture, clothing, foodstuffs, electronics, housewares items, etc.) would be subject to depreciation and the resale or fair-exchange values would not be sufficient to cover the cost of replacement. The replacement value represents the actual cost of repurchasing items comparable in quality to those lost or damaged by the demolition. (For heirlooms and other items sentimental value, a replacement cost should be included in this category; however, the nonmaterial loss or irreplaceability should be expressed in the “Victims’ Nonmaterial Losses” section of the matrix, with a narrative either included in the matrix or attached to it.

Collateral damage

This section of the matrix allows for inclusion of the material losses to the indirect victims in particular, including neighbors’ and public property that are affected by the act. In cases of violent eviction or demolition, using bulldozer or explosives, for example, nearby property can be damaged in various degrees, or destroyed.

Infrastructure

This section refers to services and other infrastructure lost in the demolition/eviction/confiscation that would have to be replaced after the event. For example, electricity provided at the original site may have to be replaced by a generator or purchasing energy from an alternate source. Water, previously available from installed or nearby facilities may have to be replaced by purchasing water or hauling it from another source. The resulting added cost—including the relative cost of labor at the going rate of such work for hire, which is beyond the existing regular costs of obtaining same—is the value to be calculated here.

Business losses

If the demolition/eviction/confiscation results in the loss of a business, or a portion of business, that cost is to be included here. Those losses are the subject of subcategories to be detailed below.

Equipment/inventory

This includes the value of machinery and equipment, other installations, such as furnishings and built ins, as well as all stock and supplies. This should include also the property belonging to others lost or damaged in the event. For example, a laundry or repair service would hold clients' property to be processed and returned. The values of those items are also to be included in this figure.

Prospective income

The loss resulting from inability to deliver goods and services, and the anticipate profit from existing stores, orders, contracts, etc. that would be unfulfilled due to the event. The short-term and long-term affects are to be calculated by different methods. This category of loss follows the method developed locally for determining "goodwill" as an asset, which would include the projected income from a pattern of business developed through the lifetime of the enterprise. [Refer to insurance law methods.]

Mortgage, other debts and penalties

The demolition/eviction/confiscation removes the owner's relationship with the land and/or structure, contents, livestock, inventory and other matters of material value, such as materials and work performed for physical improvement to the property. However, the event does not relieve the owner from responsibility to repay for those values obtained on a credit basis. Those values, including any penalties and increased interest resulting from the event, are to be included here for both the short-term and long-term. If a situation prevails, as in many legal systems, that a debtor relinquishes claims (as in a natural disaster, for example), then that cost should nonetheless be calculated and listed under the category of "Other than Victim's Losses."

Livestock

The value of livestock lost and the treatment of those injured by the event is calculated here. This would include also the labor costs for time spent in rounding up dispersed livestock at the rate of pay for such work for hire. The calculus for these values includes the loss of anticipated returns from normal sale of, and/or produce from the animals, including their normally anticipated progeny over the short-term and long-term. In the case of the animals'

value as beasts of burden, the returns on their labor are to be included in the figures provided under lost revenue, increased transportation costs, returns from crop loss, or other appropriate category.

Land

The landed property not associated with the affected structure itself is to be calculated on the basis of fair market value, as with the structure and its plot entered above. This could be land adjacent to the dwelling or other affected structure, or land confiscated separately. This land could be lost entirely through confiscation, or its value could be reduced as a result of the eviction or demolition. In the case of eviction, land title might not be lost outright, but the conditions created by the eviction may prevent the owner(s) from returning to or reclaiming their land. In that case, the land in question would be calculated as an outright loss.

Trees/crops

The value of a lost or damaged nonfruit-bearing, or otherwise unharvestable tree or other vegetation would be determined by the cost of purchasing and replanting a comparable replacement. The nonmaterial, aesthetic, or sentimental value of the tree or other vegetation would be included by narrative in the Victim's Nonmaterial Losses item under Environment or Heritage, as appropriate. The value of harvestable trees and crops would include the value of the replacement itself for fruit-bearing trees and crops, as well as the (short-term and long-term) value of the harvest. The loss of timber would be calculated accordingly also, with the value being the anticipated return from the harvesting or sale of the tree itself.

The ecological loss of vegetation, depending on the nature of the event—if by demolition were by fire or other destructive means—also carries a value. Ecological damage is calculated on the basis of the restoration costs entailed. Collateral damage to wildlife and other natural assets, owing to the damage and the time required to restore it, may be of both a calculable and incalculable loss. Where possible, such calculable values should be included here. Otherwise, those losses are to be recorded in the narrative section of both the Victim's and Nonvictim's Nonmaterial Losses, for those losses would be of a more public nature.

Lost/decreased wages/income

The loss of a home, including subsequent short-term or long-term resettlement, may involve the loss of livelihood, whether that livelihood is linked to the dwelling and/or land lost. In any event, wages would inevitably be lost (to victim or her/his employer) for nonproductive time attending to the event and its aftermath. Resettlement can lead to loss of a job or jobs altogether, or necessitate securing alternative employment, especially if temporary or long-term resettlement is far from the regular workplace. To calculate that value, one would subtract the short-term and long-term wages and other income of affected persons from the normal, anticipated wages and other income before the event. Since obtaining new employment and other income involves a loss of certain benefits, such as accumulated vacation leave, seniority and other benefits, the relative loss of those values should be included here if calculable. Job seniority may not be calculable value in monetary terms if it involves merely standing vis-à-vis colleagues. However, if that seniority arguably would have led to promotion with material effect in the short or long terms, that value is to be factored here as well.

Health care

The event itself or its aftermath may have negative health consequences. Social science has recorded the effects of eviction and resettlement upon the increased mortality and morbidity rates of the affected communities. While these notable consequences belong among the Victim's Nonmaterial Losses, the care for these consequences has clearly calculable values. The loss of life, limb and other health effects are the subject of the laws of states for the purposes of calculating victim compensation in insurance and other cases involving law suits. A sample of such methods taken from such statutes could form a composite methodology for calculating victims' health losses here.

The overcrowding, such as in interim or alternative housing arrangements, often leads to negative health consequences for those evicted, as well as for those providing the alternative shelter in their own quarters. The care and treatment of these health consequences (such as influenza, scabies, malnutrition, etc.) are an additional value added to these health care costs.

Interim housing

Eviction, confiscation and demolition victims often seek alternative housing with relatives or friends, either within the community or elsewhere. This housing has a value, which is to be calculated on the basis of fair rental rates for such shelter, whether rent is paid or not. It remains a cost and value that is subsidized in one form or another. It also can lead to an actual expanded definition of what constitutes the victim, for persons and groups offering assistance in various forms can be counted as second tier victims by virtue of the loss—voluntary or otherwise—incur as a result of servicing the persons directly affected by the eviction, confiscation or demolition.

Bureaucratic and legal fees

While under threat of a violation, such as eviction, demolition and confiscation, the eventual victim would likely undergo costs related to both time spent and out-of-pocket costs in order to restrain or defend against the impending violation (if the threat is known in advance). Both the time and monetary costs incurred by both bureaucratic processes and legal advice and defense work should be quantified. Even if the legal advice given is free of charge to the affected person(s), those rendering the advice (NGO, CBO, other *pro bono* service) should put a value on that service for the purposes of this costing exercise. (The costs of bureaucratic efforts by public personnel is determined below under "Other than Victims' Nonmaterial Costs.")

Before the victim(s) can restore their proper housing, s/he conventionally undergoes a procedure and cost toward obtaining a license to rebuild or otherwise restore a dwelling. The costs incurred in this process, including fees, legal service, bribes and other out-of-pocket expenses should be included as a category in its own right.

Alternative/replacement housing

The cost of securing comparable housing on a permanent basis is represented here. (Temporary lodging costs are treated above under "Interim housing.") The comparable housing is meant to include a dwelling with similar spatial dimensions, infrastructure, location and services as the home lost in the violation. This may involve calculation of the

replaceable features of the original dwelling with some adjustments, depending on circumstances. For instance, a comparable dwelling space may be found near the source of livelihood, but may be in a differently priced market, and the adjusted figure would account for that. That dwelling may be comparable in most aspects, but lack services or infrastructure. In that case, the cost of obtaining the replacement services or infrastructure at the local rate would have to be added. Likewise, if the replacement housing is comparable to the original dwelling lost, but its location is less convenient for commuting to one's source of livelihood or family and original community members, that additional transportation cost would be included in the "Transportation" item below.

Since this category of cost is of a more-or-less permanent nature, it should be cited in the "Long-term" cost column of the matrix. Typically, obtaining permanent replacement housing is a lengthy process; therefore, calculating this costs would be a subject for, and a further argument for follow up monitoring of violation cases.

Resettlement

The expenses of traveling and transport of goods to both interim and replacement housing sites form part of the resettlement cost. This, too, would likely involve the efforts and time on the part of several persons—with equivalent values—in order to locate and secure the short-term and long-term housing alternatives. All related costs should be calculated as much as possible.

Transportation costs

This category is the amount of difference between the amounts spent on transportation as a result of the eviction, demolition or confiscation and the amounts spent (if any) on transportation in the normal conduct of life at the original place of residence. Such values include expenses *and* time spent commuting to and from the source of livelihood, visiting family and community members, going to market, carrying out cultural and religious activities, visiting grave sites, conducting other official or private business, etc.

Victims' nonmaterial losses

Health

In addition to the cost of medical treatment, the loss of health has a value seldom calculated in monetary terms. Methods for calculating the values of losses of life and limb can be found in local legal practice concerning divorce, traffic and insurance. This loss will have to be described in some detail in order to make your case.

Living space

A reduction in living space can have negative physical and emotional effects, as when an evicted family takes refuge with friends and relatives in small, temporary quarters. Consequences may include nervousness, loss of sleep or skin ailments. Be sure to describe this situation as part of the victim's experience.

Reconstruction licensing

Long waiting and frustration may result from the search for a license to rebuild after demolition, eviction or confiscation. This loss can be measured in time and stress, and should be included here.

Psychological harm

The victims may suffer mental stress and psychological harm, especially in the context of violence during eviction, or the trauma that accompanies homelessness after the violation. Children are particularly susceptible. Their story needs to be told. You may find criteria for quantifying the value of pain and suffering from the specialized practice of local law on traffic and insurance.

Disintegration of family

Displacement and other violations of adequate housing could lead to separation of family members and the deterioration of family relationships. With the psychological depression arising from housing and land loss, some victims may engage in antisocial behavior, such as violence or substance abuse that harms family relations.

Loss of community

Eviction, resettlement or land loss can fragment communities and reduce social capital built up over time. It can separate people from support systems (including child-care arrangements, domestic division of labor, etc.) upon which they depend for livelihood and social activities, while women bear an extra burden of maintaining an uprooted home.

Investment in infrastructure

Even—and especially—the most-impoverished communities have to invest in local infrastructure (e.g., electricity, water, transport, roads), particularly if the municipal institutions exclude them. Separation from these facilities by forced eviction, confiscation or demolition means a total loss of that investment, which may not be quantified, partly because they are the product of volunteer labor.

Investment in sanitation and waste-management systems

A community may provide its own waste-management solutions, however simple it may be, especially in the absence of public services. The vital functions of waste management may no longer be possible because of the separation, causing a loss of labor divisions or disposal options and spell a deterioration in the quality of life, including entitlements to environmental health as a result of the violation.

Investment in security protection systems

Informal communities are typically forced to seek their own security arrangements, since civil police may fail to serve them, or deteriorating living conditions may coincide with increased social violence.

Investment in educational infrastructure

Local communities' arrangements for popular education may be curtailed with eviction, leading also to the disruption of formal education (e.g., lost school days). Each home also is a locus of educational infrastructure, especially where children carry out their homework.

Heritage

For heirlooms and other items of sentimental value, as for land-based identity and culture, a replacement cost should be included in this category. However, the incalculable nonmaterial dimension, or irreplaceability should be expressed in the "Victims' Nonmaterial Losses" section of the matrix, with a narrative either included in the matrix or attached to it.

Victims' nonmaterial costs

Environment/ecology

Various forms of housing rights violation can spell the loss of environmental safety, health and recreation. Displacement and eviction sever the relationship between the inhabitants and their habitat. It may also force them to live in precarious or unsafe environments as a consequence.

Standing/seniority

A home owner who loses her/his housing also loses the status that comes with the property and securely tenured lifestyle. The formerly real or perceived capacity of the victims to advise and support others dissipates with the violation of their right to adequate housing, especially through land loss.

Relocating long-standing communities to new areas makes them low-status newcomers in competition with new, indigenous neighbors. Environmental degradation or rezoning may affect the status of a community negatively, leading to intangible—but sometimes also quantifiable—losses.

Political marginalization

Homeless people in many States are denied the right to vote for lack of a fixed address. Resettlement renders inhabitants politically weak vis-à-vis new neighbors, especially without the benefit of local connections and established relationships.

Social marginalization

Losing one's home and place to live often means losing also the social integration once enjoyed in the former residence. Spatial marginalization to the outskirts of the city may be synonymous with exclusion from social services and infrastructure.

Further vulnerabilities

The loss of home, land and social capital (i.e., productive relations within the community) can leave the victim(s) without protection from the natural elements, and/or without livelihood and sources of income. The homeless woman becomes further vulnerable to threats against her personal security and integrity long after the housing-rights violation.

Other-than-victims' material costs (public costs)

Police

The law enforcement officials engaged in either committing or remedying a housing and land rights violation, for example, represent a cost to the public purse. You can calculate their number, multiplied by the hours/days engaged and by corresponding wages and benefits to derive an estimate of the public costs incurred.

Bulldozers

In some cases (e.g., in Israel), courts issue orders to targeted inhabitants and communities to demolish their own homes. If they do not comply, the State carries out the deed and charges the victim for the service. In other cases, the housing rights monitor would have to calculate the cost of using the equipment and the wages of the operator to determine the public expenditure in carrying out that part of the violation.

Legal practitioners

Lawyers, either arguing against or defending housing and land rights, as well as judges, prosecutors and court staff dedicate time and materials that are covered from public budgets. Their level of effort and cost per unit of time (hours or days) could form a method of calculating these public costs.

Army

Military personnel and equipment used in the violation (or defense against a violation) also represent a cost. Quantifying these costs may be a more-elusive exercise, but it may be useful to pose estimates for your public's consideration.

Other forces

The public bodies may subcontract tasks and functions to private parties; however, those expenditures related to the case at hand would factor among the nonvictim's material costs.

Bureaucratic and personnel costs

The inspection, administrative processing, clerical and other desk work in public institutions may be carried out in connection with your case and paid by the tax payer. Your educated estimate of these values forms part of the public cost scenario.

Other-than-victims' nonmaterial costs

Social costs

Housing rights violations can be a cause or consequence of social unrest in a country. Depressed living conditions within a community often coincide with increased social violence, and dislocation often generates new adversary relations among inhabitants competing over territory and property, either at the original site, or in resettlement. Squalid

living conditions also could give rise to practices and pathogens that bear a social cost in the form of declining public health.

Civic order

Linked to adequate housing and other economic and social rights, civic order typically deteriorates commensurate with the deprivation of living conditions. Resistance to eviction and forced relocation, demolitions and dispossession by any party is the natural response to a breakdown in civic order, including that characterized by the State omitting to implement its obligation to respect, defend, promote and fulfill the human right to adequate housing and land.

Political legitimacy

Depending on the facts and scale of a particular situation, a housing and land rights violation could undermine the legitimacy of the political party, government or even State in whose name the violation is committed. Alternatively, resolving and remedying a violation could have the opposite effect of recovering the loss of official credibility and legitimacy.

✓ **Loss matrix**

✓ **Housing contents inventory**

2.8. Duty holders

The professional monitor of the human right to adequate housing should provide a list as complete as possible of the duty holders both legally and morally responsible. This legal duty holder (i.e., the State and its agents) may be operating in conjunction with others in either the violation or the potential solution. The audience of your eventual action, whether they are the general public, journalists, or a prosecutor or judge, will need a clear and complete picture of the legal personalities, those who are active and passive, and who does what to whom, from the beginning to the present.

As borne out in the foregoing sections on sources of law and guarantees, the concerned State is always the principal duty holder. It is the legal personality treaty bound by the obligation to respect, protect, promote and fulfil human rights, but also to aid those who have been deprived of them. The State's duties are threefold:

- To avoid deprivation,
- To protect and defend those facing deprivation,
- To provide remedy in the forms of assistance and justice to those deprived.

You may find the State, as duty holder, to have committed acts of deprivation, or omitted to protect or remedy a deprivation through the obstacles identified above. One might also find that the duty holder is constrained by other actors or factors, such as natural disaster or global economic recession.

Other forces may contribute to a violation, including internal and external factors (actors like the International Monetary Fund (IMF), the World Bank, multinational corporation or national planners are either direct or indirectly responsible for the deprivation, or conditions leading

up to it. So, too, are factors such as debt or traditional social practices. Especially when the role of the State is passive (i.e., by denial or failure to protect and ensure remedy to the victims), other actors may come to the fore. Private companies, including multinational corporations, for instance, regularly buy land and carry out projects that involve forced evictions and land confiscation. In some cases, the regional and international development banks have their well-articulated policies on compensation/relocation. However, these companies may be the right hand of State policies, or implementers of international public projects. That is why it can be important to note the relations between the different actors forming a whole chain of duty holders.

One must not overlook the possibility that duty holders, particularly as violators owing remedy and restitution to victims, might also be members of the community, or even family members of the victim(s). Where does the State duty lie in such a situation? As the legal personality obliged to respect, defend, promote and fulfil the human right to adequate housing, the State's duty lies squarely in the execution of its human rights obligations to regulate behavior of legal persons within its jurisdiction (and areas where it exercises effective control) so as to uphold rights. The human rights treaties and other instruments provide the guidance on how States—and statecraft—should address human rights violations by third parties as matters of civil or criminal law.

To have a full outline of questions for identifying the duty holders and the applicable legal obligations, you can use this "Toolkit" very effectively, since each element of the right to adequate housing that you have identified as relevant to your case has corresponding duty holders.

Primary: State authorities

- Has the State failed to take to prevent the violation of housing rights, especially access to public goods and services, including access to water, sanitation and energy? What are those neglected steps?
- Has the State protected the impoverished and vulnerable inhabitants and aided the victims (e.g., by prosecution, return, compensation, etc.) in the violation of housing rights, especially access to public goods and services, including access to water, sanitation and energy? Which are the particular bodies responsible for these preventive and remedial steps?
- Has the State taken sufficient measures to promote the entitlement of access to public goods and services (e.g., human rights education, campaigns, public-service announcements, awareness-raising publications, etc)? Which are the specific bodies responsible for those measures?
- What is the State's relationship with other duties holders regarding the assessed violations? Explain the nature of that relationship. Is it a contract, foreign aid package, nepotism, political patronage, etc.?



Secondary: Have other actors affected the denial of access to public goods and services, including access to water, sanitation and energy?

- Are other local, non-State actors somehow engaged in the denial of access to public goods and services, including access to water, sanitation and energy? Who are they and what is their role?
- What role do international financial institutions (IFIs) such as the World Bank, IMF, a regional development bank, or the World Trade Organisation have in determining the policies or conditions affecting access to public goods and services, including access to water, sanitation and energy in the affected community/country?
- What role and influence do multinational corporations or international development agencies have in determining the policies or conditions of access to public goods and services, including access to water, sanitation and energy in the affected community/country?
- How are these secondary duty holders responsible for the violation of the right to access to public goods and services, including access to water, sanitation and energy? To what extent do they influence State policies, programs, and laws having an effect on the violation?
- Do the secondary duty holders have internal policies/codes of conduct regarding housing rights, especially affecting the entitlement to access to public goods and services, including access to water, sanitation and energy? If so, are they publicly accessible?
- What are the relevant details of those policies or codes? How do they protect the human right to adequate housing and the entitlement of access to public goods and services, including access to water, sanitation and energy?
- Are these conditions part of an implementation contract or other cooperative agreement with State bodies or other partners?
- Before implementation, do they study the impact the projects will have or consider the possible unintended consequences?
- If there are several secondary duty holders, what is their relationship to each other, and how do they share responsibility for the assessed violation of the entitlement to access to public goods and services, including access to water, sanitation and energy? What is the relationship between each of them and the State?
- Do local authorities lack sufficient autonomy in housing and community development to apply locally relevant options to ensure the human right to adequate housing, especially access to public goods and services, including access to water, sanitation and energy?
- Do local authorities use their autonomy to protect and influence the central authorities of the State in a positive way, or do they participate in the violation and denial of the State's obligations and national policies?

Assessment

- To what extent is the State responsible for the vulnerability or violation of the housing rights entitlement to access to public goods and services, including access to water, sanitation and energy?

- ❑ To what extent are non-State actors responsible for the vulnerability or violation of the housing rights entitlement to access to public goods and services, including access to water, sanitation and energy?

2.9. Actions

The following table of actions (comprised of both preparation and implementation tasks) arranges a variety of possible problem-solving options for you by categorizing them for organizational and selective decision-making purposes. It is not an exhaustive set of options, but merely part of an array of possibilities for you to undertake with the affected community, depending on the present strengths (assets), weaknesses (liabilities), opportunities and threats.

Before selecting your actions, you should conduct a strategic planning exercise. For guidance click [here](#).

Footnotes shown here refer to relevant manuals, training materials, expertise, trainers, recorded experiences and/or methodologies already available to guide your chosen action toward a desired goal/result/solution. Toolkit users are encouraged to consult the HIC-HLRN website regularly for updates and further reference (www.hlrn.org) on constantly evolving updates, including strategies and practices arising from experiences throughout the global HIC and HIC-HLRN community.

Action		Solution
Preparation	Implementation	
Alternative tenure options		
Gather information for community to consider tenure options	Develop "limited equity cooperatives" ¹⁶⁰	Legal secure tenure in adequate housing and sustainable land
	Inform and train community in pursuing land-tenure options ¹⁶¹	
Community capacity building		
Conduct training for community on their human right to adequate housing ¹⁶²	Mobilize community in local and national human rights campaigns	Greater community participation in projects, programs and policy formulation with well-defined

¹⁶⁰ The limited-equity cooperative is a form of housing tenure in which shareholder residents manage their buildings, within limits imposed by a charter, and have the right to get back what they have paid for their shares plus an allowance for improvements, if and when they decide to leave. See Duncan Kennedy, "The Limited Equity Coop as a Vehicle for Affordable Housing in a Race and Class Divided Society," 46 Howard Law Journal 85-125, 85 (Fall 2002).

¹⁶¹ Luanne Warnock, *Sharing the Cost of Land Tenure and Stewardship* (Davis CA: Sustainable Agriculture Research and Education Program, University of California, 1996).

¹⁶² See Circle of Rights (Washington: 2000); Jules N. Pretty, Irene Guijt, John Thompson and Ian Scoones, *Participatory Learning and Action, A Trainer's Guide* (London: International Institute for Environment and Development, 1995), available from Earthprint at www.earthprint.com; also materials of Peoples' Movement for Human Rights Education, <http://www.pdhre.org>.

		human rights orientations
Legal service organizations and centers provide legal advice and representation to disadvantaged individuals and communities ¹⁶³	Organize popular resistance to HRAH violations (demonstrations, petitions, sit-ins, street theater, etc.) ¹⁶⁴	Community blocks housing rights violations by State and non-State entities
<i>Pro bono</i> (volunteer) lawyers provide legal advice and representation to disadvantaged individuals and communities	Organize national campaign on RAH ¹⁶⁵	Coordinated community action and reaction to influence State authorities on housing policies
Build capacity of community-based and other civil society organizations to manage projects and campaigns ¹⁶⁶		CBOs and NGOs more capable to support the affected people in responding rapidly and effectively to crises/violations
Train communities (in HRAH, strategic planning, technical skills, etc.) ¹⁶⁷	Public agencies provide adequate technical, marketing and research assistance to disadvantaged community on an affirmative-action basis	Community better able to mount specific alternatives to official plans
Raise public awareness toward social mobilization through public education ¹⁶⁸	Mobilize peaceful public protests to housing rights violations	Prevent forced evictions

¹⁶³ Gridley Hall and Burton Fretz, "Legal Services in the Third World," Clearinghouse Review (December 1990); Jose Diokno, Developmental Legal Aid in Rural Asean: Problems and Prospects (Washington: 1981); Richard J. Wilson and Jennifer Rasmussen, Promoting Justice: A Practical Guide to Strategic Human Rights Lawyering (Washington: Human Rights Law Group: 2001).

¹⁶⁴ Morjane Baba, Guérilla Kit (Paris: La Découverte, 2003) ; Mike Prokosh and Laura Raymond, The Global Activist's Manual: Local Ways to Change the World (New York: Nation Books, 2002).

¹⁶⁵ "Global Struggle and National Focus Note" (Geneva: HIC, 1996).

¹⁶⁶ Kaplan, Allan, The Development of Capacity (Geneva: UN Nongovernmental Liaison Service, 1999); Goggey, Shirley, Rural Community Resource Centers: A Guide for Developing Countries (London and Basingstoke: MacMillan, 1988).

¹⁶⁷ Barrameda, Teresita V. and Lea I. Espallardo, Learning, Reflecting and Acting for a Human Rights Future: A Training Manual for the Education of the Human Right to Housing in Urban Communities (Quezon City: Process, Inc. and New York: PDHRE, 2000).

¹⁶⁸ Writing for change: An interactive guide to effective writing, writing for science, writing for advocacy [CD and user's guide] (Oxford: fahamu and IDRC, 2000); International Human Rights Internship Program, Ripple in Still Water: Reflections by Activists on Local- and National- Level Work on Economic, Social and Cultural Rights (Washington: University of Minnesota Human Rights Resource Center, 1997), Chapter 6, online at <http://www1.umn.edu/humanrts/edumat/IHRIP/ripple/toc.html>; Allan McChesney, Promoting and Defending Economic, Social and Cultural Rights: A Handbook (Washington: AAAS and HURIDOCS, 2000) Chapter 7 online at: <http://shr.aaas.org/escr/handbook/>.

Enhance monitoring-and-documentation skills and methods (e.g., archiving, statistics, multimedia, etc.) to build strong argumentation ¹⁶⁹	Urgent Action appeals (organize regional and/or international mobilization) ¹⁷⁰	Convince public of violations and need for resolution
	Public-information campaigns ¹⁷¹	
Design and implement alternative planning (community generated techniques in the people's initiative to design their own living environment) ¹⁷²		Participatory alternative housing projects adapted to the community's needs
Conduct an inventory (enumeration) of community human resources and social capital ¹⁷³	Organize and divide volunteer labor of affected communities; and to areas to develop alternative plans	Community housing and built environment upgraded on-site as alternative to relocation.
	Community representatives lobby officials and legislators to cooperate with/approve community-proposed alternatives	Obtain adequate relocation site with suitable location, environmental conditions and livelihood options
Community organizing		
Consult with community representatives and conduct an inventory (enumeration) of community human resources and social capital	Establish a tenants union ¹⁷⁴	Community presents a common position in defense of its rights and interests
Identify and locate absentee landlord ¹⁷⁵		
Cooperate and negotiate¹⁷⁶		

¹⁶⁹ For guidance and methodology in documenting housing rights cases, see HLRN, Urgent Action! HLRN Guide to Practical Solidarity for Defending the Human Right to Adequate Housing [Arabic, English, French and Spanish versions] (Cairo: HLRN, 2003); and HIC Housing and Land Rights Network website: www.hlrn.org.

¹⁷⁰ For guidance and methodology in building housing rights cases argumentation and mobilise solidarity, see HLRN, Urgent Action! HLRN Guide to Practical Solidarity for Defending the Human Right to Adequate Housing [Arabic, English, French and Spanish versions] (Cairo: HLRN, 2003); and HIC Housing and Land Rights Network website: www.hlrn.org.

¹⁷¹ Strategic Campaigning (London: Amnesty International, 2003).

¹⁷² Youth in Unity for Voluntary Action--YUVA and University of Tasmania, "Settlement Upgrading Manual" [Sakkardara alterantive plan] (October 2000); UNCHS, Human Settlements Development through Community Participation (Nairobi, UNCHS, 1991); Nick Waters, The Community Planning Handbook: How People Can Shape Their Cities, Towns and Villages in Any Part of the World (London: Earthscan, 2001).

¹⁷³ Ibid.

¹⁷⁴ Tenant organizing resources" on the National Alliance of HUD Tenants website: <http://www.saveourhomes.org/>. Practical steps for forming a tenants union can be found on http://www.radio4all.org/aia/pro_tenant.html.

¹⁷⁵ "Who is my landlord anyway?" (Seattle: The Tenants Union, 2004), go to <http://www.tenantsunion.org/research.html>.

Learn/use conflict resolution techniques and, including alternative dispute resolution ¹⁷⁷	Decriminalize actions taken to obtain elements of HRAH	Administrative recognition of tenure and the human right to adequate housing of people without economic access
Mobilize inhabitants	Organize squatter actions and squatter-empowerment interventions ¹⁷⁸	
Cooperate with National Human Rights Institutions ¹⁷⁹	Propose and lobby for the implementation of National Plans of Action for Human Rights ¹⁸⁰	National housing shortage, upgrading needs and land conflicts addressed in a National Plan of Action with provision for law and policy reform
Negotiate with municipal authorities to include the community/civil society as a partner ¹⁸¹	Increase community participation in design, planning, implementation and maintenance of housing ¹⁸²	Maintained and upgraded social housing
Train in negotiation and mediation skills ¹⁸³	Negotiation toward reconciling evictions/	Indigenous peoples regain historic land claims

¹⁷⁶ For a collection of popular experiences in government-nongovernment cooperation in the field of human settlements, see Habitat International Coalition, *Building the City with the People: New Trends in Community Initiatives with Local Governments* (Mexico City: Habitat International Coalition, 1997), contents also available on line at HIC General Secretariat website, at <http://www.hic-net.org/library.asp>.

¹⁷⁷ American Arbitration Association (AAA), *Grievance Mediation Procedures* (New York: AAA, 1992); AAA, *Resolving Your Disputes* (New York: AAA, 1993); American Bar Association, *Alternative Dispute Resolution: An ADR Primer* (Washington: Standing Committee on Dispute Resolution, 1989); Carpenter, Susan L. and W.J.D. Kennedy, *Managing Public Disputes: A Practical Guide to Handling and Reaching Agreements* (San Francisco: Jossey-Bass Publisher, 1988); Cochrane, Michael G. ed., *Attorneys General and New Methods of Dispute Resolution* (Washington: American Bar Association, 1990); Costantino, Cathy, A. and Merchant, Christina, S. *Designing Conflict Management Systems* (San Francisco: Josey-Bass Publisher, 1996); Edelman, Lester, Frank Carr, and James L. Creighton, *The MiniTrial* (Ft. Belvoir VA: U.S. Army Corps of Engineers Institute for Water Resources, 1989); Edelman, Lester, Frank Carr, Charles Lancaster, and James L. Creighton, *Non-Binding Arbitration* (Ft. Belvoir VA: U.S. Army Corps of Engineers Institute for Water Resources, 1990); Fine, Erika S. and Elizabeth S. Plapinger, eds. for the CPR legal Program, *Containing Legal Costs: ADR Strategies for Corporation, Law Firms, and Government* (Butterworth Legal Publishers, 1988); ; Folberg, Jay and Alison Taylor, *Mediation: A Comprehensive Guide to Resolving Conflicts without Litigation* (San Francisco: Jossey-Bass Publishers, 1984). For a bibliography and resources guide on alternative dispute resolution, see Office of Personnel Management website: <http://www.opm.gov/er/adrguide/Section7.asp>.

¹⁷⁸ Diana Mitlin and David Satterthwaite eds., *Empowering Squatter Citizen: Local Government, Civil Society and Urban Poverty Reduction* (London: International Institute for Environment and Development, 2004), available from Earthprint at www.earthprint.com.

¹⁷⁹ OHCHR, *National Institutions for the Promotion and Protection of Human Rights* [Human Rights Series No. 19] (Geneva: OHCHR, undated), at <http://www.unhcr.ch/html/menu6/2/fs19.htm>.

¹⁸⁰ Office of the High Commissioner for Human Rights, *Handbook on National Human Rights Plans of Action* [Professional Training Series No. 10] (Geneva and New York: OHCHR, 2002), at: <http://www.ohchr.org/english/about/publications/docs/nhrap.pdf>.

¹⁸¹ Janelle Plummer, *Municipalities and Community Participation: A Sourcebook for Capacity Building* (London: Earthscan, 2001); Janelle Plummer, ed., *Focusing Partnership: A Sourcebook for Municipal Capacity Building in Public-Private Partnerships* (London: Earthscan, 2002); Diane Warburton, ed., *Community and Sustainable Development: Participation in the Future* (London: Earthscan, 200X).

¹⁸² UNCHS, *Human Settlements Development through Community Participation* (Nairobi, UNCHS, 1991).

¹⁸³ Scott Beattie, "Is Mediation a Real Alternative to Law? Pitfalls for Aboriginal Participants," *Australian Dispute Resolution Journal* 8 (1997) 57; Larissa Behrendt, *Aboriginal Dispute Resolution: A Step towards Self-Determination and Community Autonomy*. (Sydney: Federation Press, 1995).

	removals and land grabbing ¹⁸⁴	
Develop community/local government cooperation	Monitor transparency in decision-making processes	Obtain social housing (provided by government), based on need, with amortization based on minimum wage level (affordability)
	Design infrastructure projects	
	Reform public policy toward providing affordable housing	
	Propose and implement National Shelter Strategy ¹⁸⁵	
	Design national (comprehensive) development plans	
Develop the cooperative sector	Promote cooperative sector initiatives to provide affordable housing	
Use/lobby/cooperate with the international human rights system (interventions with factual, legal and political mechanisms of the UN and regional human rights systems) ¹⁸⁶	Undertake negotiations at international/ multilateral level (whereby negotiators representing the State assert their prior obligations under international human rights treaty law against IFI [World Bank, regional development bank, IMF, etc.] and WTO conditionalities leading to housing rights regressive / retrogressive violations) ¹⁸⁷	Obtain/ensure continuous regulation of housing market practices (e.g., to ensure tenure security, accessibility of housing, building materials, direct investment, etc.)
		End to practices of land confiscation through foreclosure, adverse possession and eminent domain without adequate, consensual alternatives
Develop / reform / enforce law¹⁸⁸		

¹⁸⁴ Michael Asch and Norman Zlotkin, "Affirming Aboriginal Title: A New Basis for Comprehensive Claims Negotiations," in Michael Asch, ed., *Aboriginal and Treaty Rights in Canada: Essays on Law, Equality, and Respect for Difference* (Vancouver: University of British Columbia Press, 1997).

¹⁸⁵ UNCHS, *Developing a National Shelter Strategy: Lessons from Four Countries* (Nairobi: UNCHS, 1990); OHCHR, *Handbook on National Human Rights Plans of Action* (Geneva: OHCHR, 2001)

¹⁸⁶ See "NGO participation in the activities of the Committee on Economic, Social and Cultural Rights," UN doc. E/C.12/2000/6, 7 July 2000, website: <http://www.hchr.un.ch>; and "Revised general guidelines regarding the form and contents of reports to be submitted by states parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights," UN doc. E/C.12/1991/1, 17 June 1991.

¹⁸⁷ INCHRITI, *Trade, Investment, Finance and Human Rights: Essential Documents* (Geneva: INCHRITI, 2001).

¹⁸⁸ Mario Rosário, "[Action "Tsimá Ga Ku Aka" to build together](#)" (1996); Janeth López, "[Asesoría en vivienda para el proceso de reinserción en Colombia](#)" (1996); K.A. Jayaratne, "[Collaborative Partnership to Improve the Low Income Neighbourhoods](#)," (1996); Michael Shapcott, "[Rupert Pilot Project. A self-Help and Community Rehabilitation Project in Canada](#)" (1996); Leopold Mutembei, "[Struggles of the urban poor to improve their living conditions](#)" (1996); Leonard Chileshe Mulenga, "[The case of Bauleni Upgrading](#)" (1995); Johan Silas, "[The Improvement of Low Cost Housing and](#)

Initiate/reform legislation and regulatory processes in compliance with the human-right-to-adequate - housing framework	Undertake class action suits (with minimum of [e.g., at least 15] physical or legal persons undertaking a litigation action, generally in the name of a whole group of the population), or public-interest litigation (e.g., India) ¹⁸⁹	Law and policy enforced to respect, defend, promote and fulfill housing rights
		Law enforcement officers protect population from and implied protection
Collect sufficient data to determine material and nonmaterial losses to victims of housing and land rights violations		Violators prosecuted and punished
		Victims receive restitution and full compensation for violation and material and nonmaterial losses
Conduct national housing and land rights assessment ¹⁹⁰	Lobby parliament	Law promotes housing and land acquisition and retention in disadvantaged communities consistent with international commitments to promote just patterns of land distribution
	Raise test cases, constitutional challenges through court system	
	Develop laws on properties left without will and testate in order to narrow the class of heirs and prevent fractionation of the ownership	
	Nationwide constitutional review campaign	Constitutional reform ¹⁹¹
Institutional reform		

[Environment](#)" (1996); in Habitat International Coalition, Building the City with the People: New Trends in Community Initiatives with Local Governments (Mexico City: Habitat International Coalition, 1997), contents also available on line at HIC General Secretariat website, at <http://www.hic-net.org/library.asp>.

¹⁸⁹ "Public interest litigation" (PIL) is a form of litigation filed in a court of law, for the protection of "public interest." Most prominently used in the Indian context, it is not defined in any statute or act. It has been interpreted by judges to consider the intent of public at large. Although, the main and only focus of such litigation is public interest, PIL can be filed in cases involving, e.g., such issues as pollution, "terrorism," road safety, constructional hazards, violated human rights of the poor, the content or conduct of government policy, to compel municipal authorities to perform a public duty, etc. See, for example: Upendra Baxi, "Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India" [revised], in Upendra Baxi, ed., Law and Poverty: Critical Essays (Bombay: Tripathi 1988); Mario Gomez, In the Public Interest: Essays on Public Interest Litigation and Participatory Justice (Colombo: Legal Aid Centre, University of Colombo, 1993); Sampat Jain, Public Interest Legislation (New Delhi, Deep & Deep, 2002); Shri. V.S.Vadivel, "Public Interest Litigation (PIL) A Boon or Bane?" (Legal Services India, 2004),

<http://www.legalserviceindia.com/articles/pil.htm>; see also Help Line Law website:

<http://www.helpline.law.com/docs/main.php3?id=PIL11>.

¹⁹⁰ Apply this HIC-HLRN Housing and Land Rights Monitoring Toolkit on a national scale to all elements of the human right to adequate housing.

¹⁹¹ See, for example, "The history of constitutional reform in Kenya," World History Archives (2004), <http://www.hartford-hwp.com/archives/36/index-bbh.html>.

Establish and maintain an effective Land Trust to support communities subject to discrimination and dispossession		Land ownership expanded for disadvantaged communities on an affirmative-action basis
Monitor and survey practices of public and private lending institutions for discrimination practices and patterns	Lobby for disciplinary action and rehabilitation of institutions to end discriminatory practices	Institutions apply uniform criteria in housing and community development programs, policies and transactions
International human rights system interventions		
Prepare and present collective parallel report to human rights treaty bodies (or submit cases under individual complaints procedures under Optional Protocols)		UN treaty body Concluding Observations coincide with community's evaluation of housing rights conditions and proposals for solutions
Raise cases and submit briefs before regional human rights courts and commissions ¹⁹²		State compelled to implement its treaty obligations to respect, defend, promote and fulfill the human right to adequate housing and land
Use Concluding Observations in public information and media campaigns, litigation		
Submit cases to UN Commission on Human Rights 1503 Procedure		States intervene to resolve impasse in housing rights violation case
Submit question/case to UNESCO complaints procedure		States intervene to resolve impasse in housing rights violation case
Legal defense		
Develop and deliver legal literacy and litigation strategy training ¹⁹³	Provide legal-aid services to defend individual and community housing and land rights	Judicial rulings include legal precedents for future litigation and law reform to ensure individual and group rights to

¹⁹² Litigating Economic, Social and Cultural Rights: Achievements, Challenges and Strategies (Geneva: COHRE, 2004), available at <http://www.cohre.org/library/Litigating%20ESCR%20Report.pdf>; Amicus Curiae in Grupo Interdisciplinario por los Derechos Humanos v. Colombia [submitted by COHRE to Inter-American Commission on Human Rights on case of housing destruction by paramilitary groups in Ituango and El Aro, Colombia], on line at <http://www.cohre.org/downloads/amicuscolombia1.doc>; Amicus Curiae in Justiça Global, et al. v. Government of Brazil, Inter-American Commission on Human Rights [submitted by COHRE on actual and threatened violations of housing rights, including forced evictions, with the planned Alcântara Spaceport expansion, in Brazil] available at <http://www.cohre.org/downloads/amicusbrazil1.doc>; Amicus Curiae in CELS & CEJIL v Argentina, Inter-American Commission on Human Rights [submitted by COHRE to Inter-American Commission on Human Rights on case local authorities conducting forced evictions in Barrio Ejército de los Andes, Provincia de Buenos Aires, Argentina], available at <http://www.cohre.org/downloads/amicusargentina1.doc>. See also COHRE Case Law Database on line at <http://www.cohre.org/iframe.htm>; Case law database for economic, social and cultural rights available on the ESCR-Net website at <http://www.escr-net.org/>; found in "Case Law" at http://www.escr-net.org/EngGeneral/Case_law.asp, or "Jurisprudencia" at http://www.escr-net.org/EspGeneral/Case_law.asp.

¹⁹³ Margaret Schuler and Sakuntala Kadirgamar-Rajasingham, Legal Literacy: A Tool for Women's Empowerment (Washington: Women, Law and Development, OEF International, 1992).

Collect detailed data on violations, perpetrators, values of losses and other consequences ¹⁹⁴	Present admissible evidence in litigation on behalf of victims ¹⁹⁵	adequate housing and land
		Crimes and perpetrators prosecuted and punished
		Judicial remedies, including legal precedents for future litigation and law reform to ensure gender equality
Develop gender-awareness and gender-justice training for communities, police, lawyers, prosecutors and judges ¹⁹⁶	Provide legal-aid services to defend equal rights to housing and land for women and gender-discrimination victims	Victims receive restitution and full compensation for violation and material and nonmaterial losses ¹⁹⁷
Develop judicial procedures and expertise to provide for land-consolidation courts	Consolidate and reduce unstable “in-common” tenancy to maintain family and community land retention, especially to uphold land base for minority groups and indigenous peoples	Communities restore and retain their land base
Media cooperation and campaigns		
Conduct training for media professional in the human right to adequate, corresponding obligations, interviewing victims, quantifying victims’ losses and community follow-up ¹⁹⁸	Meet journalists and media professionals to follow-up on training and present new documentation and information on developments	Informed public supports community alternative-development and/or anti-eviction proposals
Provide media outlets with economic analyses of various possible alternatives (on-site upgrading v. relocation)		

¹⁹⁴ See “Housing and Land Rights Violation Case Documentation Form” in this toolkit.

¹⁹⁵ Domestic Implementation of International Human Rights: Litigating Economic, Social and Cultural Rights, on Human Rights Internet website at http://www.hri.ca/forthecanada/vol1/guide-part_11.htm; Case Law Database for Economic, Social and Cultural Rights available on the ESCR-Net website at <http://www.escr-net.org/>; found in “Case Law” at http://www.escr-net.org/EngGeneral/Case_law.asp, or “Jurisprudencia” at http://www.escr-net.org/EspGeneral/Case_law.asp.

¹⁹⁶ Shelter Rights Initiative, Gender Specific Rights Litigation and Protection Strategies (Lagos: SRI, 1998); SRI, Manual on Judicial Protection of Economic, Social and Cultural Rights (Lagos: SRI, 2000).

¹⁹⁷ “Seminar on the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms,” Netherlands Quarterly on Human Rights Special Issue (1993); S. Nadasen, “Restitution, Reconstruction, Reconciliation and Restitution: Land Reform—Balancing the Interests of the Dispossessed, the Homeless and Development,” Stellenbosch Law Review (1997), 360–77. For a bibliography of global restitution and compensation experience, go to: <http://userpage.fu-berlin.de/~theissen/biblio/>.

¹⁹⁸ HIC-HLRN training module on “Housing and Land Rights for Media Professionals.”

Provide media outlets with alternative plans and community proposals for their development		
Policy reform		
Reverse and prosecute discriminatory practices toward disadvantages individuals and communities by both public and private lending institutions		Fairness-in-lending policy formulated and enforced for housing and land purchase, rehabilitation and sustainability
Expand public-private initiatives to stimulate investment and multipurpose development communities		Integrated development with low-cost housing on public and donated lands
Provide housing and relief		
Exchange expertise in temporary housing and relief provision	Organize emergency relief (immediate provision of housing and/or housing resources at no cost to those denied: water, medical services, economic relief, housing resources and building materials, etc.)	Eviction and displacement victims receive emergency (temporary) housing
Resource mobilization		
Conduct an inventory (accounting) of community (human and material) resources	Design, adapt and implement alternative-finance schemes; (e.g., small savings toward common projects) and self-financing for needy inhabitants (with freehold tenure options) ¹⁹⁹	Upgrading and generally improved living conditions on site, as alternative to relocation
	Establish and operate nonbank institutions as lenders and builder of adequate, low-income housing ²⁰⁰	

¹⁹⁹ Alternative Financing Models: Hybrids of Homeownership Mutual Housing (The Enterprise Foundation, 2003); "Capitalizing on Collaboratives: New Partners for Comm. Dev. Finance" (Washington: Center for Policy Alternatives, July 1996); Enrique Ortíz, FONHAPO: The Experience of the National Fund for Low Income Housing in Mexico (London: International Institute for Environment and Development, 1998), available from Earthprint at www.earthprint.com.

²⁰⁰ Jeffrey Carmichael and Michael Pomerleano, The Development and Regulation of Non-Bank Financial Institutions (Washington: World Bank, 2002); Indonesia: Housing Finance for the Urban Poor (Manila: Asia Development Bank, 2001); Peer Smet, "Indian Housing Finance Alliances and the Urban Poor," Global Built Environment Review Vol. 2, No. 1, 58–66, <http://www.edgehill.ac.uk/qber/pdf/vol2/issue1/Eight.pdf>.

	Organize self-help cooperation through rotating community credit (building & upgrading infrastructure, social production of housing ²⁰¹)	
	Immediate, diligent and effective increase in advice-and-lending services, on an affirmative-action basis within public lending institutions	
	Develop microcredit schemes (for upgrading and construction, but with social and legal components providing HRAH content) ²⁰²	
Analyze economic costs of the various possible alternatives (on-site upgrading v. relocation)		
Raise material support (raise funds) from private, public and intergovernmental donors), including microcredit ²⁰³		
Plan/undertake reconstruction, ²⁰⁴ upgrading and general improvement of living conditions (with multiple parties cooperating)		
Restoration and increase housing subsidy programs for low-income people, including by tax reform (e.g., reversal of tax cuts for the wealthiest tax payers)		Low-income people pay no more than 30% of monthly incomes for adequate housing

²⁰¹ Joseph Schechla, ed., [Anatomies of a Social Movement](#) (Cairo: HIC-HLRN, 2004); Habitat International Coalition, [Building the City With the People. New Trends in Community Initiatives in Cooperation with Local Governments](#) (Mexico City: Habitat International Coalition, 1997); Prem Pangora, [Citizen's Initiatives for environmental improvements: The case of River Sabarmati, Ahmedabad, India](#) (Mexico City: Habitat International Coalition, 1997); Joël Audefroy, [Construyendo la Ciudad con la Gente. Nuevas tendencias en la colaboración entre las iniciativas comunitarias y los gobiernos locales](#) (Mexico City: Coalitón Internacional para el Habitat, 1998); Gustavo Romero, La producción social del hábitat: reflexiones sobre su historia, concepciones y propuestas (2000), available on line at http://www.hic-net.org/online/Romero_PSH-intro.pdf; Eike Jacob, [Social Production of Habitat in Latin America](#) (2003); Habitat International Coalition-América Latina, "Social Production of Habitat. Conceptual framework" (2003); Enrique Ortíz, Social Production of Habitat: Marginal option or reality-transforming strategy? (2003), available on line at http://www.hic-net.org/online/Ortiz_SPH.pdf; Enrique Ortíz, [Vivitos y Coleando. 40 años trabajando por el hábitat popular en América Latina](#) (2002).

²⁰² Nazrul Islam, [Grameen Bank Bangladesh. A credit institution for housing](#) (1996); Jaffer Murtaza, [The Tanzania-Bondeni Community Lands Trust](#) (1996).

²⁰³ Nazrul Islam, [Grameen Bank Bangladesh. A credit institution for housing](#) (1996); Jaffer Murtaza, [The Tanzania-Bondeni Community Lands Trust](#) (1996).

²⁰⁴ See York University Postwar Reconstruction and Development Unit, website: <http://www.york.ac.uk/depts/poli/prdu>.

Conduct an inventory of community financial and material resources	Develop community savings schemes	Social production of habitat: Community/self-financed upgrading of housing and improvement of living conditions
Conduct public budget analysis from the housing rights perspective ²⁰⁵	Develop participatory budgeting ²⁰⁶ (ensuring that necessary programs and projects are budgeting according to housing rights obligations)	Public budgets comply with State's housing rights obligations to ensure "progressive realization" with "maximum of available resources"
Training other actors (outside community)		
Train civil servants in HRAH (including international treaty obligations upon the State and local authorities)	Reform urban/land planning criteria, procedures and objectives to harmonize with local community needs and criteria ²⁰⁷	Physical planning integrates human rights obligations, language and priorities directed to needy and vulnerable communities
Train lawyers in HRAH, (including international treaty obligations upon the	Legal argument, litigation and judicial decisions invoke international norms and treaty obligations	Legal recognition of traditional legal and tenure systems and provision of secure title ²⁰⁹

²⁰⁵ Ravikant Joshi, *A Case for Reform: how municipal budgets can change our cities* (Mumbai: YUVA Books, 2001); Maria Socorro I. Diokno, "A Rights-based Approach towards Budget Analysis" (Washington: International Human Rights Internship Program, 1999); Institute for Development Policy Analysis and Advocacy—IDPAA (Atiur Rahman et al.), *Alternative Budget Analysis: A Series of Studies on the National Budget for the Perspective of Poverty Eradication* [three volumes: Budget and the Poor, The Budget-making Process, People's Budget: An Alternative Exercise Using Participatory Tools] (Dhaka: University Press Ltd., 2002).

²⁰⁶ Rebecca Abers, 1998, "From clientelism to cooperation: Local government, participatory policy, and civic organizing in Porto Alegre, Brazil"; *Politics and Society*. 26(4)c 511–37; Rebecca Abers, *Inventing Local Democracy: Grassroots Politics in Brazil* (Boulder: Lynne Rynner, 2000); Baierle, Sergio, 1998, "The Explosion of Citizenship: The Emergence of a New Ethical-Political Principal in Popular Movement in Porto Alegre, Brazil," in Sonia E. Alvarez, Evelina Dagnino and Arturo Escobar, *Cultures of Politics/Politics of Cultures: Revisioning Latin America Social Movements* (Boulder: Westview Press, 1998); Sousa Boaventura de Santos, "Participatory Budgeting in Porto Alegre: Toward a Redistributive Democracy." *Politics and Society* 26(4) (1998), 461–509; *Quem é o público do Orçamento Participativo: se perfil, porque participa, e o que pensa do processo* (Porto Alegre: Cidade de Porto Alegre, 1999); Luciano Fedozzi, *Orçamento Participativo: Reflexões sobre a experiência de Porto Alegre* (Porto Alegre: Tomo Editorial, 1998); Pedro Jacobi and Macro Antonio Carvalho Teixeira, "Orçamento Participativo: co-responsabilidade na gestão das cidades," *São Paulo em Perspectiva*, 10 (3) (1996) 119–28; Brian Wampler, "Orçamento Participativo: Os paradoxos da participação e governo no Recife," *Cadernos de Estudos Sociais*, 15(2) (1999), 343–73; Brian Wampler, *A Guide to Participatory Budgeting* (October 2000). Internet sources: Participatory budget: The Case of Porto Alegre (Brazil) at:

<http://www.goethe.de/br/poa/buerg/en/framebag.htm> (2004);

World Bank: http://www.worldbank.org/html/fpd/urban/urb_age/porto.htm,

<http://www.worldbank.org/wbiep/decentralization/Topics13.7.htm>, <http://www.worldbank.org/participation/>; Inter-American Development Bank: <http://www.iadb.org/exr/IDB/stories/2000/eng/JAN00E/c200c1.htm>,

<http://www.iadb.org/exr/idb/sidebars/2000/eng/c200c4.htm>; Conference Proceedings on Participatory Budgeting:

<http://www.idre.ca/lacro/docs/conferencias/stren.html>, <http://www.ssc.wisc.edu/~wright/deliberative.html>,

<http://www.pgualc.org>.

²⁰⁷ UNCHS, *Developing a National Shelter Strategy: Lessons from Four Countries* (Nairobi: UNCHS, 1990); OHCHR, *Handbook on National Human Rights Plans of Action* (Geneva: OHCHR, revised draft May 2001).

²⁰⁸ Shelter Rights Initiative, *Gender Specific Rights Litigation and Protection Strategies* (Lagos: SRI, 1998); SRI, *Manual on Judicial Protection of Economic, Social and Cultural Rights* (Lagos: SRI, 2000).

²⁰⁹ Peter R. Grose, "An Indigenous Imperative: The Rationale for the Recognition of Aboriginal Dispute Resolution Mechanisms." *Mediation Quarterly* 12 (4) (summer 1995), 327–38.

State, as well as litigation strategies) ²⁰⁸		Legal recognition of tenure and the human right to adequate housing of people without economic access
Train judges in HRAH (including international treaty obligations upon the State) ²¹⁰		Judge issues restraining orders halting forced evictions and removals, land confiscation, property destruction and other housing and land rights
Train law enforcement officials in the human right to adequate housing (including international treaty obligations upon the State)	Quantify losses/costs of housing rights violations	Judicial decision orders return, restitution and compensation for evictees, IDPs, refugees ²¹¹
Transitional justice (post conflict)²¹³		Victims compensated for losses ²¹²

²¹⁰ Shelter Rights Initiative, Manual on Housing Rights Protection Strategies for Lower Court Judges (Lagos: SRI, 2000).

²¹¹ UNCHS, Housing and Property Rights in Kosovo (Pristina: UNCHS, March 2000).

²¹² For elaboration of the principles of compensation to victims of human rights violations, see Theo Van Boven, "Basic Principles and Guidelines on the Right to Reparation for Victims of Gross Violations of Human Rights and Humanitarian Law, Appendix 8 ("The van Boven Principles"), Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, E/CN.4/Sub.2/1996/17; also E/CN.4/1997/104, annex and subsequently revised as "Basic principles and guidelines on the right to a remedy and reparation for victims of violations of international human rights and humanitarian law," by Cherif Bassiouni, independent expert, Commission on Human Rights (E/CN.4/2000/62, annex). John Dugard, "Is the Truth and Reconciliation Process Compatible with International Law? An Unanswered Question," South African Journal on Human Rights Vol. 13, 258–68. For quantification methodology, see HIC-HLRN Loss Matrix in this Housing and Land Rights Monitoring Toolkit, or go to www.hlrn.org; for implementation, see to UNCHS, Housing and Property Rights in Kosovo (Pristina: UNCHS, 2000).

²¹³ For a general bibliography on transitional justice, go to <http://www.peacemakers.ca/bibliography/bib26reconciliation.html> or <http://userpage.fu-berlin.de/~theissen/biblio/> (on experiences of Germany and South Africa).

Document details on violations, perpetrators, values of losses and other consequences ²¹⁴	Present evidence to truth (and reconciliation) commission ²¹⁵	Public aware of population transfer, mass dispossessions and other crimes committed during conflict
	Issue amnesty for past crimes and perpetrators of forced evictions/removals ²¹⁶	Social reconciliation
	Present evidence to Truth and Justice Commission	Social reconciliation
		Crimes and perpetrators prosecuted and punished
Present evidence to “mixed courts”	Return, restitution and compensation for evictees, IDPs, refugees ²¹⁷	

Of course, an illustrative list of potential interventions does not sufficiently convey the wealth of local governmental and nongovernmental experience available for review and exchange. Moreover, it is, as always, at the local level of implementation where human rights, including the human right to adequate housing, are transformed from moral suasion and legal theory to implementable reality. Therefore, both the practical, case-based perspective and the theoretical-and-comparative perspective become mutually dependent, mutually reinforcing and, hence, equally needed.

2.10. Evaluation and follow-up

Evaluation of any action you choose should be an ongoing function parallel to the events and development as they happen. This note offers some simple guidance on the specific

²¹⁴ Use “Housing and Land Rights Violation Case Documentation Form” in this toolkit.

²¹⁵ Kerry Able, and Jean Friesen, eds., *Aboriginal Resource Use in Canada: Historical and Legal Aspects* (Winnipeg: University of Manitoba Press, 1991); Alfred, Gerald R., and Franke Wilmer. “Indigenous Peoples, States and Conflict,” in D. Carment and P. James, eds., *Wars in the Midst of Peace: The International Politics of Ethnic Conflict* (Pittsburg: University of Pittsburgh Press, 1997); Michael Coyle, “Claims Resolution: A Healing Process?” in J. Oakes, R. Riewe, K. Kinew and E. Maloney, eds., *Sacred Lands: Aboriginal World Views, Claims and Conflicts* (Calgary: Canadian Circumpolar Institute, 1998); Robert Rotberg and Dennis Thompson, eds., *Truth v. Justice: The Morality of Truth Commissions* (Princeton: Princeton University Press, 2000); Truth and Reconciliation Commission of South Africa Report, Vols. 1–5 (Cape Town: Juta, 1998); Theo van Boven, “Study Concerning the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms” [final report of Special Rapporteur] (Geneva: Commission on Human Rights, Subcommission on Prevention of Discrimination and Protection of Minorities) E/CN.4/Sub.2/1993/8. For an extensive bibliography of sources, go to: <http://userpage.fu-berlin.de/~theissen/biblio/>.

²¹⁶ John Dugard, *Dealing with Crimes of a Past Regime: Is Amnesty Still an Option?* [The Third Manfred Lachs Memorial Lecture] (1999); Carla Edelenbosch, “Human Rights Violations - A Duty to Prosecute?” *Leiden Journal of International Law* Vol. 7, No. 2 (1994), 5–22; Dianne F. Orentlicher, “Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime,” *The Yale Law Journal* Vol. 100, No. 8 (1991) 2537–615.

²¹⁷ Uma Dhupelia Mesthrie, *The Truth and Reconciliation Commission and the Commission on Restitution of Land Rights: Some Comparative Thoughts* [“The TRC: Commissioning the Past” conference] (Johannesburg: University of the Witwatersrand, 1999); S. Nadasen, “Restitution, Reconstruction, Reconciliation and Redistribution: Land Reform: Balancing the Interests of the Dispossessed, the Homeless and Development,” *Stellenbosch Law Review* (1997) 360–77; David B. Southern, “Restitution or Compensation: The Land Question in East Germany,” *International and Comparative Law Quarterly* Vol. 42, No. 3 (1993), 690–97; David B. Southern, “Restitution or Compensation: The Open Property Question,” *German Politics* Vol. 2, No. 3, 436–49. For a bibliography of global restitution and compensation experience, go to: <http://userpage.fu-berlin.de/~theissen/biblio/>.

evaluation tasks you will face. They are described in stages, with particular emphasis on the final stages and the vision for the future.

For our purposes, evaluation and follow-up imply two levels of assessment: (1) evaluation the action and (2) following the situation after the action concludes. The former is internal in nature and helps your organization, community or network become a learning institution by building on the lessons (successes, near-successes, failures and unanticipated results) of your efforts. The latter enables you, your organization, community or network to test the outcome to ascertain whether or not it has tangible benefits for those persons, communities, populations and peoples affected and targeted in your action. Ultimately, the follow-up process should lead you to the necessary conclusion as to what, if anything, to do next.

✓ Evaluating the action

Evaluation your action includes three integrated but conceptually distinct processes: (1) monitoring progress, (2) formative evaluation and (3) measuring the development impact.

1. Monitoring implementation progress

Monitoring the implementation of your action is the most frequent—indeed constant—aspect of the learning process. This should involve periodic reports on production of outcomes, financial accounting and levels and nature of inputs (e.g., technical assistance, training, social production of habitat). The periodicity of the reporting could be quarterly, if the action is expected to proceed for a year or more. Alternatively, reporting could be more frequent, especially if it is a short-term action, or if it takes place in a fast-paced environment such as a threatened eviction or natural disaster situation, and particularly if extreme deprivation of human well-being is at stake.

The responsibility for monitoring is to be shared by a group of actors. Remembering that, like in the “Toolkit” guide for strategic planning, the more participation, the more-favorable the result (“more participation = more dignity”).

Reporting on the action, based on the monitoring of implementation progress, should be specifically assigned, most probably to the coordinator of the action or the chief executive officer of the principal body organizing the action. The audience of the reports should be both internal, for the benefit of those engaged, and external, depending on the obligations you have to supporters, members and/or funders. The assignment of duties, division of labor and timing of evaluation events should be completed also in the planning stage of your activity (see “[Strategic planning](#)” link above).

2. Formative Evaluation Indicators of Accomplishments

Midway in the process of your action, you should conduct an assessment of the *quality and adequacy* of the tasks undertaken by assessing the actual outcomes against the standard of expected results you already have set out for yourselves.

You should develop an evaluation plan and data collection instruments as part of the project implementation. That means, you should plan ahead to collect information that will verify your intended results, whether that be in the form of documents, press reports, opinion surveys, affidavits, water-quality test results, etc. The formative evaluation activities probably will require site visits, rapid assessment and low-cost data collection techniques such as

focus groups, interviews, training evaluation forms, and simple targeted studies to identify key issues for action management.

3. Development-impact Assessment and Indicators

Development-impact assessments that you and your organization/community undertake less frequently, perhaps on an annual basis, will track changes in the outcomes, in order to determine the degree to which the larger environment of the human right to adequate housing is improving—or deteriorating, as the case may be.

Your action could—and should—produce an initial baseline report at the initial stage that coincides with your first inventory, site visits and/or assessment arising from your first use of this “Toolkit.” That report should record what you consider to be the key assumptions going into the activity, and will serve you in the subsequent stages of your action, especially at the final stages, to test those assumptions and adjust strategies to incorporate the knowledge you have created.

For the purpose of your organization’s integrity and the tactical responses you may require in the future, your action should be seen critically in the light of the purposes and goals you set out in your planning process (see [“Strategic planning”](#) link above). Some sample questions to include in your evaluation include the following:

- How does the action relate to your purpose statement of your organization/ community?
- How does the action relate to the goals(s) of your organization/community?
- Was the action planned or spontaneous?
- What was the expected result?
- Was that result achieved? If not, why?
- Were unintended results achieved?
- What were the lessons learned from this activity?
- How did this activity build/strengthen/develop your organization? What gains did you and others realize?
- How did your organization/community record and report the experience?
- How did your organization/community share and exchange the experience and lessons learned with others? Who? When? Where? What was the result?
- Has there been follow-up? Why? What? Who? When? Where?
Click on “Following up the situation” for guidance on the last point.

✓ Following up the situation

Each successful or unsuccessful action needs to be tested further for at least two reasons: (1) in order to determine if the achievement is real or merely theoretical and (2) to determine what your next move is going to be.

The now famous *Irene Grootboom and Others v. Oostenberg Municipality*²¹⁸ case before the South African Constitutional Court (1999) found in favor of the plaintiffs by applying the principles of international law on the human right to adequate housing and the legal strictures on the practice of forced eviction. The Court ordered the Western Cape Provincial Government and the Oostenberg Municipality to grant housing and utilities to the 390 adults and 510 children wrongfully evicted community at Wallacedene their right to return and

²¹⁸ Irene Grootboom and Others versus Oostenberg Municipality, Cape Metropolitan Council, the Premier of the Province of the Western Cape, National Housing Board, and Government of the Republic of South Africa, Constitutional Court of South Africa Case No: 6826/99..

remain and to benefit from public services corresponding to that right. Until today, that decision has not been fully implemented.

Likewise, the landmark case of *Qa'dan v. Katzir*,²¹⁹ in Israel, resulted in the 2000 High Court ruling that Katzir (a settlement built on Palestinian land, directed and funded in large part by the Jewish Agency) acted unlawfully when discriminating on the basis of "nationality" by excluding a non-Jewish from obtaining housing there. Until this day, that decision has not been honored, the indigenous Adil and Iman Qa'dan family of Arab citizens of Israel do not have their home in Katzir, and the Jewish Agency continues to provide land and housing benefits only to those holding "Jewish nationality," and to the exclusion of others.

There are numerous examples of slum clearance and resettlement that result in the promised secure tenure of housing, but fail to comply with other elements of the human right in their implementation. [Note: HLRN and this "Toolkit" do not advocate slum clearance or resettlement.] Inhabitants in resettlement often lack access to public goods and services, suitable location, are denied compensation for losses and are subject to a process inconsistent with the over-riding principle of self-determination.²²⁰

All such gaps and shortcomings in the outcome of any housing rights defense effort remain to be addressed, even though some advocates and service-providing NGOs may consider these developments to be victorious at some level. The true test remains, however, to determine the tangibility of the results within the framework of the human right to adequate housing, and over the long term.



With all of its emphasis on the law, this "Toolkit" is intended to assist in the realization of the human right to adequate housing as a complement to the theoretical elaboration of the right in law. Implementation is the ultimate objective of human rights, as well as this "Toolkit." Therefore, the tools provided here should serve also as the final evaluation criteria to examine whether or not the composite dimensions of the human rights are implemented and present or not.

You should use the elements (entitlements) of the human right to adequate housing here as your guide; these are also the binding criteria for all State parties and their representatives to apply as well. If you and your organization/community determine that certain criteria have been breached or neglected, then, alas, further remedial action will be required.

The bad news, perhaps, is that there may yet be more work to be done. However, even if one has to go back to the drawing board, at least the needed tools are available to the cyclical task. So, now, you can just do it.

²¹⁹ Qa'adan versus Israel Lands Administration (ILA), Ministry of Construction and Housing, Tal-Iron Local Municipal Council, Jewish Agency for the Land of Israel (JA), KATZIR: Cooperative Association for Community Settlement in Samaria Ltd., and the Farmers Association; Case No. 6698/95 of the Israeli Supreme Court, sitting as the High Court of Justice.

²²⁰ See Housing and Land Rights Network, *Restructuring New Delhi's Urban Habitat: Building an Apartheid City?* (HIC-HLRN: New Delhi, 2002).

3. Environmental goods and services (natural resources, land & water)

3.1. Concept and meaning

Every community must have access to **natural resources** necessary for its survival and livelihood, including, inter alia, fuel, fodder, water and building materials. Access to natural resources must be sufficient to meet community needs and the state must effectively regulate distribution and ensure the efficient delivery of same.

Land is a resource integral to survival, livelihood and adequate housing. To this end, the state must ensure reasonable access to land. In particular, the state must provide for equitable distribution with emphasis on the provision of necessary resources for poor households and other marginalized and vulnerable groups. Governments must implement land reforms where necessary to ensure its fair distribution as a public good and protect the landed property rights of land-based and indigenous peoples from encroachment.

Potable **water** is integral and essential to the rights to life, health and adequate housing. The state must ensure that clean and safe water is reliably accessible and provided in adequate supply for individual, family and community use. The state should enable agricultural communities not be denied water by any external source, and should assist citizens of all communities meet their water needs. The state must take effective measures to ensure the absence of water-borne pathogens and pollutants, and must protect against environmental degradation of water supply (water table). It must also ensure that adequate infrastructure is in place so as to ensure sufficiency, affordability and easy access.

An adequate place to live must be free from harm or threat of harm from natural or man-made disaster, and environmental pollutants, disease vectors and other avoidable hazards. The **environment** must provide access to natural resources, including food, fodder, water, and building materials, and reasonable recreational opportunities in nearby areas similarly free of such menacing conditions.

3.2. Sources

In this section, your **Step 2**, the HLRN “Toolkit” provides the most important international legal basis and the popular claims that ground each element of the human right to adequate housing. This compilation attempts to be as comprehensive as possible; however, additional popular sources and legal developments will augment this inventory in the future.

It is vital to establish both the established sources in international law and the popular claims. The authority of the legal sources carries corresponding obligations on most States, and applies universally to all people on the planet as *human* rights. The popular sources advance claims that are “emerging” with human rights language eventually to be codified in the law. All legally established human rights norms originated as popular claims carried forth through various forms of historic struggle.

The Legal Authority

Please note that the legal instruments cited here carry differing levels of obligation, and they are organized for you accordingly. Customary law is made up of those norms and principles that legal opinion and interstate institutions consider so basic and so repeatedly affirmed as to be binding on all legal personalities. The Universal Declaration of Human Rights, the antecedent to all subsequent human rights treaties, is the most relevant example of customary law for our purposes, even though it does not establish a monitoring and enforcement mechanism to ensure compliance.

The ratified treaties (Covenants, Charters, Conventions, etc.) are binding on all their ratifying States parties, and each establishes an independent body to monitor and guide implementation. The treaty-monitoring process provides an opportunity for civil society, States and the international legal bodies each to play a role. These international treaties are also characterized as hard law (*lex lata*), because of their binding nature. Treaty law, by definition, is any agreement between two or more States. The treaties considered here are those of both international and regional nature.

The “soft-law” instruments (*lex ferenda*) include the Declarations, Basic Principles, Minimum Rules, General Comments, etc., that are the multilateral commitments arising from international conferences, assemblies, summits, congresses and other specialised meetings. Also included in this category are the general and country-specific guidance that the treaty-monitoring bodies issue to guide and specify treaty obligations, as well as those instruments of inter-State agreement (decisions and resolutions) arising from the various political bodies of the international system (e.g., UN Commission on Human Rights, International Labour Organisation General Assembly, etc.). These instruments contain standards that are declaratory of already-binding international law, reflect the collective political will of States and provide specificity to the general Articles in the binding instruments. However, these form legal and policy guidance without the corresponding obligations of treaty law and without the corresponding legal monitoring mechanisms.

Thus, the list of legal sources in this section of the HLRN “Toolkit” maintains a corresponding priority order such that presents the binding instruments first (in chronological order of their adoption), and follows with the nonbinding, declaratory sources (in their chronological order):

- ***International Treaty Law***
- ***Regional Treaty Law***
- ***Declaratory Instruments and Jurisprudence***

The Moral Argument

The popular sources are useful especially in demonstrating ground-level recognition of the various elements of adequate housing as rights in and of themselves, but also provide a list of human rights that reflect common human needs, but await codification as *bona fide* rights. The “emerging rights” include elements inextricable from the human right to adequate housing: water, land and energy, among others. The popular sources are indicators of the ever-evolving specificity of human rights law and the legal and problem-solving horizons toward which social movements and the human rights community are heading.

The relevant excerpts from these collective moral are listed in the “Toolkit” Sources (Step 2) as *Popular Sources*. These are moral, rather than legal, in nature. However, as claims, they bear legal dimensions in the sense that they are the substance of future legal standards. We continue to include these claims in the HLRN “Toolkit” as they emerge from popular struggles, natural and social sciences, nongovernmental forums, social movements, campaigns and labour action (strikes), as well as other forms of popular and collective problem-solving initiatives.

In this “Toolkit,” *Popular Sources* are distinguished from the legal sources by their presentation in *italic* script.

Another source of the human right with a legal dimension is the jurisprudence of course-based decisions on cases involving housing and land rights. These also could provide the

basis for legal argument even in distant jurisdictions. Examples include the case-specific—but internationally relevant—rulings in famous decisions in favor of housing rights claims such as those arising from legal struggles in Cyprus, Palestine/Israel and South Africa:

Qa'adan versus Israel Lands Administration (ILA), Ministry of Construction and Housing, Tal-Iron Local Municipal Council, Jewish Agency for the Land of Israel (JA), KATZIR: Cooperative Association for Community Settlement in Samaria Ltd., and the Farmers Association; Case No. 6698/95 of the Israeli Supreme Court, sitting as the High Court of Justice.

Irene Grootboom and Others versus Oostenberg Municipality, Cape Metropolitan Council, the Premier of the Province of the Western Cape, National Housing Board, and Government of the Republic of South Africa, Constitutional Court of South Africa Case No: 6826/99 (1999).

Loizidou versus Turkey (Article 50 and Merits), European Court of Human Rights Case 40/1993/435/514 (18 December 1996).

✓ Legal sources

Natural Resources and Environment

International Treaty Law

Desertification Convention (1994)

Annex II [Regional Implementation Annex for Asia] Article 2. "...the Parties shall, as appropriate, take into consideration the following particular conditions which apply in varying degrees to the affected country Parties of the region... (b) the heavy pressure on natural resources for livelihoods."

Annex I [Regional Implementation Annex for Africa] Article 8.3. "National action programmes shall also, as appropriate, include the following: (b) measures to conserve natural resources, ensuring integrated and sustainable management of natural resources, including: agricultural land and pastoral land; vegetation cover and wildlife; forests; water resources; and biological diversity; training with regard to, and strengthening, public awareness and environmental education campaigns and disseminating knowledge of techniques relating to the sustainable management of natural resources."

Convention on Biodiversity (1992)

Article 15. "Recognizing the sovereign rights of States over their natural resources, the authority to determine access to genetic resources rests with the national governments and is subject to legislation...Each Contracting Party shall endeavour to create conditions to facilitate access to genetic resources for environmentally sound uses by other Contracting Parties and not to impose restrictions that run counter to the objectives of this Convention."

International Labour Organisation Convention No. 169 concerning Indigenous Peoples in Independent Countries (1989)

Article 15.1. "The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources."

International Covenant on Economic, Social and Cultural Rights (1966)

Articles 1.2 & 2. “All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence...Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”

Regional Treaty Law

European Charter of Fundamental Rights (2000)

Article 37. Environmental protection

“A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.”

African Charter on Human and Peoples’ Rights (1981)

Article 21.1. “All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it...**3.** The free disposal of wealth and natural resources shall be exercised without prejudice to the obligation of promoting international economic cooperation based on mutual respect, equitable exchange and the principles of international law. **4.** State Parties to the present Charter shall individually and collectively exercise the right to free disposal of their wealth and natural resources with a view to strengthening African Unity and solidarity. **5.** State Parties to the present Charter shall undertake to eliminate all forms of foreign exploitation particularly that practised by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources.”

Declaratory Instruments and Jurisprudence

World Summit on Sustainable Development Plan of Implementation (2002)

9. “Strengthen the contribution of industrial development to poverty eradication and sustainable natural resource management. This would include actions at all levels to... (f) Provide support for natural resource management for creating sustainable livelihoods for the poor.”

UNESCO Universal Declaration on Cultural Diversity (2001)

14. “Respecting and protecting traditional knowledge, in particular that of indigenous peoples; recognizing the contribution of traditional knowledge, particularly with regard to environmental protection and the management of natural resources, and fostering synergies between modern science and local knowledge.”

Habitat Agenda, adopted by the second United Nations Conference on Human Settlements (Habitat II) (1996)

39. “We reaffirm our commitment to the full and progressive realization of the right to adequate housing, as provided for in international instruments....”

40. “We further commit ourselves to the objectives of:… **(b)** Providing legal security of tenure and equal access to land to all people, including women and those living in poverty; and undertaking legislative and administrative reforms to give women full and equal access to economic resources, including the right to…natural resources…”

Article 67.c. “To integrate shelter policies with macroeconomic, social, demographic, environmental and cultural policies, Governments, as appropriate, should: strengthen the linkages between shelter policies, employment generation, environmental protection, preservation of cultural heritage, resource mobilization and the maximization of resource efficiency, and strengthen the stimulation of and support for sustainable economic development and social development activities.”

Declaration of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (2001)

42. “...Efforts are now being made to secure universal recognition for those rights in the negotiations on the draft declaration on the rights of indigenous peoples, including...to manage their lands and natural resources...”

43. “We also recognize the special relationship that indigenous peoples have with the land as the basis for their spiritual, physical and cultural existence and encourage States, wherever possible, to ensure that indigenous peoples are able to retain ownership of ... those natural resources to which they are entitled under domestic law;”

Arab Declaration on Sustainable Development for Human Settlements (Rabat Declaration) (1995)

General Principles and Goals...

8. Adequate housing is a fundamental rights and requirement of the human being, who must be enabled to secure it in both urban and rural areas within a healthy and sound environment equipped with all services and utilities. **9.** Peace and security are the basis of sustainable development and preservation of environment and natural resources.

Declaration on Environment and Development (1992)

Principle 23. “The environment and natural resources of people under oppression, domination and occupation shall be protected.”

Committee on Economic, Social and Cultural Rights (CESCR) General Comment No. 4, “the right to adequate housing” (1991)

8. (b) “...All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources...”

Declaration on Social Progress and Development (1969)

Article 18(b) & (d) The promotion of democratically based social and institutional reforms and motivation for change basic to the elimination of all forms of discrimination and exploitation and conducive to high rates of economic and social progress, to include land reform, in which the ownership and use of land will be made to serve best the objectives of social justice and economic development...The adoption of measures to introduce, with the participation of the Government, low-cost housing programmes in both rural and urban areas...”

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador" (1988) [not in force]

Article 11. Right to a Healthy Environment:

1. Everyone shall have the right to live in a healthy environment and to have access to basic public services.
2. The States Parties shall promote the protection, preservation, and improvement of the environment.

Land

Customary International Law

Universal Declaration of Human Rights (UDHR) (1948)

Article 17.1, 17.2. “Everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property.”

International Treaty Law

Desertification Convention (1994)

Article 3.c. “...the Parties should develop, in a spirit of partnership, cooperation among all levels of government, communities, nongovernmental organizations and landholders to establish a better understanding of the nature and value of land and scarce water resources in affected areas and to work towards their sustainable use...”

International Labour Organisation Convention No. 169 concerning Indigenous Peoples in Independent Countries (1989)

Article 14.1, 14.2. “The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities...Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession.”

Article 15.1. “The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.

Article 17. “Procedures established by the peoples concerned for the transmission of land rights among members of these peoples shall be respected. The peoples concerned shall be consulted whenever consideration is being given to their capacity to alienate their lands or otherwise transmit their rights outside their own community. Persons not belonging to these peoples shall be prevented from taking advantage of their customs or of lack of understanding of the laws on the part of their members to secure the ownership, possession or use of land belonging to them.”

Article 18. “Adequate penalties shall be established by law for unauthorised intrusion upon, or use of, the lands of the peoples concerned, and governments shall take measures to prevent such offences.”

Article 19. “National agrarian programmes shall secure to the peoples concerned treatment equivalent to that accorded to other sectors of the population with regard to: the provision of more land for these peoples when they have not the area necessary for providing the essentials of a normal existence, or for any possible increase in their numbers; the provision of the means required to promote the development of the lands which these peoples already possess.”

International Covenant on Economic, Social and Cultural Rights (1966)

Articles 1.2 & 2. “All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence...Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”

Declaratory Instruments and Jurisprudence

World Summit on Sustainable Development Plan of Implementation (2002)

10.(a) “Improve access to land and property, to adequate shelter...for the urban and rural poor, with special attention to female heads of household;

63. Provide financial and technical support for Africa’s efforts to implement the Convention to Combat Desertification at the national level and integrate indigenous knowledge systems into land and natural resources management practices, as appropriate, and improve extension services to rural communities and promote better land and watershed management practices, including through improved agricultural practices that address land degradation, in order to develop capacity for the implementation of national programmes.

67. (b) Promote and support efforts and initiatives to secure equitable access to land tenure and clarify resource rights and responsibilities, through land and tenure reform processes that respect the rule of law and are enshrined in national law, and provide access to credit for all, especially women, and that enable economic and social empowerment and poverty eradication as well as efficient and ecologically sound utilization of land and that enable women producers to become decision makers and owners in the sector, including the right to inherit land;

Declaration of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (2001)

34. “We recognize that people of African descent have for centuries been victims of racism, racial discrimination and enslavement and of the denial by history of many of their rights...Recognition should therefore be given to their rights to...the natural renewable resources of their habitat...and where applicable to their ancestrally inhabited land;”

43. “We also recognize the special relationship that indigenous peoples have with the land as the basis for their spiritual, physical and cultural existence and encourage States, wherever possible, to ensure that indigenous peoples are able to retain ownership of their lands and of those natural resources to which they are entitled under domestic law...”

Habitat Agenda, adopted by the second United Nations Conference on Human Settlements (Habitat II) (1996)

39. “We reaffirm our commitment to the full and progressive realization of the right to adequate housing, as provided for in international instruments....”

40. “We further commit ourselves to the objectives of:... (b) Providing legal security of tenure and equal access to land to all people, including women and those living in poverty; and undertaking legislative and administrative reforms to give women full and equal access to economic resources, including the right to inheritance and to ownership of land and other property, credit, natural resources and appropriate technologies; ... (d) Ensuring transparent, comprehensive and accessible systems in transferring land rights and legal security of tenure; ...”

67(d) & (e) “To integrate shelter policies with macroeconomic, social, demographic, environmental and cultural policies, Governments, as appropriate, should...apply public policies, including expenditure, taxation, monetary and planning policies, to stimulate sustainable shelter markets and land development; Integrate land and shelter policies with policies for reducing poverty and creating jobs, for environmental protection, for preservation of cultural heritage, for education and health, for providing clean water-supply and sanitation facilities, and for empowering those belonging to disadvantaged and vulnerable groups, particularly people without shelter.”

Vancouver Declaration Human Settlements (1976)

10. “Land is one of the fundamental elements in human settlements. Every State has the right to take the necessary steps to maintain under public control the use, possession, disposal and reservation of land. Every State has the right to plan and regulate use of land, which is one of its most important resources, in such a way that the growth of population centres both urban and rural are based on a comprehensive land use plan. Such measures must assure the attainment of basic goals of social and economic reform for every country, in conformity with its national and land tenure system and legislation.”

Declaration on Social Progress and Development (1969)

Article 17(d) “Measures for appropriate supervision of the utilization of land in the interests of society.”

Article 18(b) “The promotion of democratically based social and institutional reforms and motivation for change basic to the elimination of all forms of discrimination and exploitation and conducive to high rates of economic and social progress, to include land reform, in which the ownership and use of land will be made to serve best the objectives of social justice and economic development.”

Water

International Treaty Law

Desertification Convention (1994)

Article 3.c. “...the Parties should develop, in a spirit of partnership, cooperation among all levels of government, communities, nongovernmental organizations and landholders to establish a better understanding of the nature and value of land and scarce water resources in affected areas and to work towards their sustainable use...”

Convention on the Use of Transboundary Watercourses and International Lakes (1992)

Article 2. 5(1). “The precautionary principle, by virtue of which action to prevent, control or reduce water-related disease shall not be postponed on the ground that scientific research has not fully proved a causal link between the factor at which such action is aimed, on the one hand, and the potential contribution of that factor to the prevalence of water-related disease and/or transboundary impacts, on the other hand.”

Declaratory Instruments and Jurisprudence

World Summit on Sustainable Development Plan of Implementation (2002)

7. The provision of clean drinking water and adequate sanitation is necessary to protect human health and the environment. In this respect, we agree to halve, by the year 2015, the

proportion of people who are unable to reach or to afford safe drinking water (as outlined in the Millennium Declaration) and the proportion of people who do not have access to basic sanitation, which would include actions at all levels to:

- (a) Develop and implement efficient household sanitation systems;
- (b) Improve sanitation in public institutions, especially schools;
- (c) Promote safe hygiene practices;
- (d) Promote education and outreach focused on children, as agents of behavioural change;
- (e) Promote affordable and socially and culturally acceptable technologies and practices;
- (f) Develop innovative financing and partnership mechanisms;
- (g) Integrate sanitation into water resources management strategies...

“Eradicating poverty...would include actions at all levels to...

25. “Launch a programme of actions, with financial and technical assistance, to achieve the Millennium development goal on safe drinking water. In this respect, we agree to halve, by the year 2015, the proportion of people who are unable to reach or to afford safe drinking water, as outlined in the Millennium Declaration, and the proportion of people without access to basic sanitation, which would include actions at all levels to:

- (a) Mobilize international and domestic financial resources at all levels, transfer technology, promote best practice and support capacity-building for water and sanitation infrastructure and services development, ensuring that such infrastructure and services meet the needs of the poor and are gender sensitive;... (c) Promote priority action by Governments, with the support of all stakeholders, in water management and capacity-building at the national level and, where appropriate, at the regional level, and promote and provide new and additional financial resources and innovative technologies to implement chapter 18 of Agenda 21; (d) Intensify water pollution prevention to reduce health hazards and protect ecosystems by introducing technologies for affordable sanitation and industrial and domestic wastewater treatment, by mitigating the effects of groundwater contamination and by establishing, at the national level, monitoring systems and effective legal frameworks; (e) Adopt prevention and protection measures to promote sustainable water use and to address water shortages.”

66 (a) “Provide access to potable domestic water...at the household level through initiatives to encourage public and private investment in water supply and sanitation that give priority to the needs of the poor within stable and transparent national regulatory frameworks provided by Governments, while respecting local conditions involving all concerned stakeholders and monitoring the performance and improving the accountability of public institutions and private companies; and develop critical water supply, reticulation and treatment infrastructure, and build capacity to maintain and manage systems to deliver water and sanitation services in both rural and urban areas...”

Committee on Economic, Social and Cultural Rights (CESCR) General Comment No. 15, “The right to water” (2002)

2. “The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. An adequate amount of safe water is necessary to prevent death from dehydration, reduce the risk of water-related disease and provide for consumption, cooking, personal and domestic hygienic requirements.”

United Nations Millennium Declaration (2000)

23. “We resolve therefore to adopt in all our environmental actions a new ethic of conservation and stewardship and, as first steps, we resolve...To stop the unsustainable exploitation of water resources by developing water management strategies at the regional, national and local levels, which promote both equitable access and adequate supplies.”

Millennium Declaration Goal 7, Target 10: [To] Halve by 2015 the proportion of people without sustainable access to safe drinking water and basic sanitation

“Clean water contributes to better health...Connecting all households to a reliable source of water that is reasonably protected from contamination would be an important step toward improving health and reducing the time spent collecting water.”

Committee on Economic, Social and Cultural Rights (CESCR) General Comment No. 14, “The right to the highest attainable standard of health” (2000)

12 (a) “Availability. Functioning public health and health-care facilities, goods and services, as well as programmes, have to be available in sufficient quantity within the State party...They will include, however, the underlying determinants of health, such as safe and potable drinking water and adequate sanitation facilities... **(b)** Physical accessibility...implies that medical services and underlying determinants of health, such as safe and potable water and adequate sanitation facilities, are within safe physical reach, including in rural areas...”

43. “In General Comment No. 3, the Committee confirms that States parties have a core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights enunciated in the Covenant...Accordingly, in the Committee's view, these core obligations include...to ensure access to basic shelter, housing and sanitation, and an adequate supply of safe and potable water.”

Sub-Commission on the Promotion and Protection of Human Rights 1998/7, “Promotion of the realization of the right to drinking water supply and sanitation services”

“Reaffirming the fundamental principles of equality, human dignity and social justice, and the right to drinking water supply and sanitation for every woman, man and child...Convinced of the urgent and persistent necessity of increased attention and commitment by all decision makers to the right to drinking water supply and sanitation.”

Habitat Agenda, adopted by the second United Nations Conference on Human Settlements (Habitat II) (1996)

Article 67(d) & (e) “To integrate shelter policies with macroeconomic, social, demographic, environmental and cultural policies, Governments, as appropriate, should...apply public policies, including expenditure, taxation, monetary and planning policies, to stimulate sustainable shelter markets and land development; Integrate land and shelter policies with policies for...providing clean water-supply and sanitation facilities...”

Social Summit Declaration and Programme of Action (1995)

Article 36.I. “Governments should implement the commitments that have been made to meet the basic needs of all, with assistance from the international community consistent with chapter V of the present Programme of Action, including, inter alia, the following: providing, on a sustainable basis, access to safe drinking water in sufficient quantities, and proper sanitation for all.”

Vienna Declaration and Programme of Action (1993)

47. “The World Conference on Human Rights urges all nations to undertake measures to the maximum extent of their available resources, with the support of international cooperation, to achieve the goals in the World Summit Plan of Action...By means of these national action plans and through international efforts, particular priority should be placed on reducing infant and maternal mortality rates, reducing malnutrition and illiteracy rates and providing access to safe drinking water and to basic education.”

✓ Popular sources

Natural Resources and Environment

WCaR NGO Forum Declaration (2001)

367. *“Recommend that States eliminate laws and policies that deny or limit Indigenous land and resource rights, including rights to subsoil resources, and affirmatively recognize Indigenous Peoples as the rightful owners and managers of their lands and resources. States must take immediate and effective measures to end the devastation and contamination of Indigenous waters, lands, territories and natural resources and the dispossession and denial of access to these waters, lands, territories and natural resources.”*

Zimbabwe Human Rights NGO Forum (2001)

(Core member organisations of the Human Forum are: The Amani Trust, The Catholic Commission for Justice and Peace, The Legal Resources Foundation, Transparency International (Zimbabwe), The University of Zimbabwe Legal Aid and Advice Scheme, Zimbabwe Association for Crime Prevention and the Rehabilitation of the Offender, Zimbabwe Human Rights Association, Zimbabwe Lawyers for Human Rights, and Zimbabwe Women Lawyers Association. Associate members are: GALZ and ZIMCET.)

“A clean and healthy environment, protection and equality of access to natural resources for women and men are fundamental elements in women’s enjoyment of property and resource rights.”

Land

Charter of the Inhabitants Organizations (2001)

Proposal submitted to the World Assembly of Citizens Alliance for a Responsible, Plural and United World

5. *“Demand that governments conceive of and guarantee housing as a human and social right and not a market good. Housing policies must guarantee the full implementation of this right, through access to land and the formal regularization of land and settlements, design and approval of nonexclusive housing legislation, and access to economic resources and appropriate tools (policies and norms) for social production of housing.”*

WCaR NGO Forum Declaration (2001)

367. *“Recommend that States eliminate laws and policies that deny or limit Indigenous land and resource rights, including rights to subsoil resources, and affirmatively recognize Indigenous Peoples as the rightful owners and managers of their lands and resources. States must take immediate and effective measures to end the devastation and contamination of Indigenous waters, lands, territories and natural resources and the dispossession and denial of access to these waters, lands, territories and natural resources.”*

African Charter of Partnership between Inhabitants and Local Collectivities (2000)

“After having exchanged our experiences between inhabitants of West, East, and Southern Africa, we take note of the diversity and the intelligence of the initiatives undertaken by the people to address their needs: access to land, the right to shelter, provision of basic services, a clean environment...These remain the core essential for a good life, of which many communities throughout Africa provide themselves. These initiatives need the support

recognition and institutionalisation of local authorities. Where local authorities do provide these services, partnership with community groups may ensure maintenance and sustainability of the services provided.”

Bangkok NGO Declaration on Human Rights (1995)

3. “To provide women a life with dignity and self-determination, it is important that women have inalienable, equal economic rights (e.g. right to agricultural land, housing and other resources, and property). It is imperative for governments and the United Nations (UN) to guarantee these rights.

5. “Maldevelopment leads to increasing poverty, income disparities, discussion and deprivation, including land and resource holdings, environmental degradation, and over-emphasis on macro-economic development without sufficient enhancement of human development, freedom and dignity, including dignity of men and women.

12. ... In many parts of the region, [indigenous people’s] right to land and other rights are not respected. Among the consequences are the expropriation and despoliation of their lands, armed conflicts and displacement as refugees. This has been accompanied by persecution and suppression by force. On another front, tourism has at times led to the degradation of indigenous lifestyles through commercial exploitation.

Draft Declaration on the Rights of Indigenous Peoples

Article 2. “Indigenous peoples have the right to own, develop, control and use the lands and territories, including the total environment of the lands, air, waters, coastal seas, sea-ice, flora and fauna and other resources which they have traditionally owned or otherwise occupied or used. This includes the right to the full recognition of their laws, traditions and customs, land-tenure systems and institutions for the development and management of resources, and the right to effective measures by States to prevent any interference with, alienation of or encroachment upon these rights.”

Water

WCaR NGO Forum Declaration (2001)

367.”Recommend that States eliminate laws and policies that deny or limit Indigenous land and resource rights, including rights to subsoil resources, and affirmatively recognize Indigenous Peoples as the rightful owners and managers of their lands and resources. States must take immediate and effective measures to end the devastation and contamination of Indigenous waters, lands, territories and natural resources and the dispossession and denial of access to these waters, lands, territories and natural resources.”

374. “Demands that States take immediate and effective measures to end the devastation and contamination of Indigenous waters, lands, territories and natural resources and the dispossession and denial of access to these waters, lands, territories and natural resources. Environmental racism specifically affects Indigenous Peoples’ traditional means of subsistence, their cultural and spiritual practices, and their sacred and historical sites.”

3.3. Over-riding principles

Principles found in the initial Articles common to all the major international human rights treaties affirm standards of justice arising from the major legal systems of the world. These include principles of immediate application, such as the inalienable rights to self-determination; non-discrimination, in general; gender equality; and the rule of law, including

access to justice and domestic application of the human rights contained in each treaty, particularly by adopting legislative measures.

In the case of economic, social and cultural rights, the International Covenant on Economic, Social and Cultural Rights (ICESCR) is the principle source of these rights in treaty form. The Covenant also clarifies that the State party's treaty obligation entails ensuring the "progressive realisation" of the rights "to the maximum of its available resources" (Article 2.1), including the human right to adequate housing (Article 11). Therefore, a process of realising the rights should not regress, but should ensure "the continuous improvement of living conditions" (Article 11).

The ICESCR's Article 2.1 also requires States to undertake steps, individually and through international assistance and cooperation, especially economic and technical, progressively to achieve the full realization of the covenanted rights by all appropriate means. Thus, States party to the Covenant bear an obligation to apply these principles extraterritorially and in their international relations. Therefore, "international cooperation" forms an important practical aspect of ESC rights application and, therefore, one of the principles over-riding States' duties to implement human rights.

Comprehensive monitoring of the human right to adequate housing requires assessing each entitlement (element) in light of the rights and corresponding obligations arising from these over-riding legal principles:

- **Self-determination**
- **Nondiscrimination**
- **Gender equality**
- **Rule of law**
- **Progressive realization (nonregressivity/nonretrogression)**
- **International cooperation**

The normative approach provided in the international human rights system prevails upon the monitor to pose a number of relevant questions related to implementation not only of the specific content of the particular right, but also these over-riding principles common to the principal human rights treaties and applicable to all rights. This section will guide the monitor in applying these six over-riding principles in the respect, defense, promotion and fulfilment of the human right to adequate housing and land.

✓ **Self-determination**

General description

The principle of equal rights and self-determination of peoples is considered to have been a general principle of international law arising from common State practice already at the founding of the League of Nations. However, self-determination was first codified in the Charter of the United Nations in 1945, which sets forth the purposes of the United Nations as:

2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace...²²¹

²²¹ Charter of the United Nations, 26 June 1945, Article 1(2).

The Charter's Article 55 stipulates further:

With a view to the creation of conditions of stability and well-being, which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

- a. higher standards of living, full employment, and conditions of economic and social progress and development;²²²
- b. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and
- c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

Every State has the duty, therefore, through unilateral, bilateral and multilateral action to promote universal respect for, and observance of human rights and fundamental freedoms in accordance with the Charter. Its Article 2.2 clarifies the universal duty of State membership such that:

All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with the present Charter.

The principle of self-determination has been progressively reaffirmed and legally defined throughout the UN system since its founding.²²³ The material significance of self-determination is further elaborated in the Covenants on human rights adopted in 1966.²²⁴ The common Article 1(2) of both the ICCPR and ICESCR sets forth that:

All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

How concerned persons/communities exercise an effective role in determining the terms by which they realize the human right to adequate housing is also a subject of the inalienable right of self-determination. Self-determination is the right of peoples, not of States. It is the State, however, that is the legal personality obliged to ensure the protection, defense, promotion and fulfillment of self-determination as a duty under international public law, as well as the essential legitimizing factor of the State itself.²²⁵

The concept of, and right to self-determination manifest in a spectrum of types and expressions of effective local control over developments and relations within a community

²²² Ibid., Chapter IX, "International Economic and Social Co-operation," Article 55.

²²³ For example, see Declaration on the Granting of Independence to Colonial Countries and Peoples (1960), preamble and Article 7; "Permanent sovereignty over natural resources," General Assembly resolution 1803 (XVII) (1962), preamble and paras. 1–2, 5–7; International Convention on the Elimination of All Forms of Racism and Racial Discrimination (1965), Articles 1 and 5; Declaration on Social Progress and Development (1969), Articles 2, 3 and Part II; Declaration on Principles of International Law (1970), preamble and, esp., "The principle of equal rights and self-determination of peoples"; ECOSOC Declaration on Race and Racial Prejudice (1978), Articles 1, 3, 5 and 9 Declaration on the Right to Development (1986) preamble and Article 1, 6 and 8.

²²⁴ International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI), 16 December 1966 (entered into force 3 January 1976 in accordance with Article 27); Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI), 16 December 1966 (entered into force 23 March 1966 1976 in accordance with Article 49).

²²⁵ Consistent with the principle of the Universal Declaration of Human Rights, Article 21, which states that "the will of the people shall be the basis of the authority of government."

and territory may involve either external or internal self-determination; that is, national independence as in the formal distinction of a self-determination unit with its own internationally recognized borders, a self-determination unit within the internationally recognized borders of a unitary State, or a community's²²⁶ effective control over developments and relations affecting it as an independent State.²²⁷

In its General Comment No. 12 on “the right of self-determination of peoples” (1984), The UN Human Rights Committee (HRC) gave its guidance on the corresponding obligations of States, with the following:

1. In accordance with the purposes and principles of the Charter of the United Nations, Article 1 of the International Covenant on Civil and Political Rights recognizes that all peoples have the right of self-determination. The right of self-determination is of particular importance because its realization is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights. It is for that reason that States set forth the right of self-determination in a provision of positive law in both Covenants and placed this provision as Article 1 apart from and before all of the other rights in the two Covenants.

2. Article 1 [of ICCPR] enshrines an inalienable right of all peoples as described in its paragraphs 1 and 2. By virtue of that right they freely "determine their political status and freely pursue their economic, social and cultural development". The Article imposes on all States parties corresponding obligations. This right and the corresponding obligations concerning its implementation are interrelated with other provisions of the Covenant and rules of international law.

3. Although the reporting obligations of all States parties include Article 1, only some reports give detailed explanations regarding each of its paragraphs. The Committee has noted that many of them completely ignore Article 1, provide inadequate information in regard to it or confine themselves to a reference to election laws. The Committee considers it highly desirable that States parties' reports should contain information on each paragraph of Article 1.

4. With regard to paragraph 1 of Article 1, States parties should describe the constitutional and political processes which in practice allow the exercise of this right.

5. Paragraph 2 affirms a particular aspect of the economic content of the right of self-determination, namely the right of peoples, for their own ends, freely to "dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence." This right entails corresponding duties for all States and the international community. States should indicate any factors or difficulties which prevent the free disposal of their natural wealth and resources contrary to

²²⁶ While a standard legal definition of nation and people remains a subject of debate, the International Court of Justice has offered criteria for a community, having distinct rights as “a group of persons living in a given country or locality, having a race, religion, language and traditions of their own and united by the identity of race, religion, language and traditions in a sentiment of solidarity, with a view to preserving their traditions, maintaining their form of worship, insuring the instruction and upbringing of their children in accordance with the spirit and traditions of their race and rendering mutual assistance to each other,” Permanent Court of International Justice, *The Greco-Bulgarian “Communities”* Advisory Opinion No. 17, 13 July 1939 (Leyden: Sijthoff, 1930), 21.

²²⁷ For a comprehensive consideration of the human right of self-determination and its applications, see Hurst Hannum, *Autonomy, Sovereignty, and Self-Determination: The Accommodation of Conflicting Rights* (Philadelphia: University of Pennsylvania Press, 1996).

the provisions of this paragraph and to what extent that affects the enjoyment of other rights set forth in the Covenant.

6. Paragraph 3, in the Committee's opinion, is particularly important in that it imposes specific obligations on States parties, not only in relation to their own peoples but *vis-à-vis* all peoples which have not been able to exercise or have been deprived of the possibility of exercising their right to self-determination. The general nature of this paragraph is confirmed by its drafting history. It stipulates that "The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations". The obligations exist irrespective of whether a people entitled to self-determination depends on a State party to the Covenant or not. It follows that all States parties to the Covenant should take positive action to facilitate realization of and respect for the right of peoples to self-determination. Such positive action must be consistent with the States' obligations under the Charter of the United Nations and under international law: in particular, States must refrain from interfering in the internal affairs of other States and thereby adversely affecting the exercise of the right to self-determination. The reports should contain information on the performance of these obligations and the measures taken to that end.

7. In connection with Article 1 of the Covenant, the Committee refers to other international instruments concerning the right of all peoples to self-determination, in particular the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, adopted by the General Assembly on 24 October 1970 (General Assembly resolution 2625 (XXV)).

8. The Committee considers that history has proved that the realization of and respect for the right of self-determination of peoples contributes to the establishment of friendly relations and cooperation between States and to strengthening international peace and understanding.

Self-determination applied to communities

The over-riding principle of self-determination in this "Toolkit" is inspired by classic (customary and treaty) law criteria, as well as popular claims to the same. In both senses, the claim is legally fixed in the common Article 1 of the human rights treaties. Using the ICESCR as a basic and integrated instrument, the "ToolKit" especially applies this over-riding principle to Article 11, which guarantees the human right to housing.

In making the case for ultimate "self-determination" at the community level, this "Toolkit" draws on a number of popular instruments (mostly written and collectively endorsed statements, but also those rooted in oral traditions) asserting the "right" of communities to determine their own destiny. "Community" also enjoys a legal definition (see below).

Self-determination becomes as vital as any other need that grounds other human rights, including those other over-riding principles of rule of law, nondiscrimination, gender equality and international cooperation consistent with all human rights. In their collective dimension, these all become community "needs" and, consequently, "rights" insofar as their absence leads to erosion and violation of a bundle of individual, stand-alone rights and can lead to the deprivation or demise of a community as such.

It should be noted that States and others have recognized the real problem of “ethnocide” and “cultural genocide” resulting from assimilation policies so as to compel the rewriting of the International Labour Organisation (ILO) Convention No. 107 on Indigenous and Tribal Populations in Independent Countries (1956), eventually to adopt the Indigenous and Tribal Peoples Convention No. 169 (1989). Relevant to the practice of self-determination is the question of land tenure, which ILO Convention No. 169 treats in Articles 13–19, while at the same time disclaiming that the term “people” in the Convention does not convey implications as a term of international law (i.e., conferring the right of self-determination).

However, it is the human consequence of the deprivation, rather than the legal “peoplehood,” that makes self-determination vital for any putative victims. Therefore, collective self-determination becomes the right of communities as necessary, even if they are not (or not yet) internationally recognized as a “people” or “nation,” the category To avoid the horrendous consequences of demise and deprivation, and to ensure survival of communities as a “right”—especially marginal and otherwise vulnerable ones such as those facing ethnic cleansing and/or elimination through military, administrative, globalization, forced eviction or development measures—local self-determination is vital, no matter what assimilationist governments individually or jointly say. In human rights, it is the human who has the first and final subject of respect, protection, promotion and fulfillment.

That having been said, and recognizing that self-determination can be either internal or external, the international public law term of art “internal self-determination unit” applies in the case of group or community, and is subject to case-by-case interpretation. This could refer to the rightful place of a minority or an indigenous people. It could conceivably apply also to a community of urban poor, particularly if their survival and/or well-being is threatened and their self-determination then becomes a need/right and requisite to the realization of other rights (life, adequate housing, culture, health, etc.).

In any case, the claimant of self-determination, whether an external or internal type, must meet the challenge and legal test of asserting that the claim at any level does not conflict with—or at least is balanced with—the rights of others. That may mean, of course, ensuring that self-determination claims do not negate general ecological values, others’ self-determination rights, the rights of women to gender equality, security of person, regional peace and security, etc.

What are the criteria for *bona fide* claimants to local self-determination in the terms of international law as developed? The criteria presented by Martinez-Cobo (*Study of Discrimination against Indigenous Peoples*, UN document E/CN.4/Sub.2/1986/7/Add.4) has grounded much of the self-determination thinking about indigenous peoplehood and the rights arising. Based on his criteria for indigenous “people,” the characteristics constituting a community with the right to claim external or internal self-determination could also be that the community (1) predate the influx of “others,” (2) possess distinct cultural attributes, (3) occupy an identifiable territory and (4) identify itself as a people/community having the right to self-determination.

Legally defining the subjects of self-determination

Definitions of “people” or “nation,” the legal self-determination rights holders, are generally unpopular with States and their sitting governments, unless the definition applies to an existing “nation-state.” Of course, very few States can claim adherence to this definition, that is, to contain a single native people or nation (except, perhaps, Portugal, excluding immigrants). The General Assembly has assumed the task of defining self-determination

(particularly in resolution 1514(XV), 14 December 1960). That has been construed typically as applying to cases of decolonization (Angola, Algeria, Namibia, Mozambique, Palestine, Puerto Rico, etc.). In its Advisory Opinion on Namibia, the International Court of Justice recognized Namibians as a “people” and “nation” in light of the value of, and for the purpose of decolonization. Despite this legal reference, the actual definition of “people” and “nation” remains under debate for political and practical reasons.

In addition to the guidance on “people,” including indigenous peoples, as explicit self-determination rights holders, we have an international law definition of what constitutes a “community.” The “community” definition does not deviate significantly from the four-part construct that Martínez-Cobo offered (above). It comes to us from the first International Court in a case sorting out criteria for transferring the ethnically Greek and Turkish communities between the Republic of Turkey and Greece after the First World War:

A group of persons living in a given country or locality having a race, religion, language and tradition of their own and united in the identity of race, religion, language and tradition in a sentiment of solidarity, with a view to preserving traditions, maintaining their form of worship, insuring the instruction and upbringing of their children in accordance with the spirit and traditions of their race and rendering mutual assistance to each other.²²⁸

Leaving aside the probability that the purpose of the Court’s opinion (population transfer) would be legally impermissible today,²²⁹ the legal definition of “community” it provided is actually less ambiguous than that of “people” or “nation.” The “people” definition remains elusive largely because some States find it a political Pandora’s box that could challenge their jurisdiction and/or effective control over territory. Until now, some governments instead persist in proffering the legally vacuous term “indigenous populations,” so that the legally more-significant term “people/s” would wane into disuse, as would also the corresponding rightful and self-preserving claims of its subjects to self-determination. However, if one is looking for a way to apply self-determination to “communities,” one has this definition of the ICJ’s predecessor as a reference.

Significant also is the fact that the Court’s definitive Advisory Opinion was intended for a narrow and specific purpose. That was not to recognize an external self-determination right, but to rationalize a population transfer scheme that today would be considered a clear violation of international public law. That is not only because of the absence of consent and the obvious human suffering population transfer causes, but also because it deviates from the most basic concept of contemporary statecraft and democratic governance, which is that the State administer—including by way of implementing the right to self-determination—for *all* of its citizens. Population transfers and external self-determination claims, therefore, serve as a seismograph of a government’s failure at effective statecraft.

This dissertation on self-determination has admittedly merged concepts and definitions of communities with peoples/nations, as the Permanent Court of International Justice effectively has done. Nonetheless, the values that sustain them are akin, and so should the safeguards that promise to prevent the worst of consequences arising from human rights violations against any identifiable group. In summary, self-determination has a local and community-based expression and basis as a right. For the purposes of advancing human rights through the “Toolkit,” both “communities” as well as “nations/peoples” hold the right

²²⁸ Permanent Court of International Justice, The Greco-Bulgarian “Communities,” Advisory Opinion No. 17, 31 July 1930 (Leyden: Sijthoff, 1930), p. 21.

²²⁹ See report of the Special Rapporteurs Aun al-Khasawneh and Ribot Hatano, “The human rights dimensions of population transfer, including the implantation of settlers and settlements,” E/CN.4/Sub.2/1993/17.

and responsibility to determine their own habitat, the essence of a people and/or community's survival and sustainability with dignity in its dwelling place.

Applied to environmental goods and services

Applied to environmental goods and services, the over-riding principle of self-determination traditionally means that every people has the inalienable right to determine the terms of accessing environmental goods and services, including water and land in its administrative and territorial unit(s). This determination must be made according to local specificity, reflecting the consent of the people subject to self-determination, but also within the obligations provided in the ICESCR and the CESCR's General Comment No. 4 (cited above). Therefore, for peoples, as such, or for other affected persons, a measure of self-determination, assured through "genuine consultation," is required to realize secure tenure, regardless of the specific conditions for enjoying the entitlement to equitable access to environmental goods and services.

✓ Nondiscrimination

General description

Like self-determination, an inalienable human right common to the major legal systems throughout the world, a fundamental requisite of justice is the absence of discrimination on any arbitrary basis. Discrimination typically results in deprivation of human needs and rights.

Given its centrality, the principle of nondiscrimination, consequently, is an over-riding human rights principle embodied in the first Articles of each major human rights treaty. Nondiscrimination, and its corresponding State obligation to ensure nondiscrimination, are enshrined in the preamble of all international declarations and resolutions concerned with human rights matters, governance and the relations between and among States, nations and peoples.

Common to Article 2 in both the Covenants, nondiscrimination stands out as an over-riding principle with *immediate* application to all the rights contained in those instruments.²³⁰ The Covenants prohibit arbitrary preferential or punitive treatment and oblige States parties to undertake steps to ensure that rights be exercised without distinction or discrimination "of any kind [as to] race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."²³¹

The International Convention on the Elimination of All Forms of Racial Discrimination (1965) defines discrimination as:

any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.²³²

²³⁰ For further guidance on the legal obligations to immediate implementation of the nondiscrimination principle applied to housing rights, see the report of the Special Rapporteur on Adequate Housing E/CN.4/2002/59.

²³¹ ICESCR, Article 2.2; ICCPR, Article 2.1.

²³² Article 1, International Convention on the Elimination of All Forms of Racial Discrimination, adopted by General Assembly resolution 2106 (XX) of 21 December 1965, entered into force, 4 January 1969.

Article 5 of that Convention actually offers the historic first codification of the human right to housing, with particular reference to the over-riding principle of nondiscrimination. It reads:

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

In the Convention and its negotiation history, an important distinction emerges: While it is the obligation of States' parties and their governments to combat both "racism" and "racial discrimination," the former is a state of mind that should be eradicated through measures including education and other efforts to bring about a cultural and social transformation toward antidiscrimination. The latter, "racial discrimination" is the actual activation of prejudice which, in its manifestation, is a material violation of the rights of others. Any official action or omission of practicing or condoning racial discrimination is a violation of an *immediate* obligation of the State, not subject to "progressive realization."

This distinction between (1) theoretical racism and (2) racial discrimination in practice has historic roots. It is found also in moral systems, as reflected in the Holy Qur'an, which recognizes the existence of prejudice, but, nevertheless, entreats against putting that into practice:

O you who believe, be upright for God, bearers of witness with justice; and let not hatred of a people incite you not to act equitably. Be just, [for] that is nearer to the observance of duty [the nearest thing to piety].²³³

This moral distinction was found relevant nearly one millennium later, during the French Revolution. Then, the revolutionary slogan and moral call to the Human Rights of Man and Citizen was "*liberté, égalité, fraternité*." While all three qualities were found desirable and necessary to build a new, democratic society, only liberty and equality could actually be legislated. Fraternity (or sorority) could be developed and encouraged by the State and civil society much more likely than it could be enforced. Nonetheless, a range of practical measures can be undertaken to nondiscrimination in actual practice.

Inherent in the principle of nondiscrimination is the understanding that programs formally providing advantages to persons and groups historically subject to discrimination are not considered to constitute unlawful discrimination. On the contrary, international public law calls upon States to provide additional assistance to those persons and groups subject to past and/or present discrimination, as in corrective/positive discrimination or affirmative action programs that redress foregoing patterns of deprivation.²³⁴

Applied to environmental goods and services

Applied to environmental goods and services, the nondiscrimination principle ensures that individuals and groups are not deprived of opportunities to access environmental goods and services, including legal enforcement, protection and remedy, nor denied this entitlement on the basis of race, color, creed, gender, sex, sexual orientation, political opinion, social or

²³³ Chapter 5: The Food [al-Ma'da], Section 2: "Duty of Uprightness," verse 8. Maulana Muhammad Ali, transl. The Holy Qur'an (Lahore: Ahmadiyya Anjuman Isha'at Islam, 1963), p. 243.

²³⁴ See Marjorie Cohn, "Affirmative Action and the Equality Principle in Human Rights Treaties: United States' Violation of Its International Obligations," Virginia Journal of International Law, Vol. 43 (2002), 249-74.

economic status, language, physical ability/disability, property, form of legitimate work, descent, or any other origin or arbitrary criterion. For indigenous, tribal or other land-based peoples, the State has the obligation to recognize their systems for managing their environmental goods and services in law and in administrative matters. Likewise, no State possesses the legal authority to practice or condone *de jure* or *de facto* discrimination that leads to the loss or denial of secure tenure to any member of any group, particularly to the unfair advantage of another. This applies to the practice of nepotism and other forms of corruption that allow disproportionate benefits to family members or political partisans, as well as preferences given to groups such that ignite sectarian or social conflict.

International public law calls States to provide special assistance to persons and groups who have been subject to past and/or present discrimination, as in affirmative action programs that redress foregoing patterns of deprivation.²³⁵ As enshrined in ICESCR's prohibition under Article 1.2, "in no case may a people be deprived of its own means of subsistence."

✓ Gender equality

General description

Despite the universal acceptance of the principle of gender equality in international law, many women are denied equal treatment and discriminated against in their housing on the basis of sex or gender. Approximately one-third of the world's women may be homeless, living in inadequate housing and own less than one percent of the world's property.²³⁶ The intersectionality of poverty or other factors (i.e., class, indigenous, refugee, migration, caste, sexual orientation, ethnic minority, age, disability, widowhood, citizenship or nationality status, etc.) further marginalize women. In the context of the increased feminization of poverty, decreased access to public services, and destruction of natural environments, all of which are accelerating with the process of globalization, women are increasingly placed in situations where they do not have adequate housing.

The denial of adequate housing for women is a violation of women's human rights. It can also result in the violation of women's other human rights such as rights to life, livelihood, adequate food, employment and political participation (e.g., voting rights). In particular, the lack of adequate housing also can make women more vulnerable to various forms of violence against women (e.g., domestic violence, trafficking, sexual and gender-based violence against migrant workers etc.).

The right to nondiscrimination in gender relations, as an over-riding principle in human rights implementation, is generally stated in UDHR, Article 2 (nondiscrimination) and throughout the Declaration in its language of human rights for "everyone" and "all are equal before the law." More specifically, gender equality has emerged as a binding, over-riding principle in the two Covenants' common Article 3:

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all... rights set forth in the present Covenant.

This principle is further elaborated in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).²³⁷ Article 13 obliges States parties to take all

²³⁵ For further guidance on the legal obligations to immediate implementation of the nondiscrimination principle applied to housing rights, see the report of the Special Rapporteur on Adequate Housing E/CN.4/2002/59.

²³⁶ COHRE Fact Sheet on Women's Right to Housing, Land and Property.

²³⁷ Adopted and opened for signature, ratification and accession by General Assembly resolution 34/180, 18 December 1979; entered into force, 3 September 1981, in accordance with Article 27(1).

appropriate measures to eliminate discrimination against women in areas of economic and social life, and to ensure women's equal right to bank loans, mortgages, and other forms of social credit. In Article 14, paragraph 2, CEDAW specifically addresses women's equal rights in human settlements as the right of women in rural areas to enjoy adequate standard of living conditions, particularly, in relation to housing sanitation, electricity and water supply, transportation, education, communications and access to credit. This extends explicitly to women's "equal treatment in land and agrarian reform as well as in land resettlement schemes." Article 15 also addresses women's equal right to conclude contracts and administer property; while Article 16, paragraph 1 (c) guarantees women's equal rights and responsibilities during marriage and its dissolution, including equal rights for both spouses in respect of ownership, acquisition, management, administration, enjoyment and disposition of property.

This legal norm is carried forward in the Beijing Platform for Action (BPFA), which calls on Governments to remove all obstacles for women in obtaining affordable housing and access to land.²³⁸ This remains standard in the subsequent multilateral agreements formulated in the Istanbul Declaration and the Habitat Agenda (1996)²³⁹ and the World Summit on Sustainable Development (WSSD) Plan of Implementation (2002).²⁴⁰

The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (1997), which were developed for understanding and determining violations of economic, social and cultural rights, affirmed that, in order to eliminate discrimination against women's rights recognized in the Covenant, the State party should face the need and legal obligation to eliminate discrimination against women that arises out of social, cultural and other structural advantages.²⁴¹

Typically, for women the home is the single most important place in the world. Beyond shelter, it is a place for the vast majority of woman to generate income, care for children, and seek respite from violence and patriarchy in the community at large. For many still, it is the only place where women can participate fully in decisions and social activities.

Applied to environmental goods and services

The intersectionality of poverty or other factors (i.e., class, indigenous, refugee, migration, caste, sexual orientation, ethnic minority, age, disability, widowhood, citizenship or nationality status, etc.) further marginalize women as beneficiaries of environmental goods and services. Similar forms of gender discrimination are also common against men and transgendered persons on the basis of their presumed sexual roles. Women historically live in the context of feminized poverty. In that context, decreased access to public services and destruction of natural environments. These trends are accelerating in the globalization process, with women are increasingly facing situations where they do not have adequate housing, including by denying environmental goods and services, or simply passing them over in the scramble for ever-scarcer resources.

Freely exercising one's own culture (cultural adequacy) is understood to mean allowing for cultural choice and expression within the human rights framework; that is, within limits

²³⁸ Para 58(m).

²³⁹ Para 40 (b), 78 (e) and (g).

²⁴⁰ Para 67 (b).

²⁴¹ Related sources of gender equality for women in human settlements can be found in CEDAW Articles 1, 2(f), 3 and 5 (a); UDHR, Articles 2, 16, 17 and 25; UDHR, Articles 5 (d) (v) and (vi), 5 (e) (iii); ICERD, Article 2, para 1, Articles 3, 9, 16, 17, Article 23, para 4, ICCPR, Article 26; ICESCR, Article 2, para 2, Article 3, and Article 11, para 1; and CRC, Article 1, 16, para 1 and Article 27.

beyond which the rights of others are adversely affected. Preserving a practice of unequal rights to access environmental goods and services, inheritance of land and other economic/social/cultural rights are not consistent with the present framework and likely would violate both the gender-equality provisions of the Covenant, as well as provisions of the Vienna Convention on the Law of Treaties (1969).²⁴²

✓ Rule of law

General description

In the over-riding principles pertaining to previously discussed forms of discrimination, human rights are, by their nature, equal, inalienable and universal. By this is meant that the criteria for applying the standards and norms are to be inconsistent in their application. One way to ensure that is through the formal and institutionalized rule of law.

As enshrined in UDHR, Article 6, “Everyone has the right to recognition everywhere as a person before the law.” This right is codified in the ICCPR (Article 16), and is supported by regional instruments affirming the same.²⁴³ The equal inalienable and universal right to a fair trial, including the presumption of innocence, is enshrined in ICCPR,²⁴⁴ as well as the regional instruments.²⁴⁵

The law-abiding State and its officers must not withhold or impede remedies, apply the law inconsistently or arbitrarily, or exercise any form of discrimination that affects the human right to adequate housing. Inhabitants who have lost or undergone damage to their housing unjustly or illegally have the right to unobstructed access to legal remedy, including compensation for victims, which the State bears the corresponding obligation to respect, defend, promote and fulfill.

States are required to maintain the rule of law in order to ensure a consistent, predictable and accessible resolution of disputes with remedy and compensation for the victims. This covers the right of equal access to public services, such as law enforcement, public defense and judicial services. The conduct of law enforcement officers, prosecutors and judges can determine whether or not the rule of law is respected or violated. Therefore, there is a tremendous need for the State to train, discipline and rehabilitate legal enforcers and practitioners. In the case of police services, the use of force is required to follow strictly the principle of presumed innocence and the criteria of necessity and proportionality in case where State force is used.²⁴⁶ Where local statutory law may be silent on housing rights safeguards, lawyers and judges bear an extra professional duty to apply the human rights norms to the extent possible.

²⁴² The Vienna Convention sets forth, in Article 27, that “[A] party may not invoke the provisions of its internal law as justification to perform a treaty,” and the customary law principle, arising from Article 8 of the Universal Declaration of Human Rights, states that “everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him [her] by the constitution or by law.”

²⁴³ African Convention on Human and Peoples’ Rights, Article 5; Inter-American Convention on Human Rights, Article 3.

²⁴⁴ Article 10 reads: “Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his[her] rights and obligations and of any criminal charge before him[her].” [Bracketed text added.] Article 14.2 sets forth that “Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to the law.”

²⁴⁵ African Charter, Article 7; Inter-American Convention, Article 8; European Convention on Human Rights, Article 6.

²⁴⁶ Code of Conduct for Law Enforcement Officials, adopted by General Assembly resolution 34/169, 17 December 1979, Article 3; Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted at the Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August–7 September 1990, preamble and Articles 1–11.

The principles of remedy and reparation have been firmly established in instruments declaratory of the human right to access to justice. Culminating the development of international law derived from the major legal systems in the world, the revised Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law (2003) outline the right and corresponding State obligations as follows:

VII. Victim's Right to Remedy

Remedies for violations of international human rights and humanitarian law include the victim's right to:

- (a) Access justice;
- (b) Reparation for harm suffered; and
- (c) Access the factual information concerning the violations.

VIII. Victims' Right to Access Justice

A victim's right of access to justice includes all available judicial, administrative and other public proceedings, mechanisms and modalities that exist under domestic laws, as well as under international law. Obligations arising under international law to secure the individual or collective right to access justice and fair and impartial proceedings should be made available under domestic laws. To that end, States should:

Make known, through public and private mechanisms, all available remedies for violations of international human rights and humanitarian law;

Take measures to minimize the inconvenience to victims, protect their privacy as appropriate, and ensure their safety from intimidation and retaliation, as well as that of their families and witnesses, before, during, and after judicial, administrative, or other proceedings that affect the interests of victims;

Facilitate assistance to victims seeking access to justice.

Make available all appropriate diplomatic and legal means to ensure that victims can exercise their rights to a remedy and reparation for violations of international human rights or humanitarian law.

In addition to individual access to justice, adequate provisions should also be made to allow groups of victims to present collective claims for reparation and to receive reparation collectively.

The right to an adequate, effective and prompt remedy against a violation of international human rights or humanitarian law includes all available international processes in which an individual may have legal standing and should be without prejudice to any other domestic remedies.²⁴⁷

The restitution of housing and property is one form of restitutive/restorative justice sought in the rule of law applied to housing rights violation victims. Efforts continue to develop these methods and disparate efforts, not least in the development of draft guidelines on restitution for refugees.²⁴⁸

Applied to environmental goods and services

²⁴⁷ As revised in accordance with UN Commission on Human Rights resolution E/CN.4/2003/34 (2003).

²⁴⁸ Progress report of the Special Rapporteur, Paulo Sérgio Pinheiro, "Housing and property restitution in the context of the return of refugees and internally displaced persons," E/CN.4/Sub.2/2004/22, 2 June 2004.

In the case of a dispute over access to environmental goods and services, the State bears an obligation to ensure that the rule of law is applied in a context of equality, inalienability and universality of rights, particularly with regard to the human right to adequate housing. In the case where the State (e.g., courts or police) assume a role in a dispute over access to environmental goods and services, the State bears the responsibility to abide by its human rights obligations and refrain from violations of the right to housing, including access to justice, such as unlawful land grabbing and forced eviction that alienates the inhabitants from access to environmental goods and services. The State is prohibited from carrying out or condoning acts of violence or other punitive measures inconsistent with the principles of (1) presumption of innocence until proven guilty and, in the use of force, (2) necessity and (3) proportionality.

The law-abiding State, its agents and offices must not withhold access to environmental goods and services arbitrarily or exercise any form of arbitrary discrimination against the inhabitants. Those who have lost their access to environmental goods and services unjustly or illegally have the right to unobstructed access to legal remedy, including compensation for victims, for which the State bears the corresponding obligation.

✓ Nonretrogression/progressive realization

General description

ICESCR's Article 2 identifies the State party's obligation to ensure the "progressive realisation" of ESC rights. That is widely interpreted to mean that the State party breaches this provision if it tolerates or causes "regressivity" in the enjoyment of the right. The relevant jurisprudence has established that, even in the case of scarce resources, the State must exert good-faith efforts, including through international cooperation, to advance—and not derogate—the enjoyment of ESC rights, including adequate housing and its constituent entitlements.

The treaty bodies have clarified further that neither political processes, domestic legislation, scarcity of resources, or agreements with other parties can be invoked to justify nonimplementation of human rights treaty obligations.²⁴⁹ For example, the binding nature of a treaty obligation is further clarified in the Vienna Convention on the Law of Treaties (1969), clarifying in its Articles 27 and 46, that invoking an internal law is not admissible as a justification for nonimplementation of a treaty obligation.²⁵⁰ To harmonize treaty obligations with local implementation, human rights obligations arising from the treaties and case law should guide policy formulation and decision-making processes in law-abiding States. Therefore, a process of realising the rights should not regress, but should ensure "the continuous improvement of living conditions" (Article 11).

This over-riding principle of "nonregressivity" has been reaffirmed in the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural

²⁴⁹ Letter of CESCR Chairperson Mme. Virginia Bonoan-Dandan to S.E. M. Yaakov Levy, Permanent Representative, Permanent Mission of Israel to the United Nations Office and Specialized Agencies at Geneva, 11 May 2001, annex to Letter by the Chairperson of the Committee on Economic, Social and Cultural Rights to the President of ECOSOC (11 May 2001).

²⁵⁰ Article 27 (Internal law and observance of treaties): "A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to Article 46." Article 46 (Provisions of internal law regarding competence to conclude treaties) states that: 1. A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance. 2. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith."

Rights (1986) and Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (1997),²⁵¹ as well as numerous cases of international jurisprudence through the monitoring functions of CESCR.

The many examples of globalization-era economic reforms demonstrate how the withdrawal of the State from its obligations to fulfill economic/social/cultural rights can lead to deprivation. The State nonetheless bears a covenanted obligation to ensure that economic policies do not make tenure more precarious and insecure, whether arising from domestic political change or pressures of an external actor, such as an international financial institution. In order to ensure “progressive realization,” therefore, it is vital to ensure that the human right to adequate housing forms a part of the overall human rights framework for development policy, especially guiding international cooperation arrangements. This civilizing process requires improved coordination among the relevant government bodies, such as ministries of Justice, Finance and Foreign Affairs. This is not only out of domestic duty toward citizens for States to ensure that development partnerships effect “progressive realization,” but also an extraterritorial obligation of the State party under ICESCR, Article 2.

The CESCR has commented also on the “core obligations” of States to implement the human right to adequate housing. It noted that, regardless of the state of development of any country, certain steps must be taken immediately, in addition to the over-riding principles of human rights law. These include abstaining from measures that would impinge upon the right, as well as to engage positively in practices to facilitate the people’s processes of groups seeking to improve their living conditions, in accordance with the specific elements outlined above.²⁵²

Applied to environmental goods and services

The State’s offices and agents, as well as its guiding policies and legislation should ensure that access to environmental goods and services becomes easier and more effective in the vicinity of the home. This means that new laws or policies, as well as trends in official behavior and practice, should improve in the direction of greater justice for all and protection for those vulnerable or victim to losing their access to such goods and services. It also means that those same parties should develop greater capacity for, and actually delivery of relief to those who have lost their access to environmental goods and services.

✓ International Cooperation

General description

States parties to both Covenants bear an obligation to implement human rights within a context of “international economic cooperation.”²⁵³ The ICESCR’s Article 2.1 requires States party to undertake steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

²⁵¹ Text available at <http://ip.aaas.org/escrdocs.nsf/>.

²⁵² “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.” General Comment No. 4, para. 10.

²⁵³ Common Article 1.2.

In the spirit of the numerous multilateral agreements on human rights and development, “progressive realization of ESC rights,” as a borderless objective, logically engages “international cooperation” duties for States to conduct themselves accordingly through their relations with other States, nations and peoples:

In fraternity and solidarity
Domestically and extraterritorially
Individually, jointly and/or collectively.

The preamble of the United Nations Charter specifies the purposes of the world organization insofar as “we the peoples of the United Nations” are determined “to promote social progress and better standards of life in larger freedom.” Article 1, para. 3 of the Charter sets out one of the UN’s purposes as “to achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.”

Linking international cooperation and self-determination as essential to the peaceful order of the United Nations, the Charter’s Article 55 reads:

With a view to the creation of conditions or stability and well-being[,] which are necessary for peace and friendly relations among nations based on respect for the principles of equal rights and self-determination of peoples, the United Nations shall promote universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

The Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations considers as essential:

the progressive development and codification of the following principles:... (d) the duty of States to cooperate with one another in accordance with the Charter;...(g) the principle that States shall fulfill in good faith the obligations assumed by them in accordance with the Charter, so as to secure their more-effective application within the international community would promote the realization of the purposes of the United Nations;...²⁵⁴

The UN States members share a duty to cooperate with one another, irrespective of their differences, to maintain international peace and security and promote international economic stability and progress, the general welfare of nations and international cooperation free from discrimination. To this noble end, the Declaration embodied by UN members commitments such that:

(c) States shall conduct their international relations in the economic, social, cultural, technical and trade fields in accordance with the principles of sovereign equality and nonintervention;

²⁵⁴ Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly in its resolution 2625 (XXV) of 24 October 1970 Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly in its resolution 2625 (XXV) of 24 October 1970

(d) States Members of the United Nations have the duty to take joint and separate action in cooperation with the United Nations in accordance with the relevant provisions of the Charter.

States should cooperate in the economic, social and cultural fields as well as in the field of science and technology and to the promotion of international cultural and educational progress. States should cooperate in the promotion of economic growth throughout the world, especially that of the developing countries.²⁵⁵

In addition to its Article 2, ICESCR also sets out to identify the UN systems itself as a vehicle for international cooperation to uphold the Covenant. The Covenant empowers ECOSOC to raise the Covenant-monitoring reports as a guide for UN technical assistance.²⁵⁶

Other instruments of international public law are dedicated to specifying norms for international cooperation agreements between and among States. Consistent with human rights norms and other *jus cogens* principles of law, the Vienna Convention, Article 53, provides clarity:

A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

States parties adhering to the international law principles of international cooperation are required to behave extraterritorially consistent with the progressive realization of economic/social/cultural rights. For our purposes, this extends especially to the human right to adequate housing and land.

As a donor country, a State must ensure that the projects and programs it supports do not erode any of the entitlements contained in their right to adequate housing for inhabitants in beneficiary countries. That includes avoiding any action that leads to forced evictions, confiscation or demolition of housing. In the case of development assistance resulting in dislocation of inhabitants, all aspects of the undertaking are to be the subject of consultation with the affected persons, and the efforts should enhance legal security of tenure as a result within the covenanted human rights framework.

As a recipient country, structural adjustment, deregulated foreign investment, privatization and related measures typified by today's bilateral and multilateral arrangements assistance agreements and programs must be compatible with the human rights obligations of the affected State. Measures that deny or reduce tenure security would be illegal and unaccepted as a condition of the assistance. States parties to the human rights instruments have a self-preserving opportunity and responsibility to uphold their prior treaty obligations as a form of (moral, legal and practical) resistance to negotiation pressures or conditionalities that may derogate the terms of legal security of tenure for inhabitants.

²⁵⁵ Ibid.

²⁵⁶ Article 22 reads: "The Economic and Social Council may bring to the attention of other organs of the United Nations, their subsidiary organs and specialized agencies concerned with furnishing technical assistance any matters arising out of the reports referred to in this part of the present Covenant which [sic] may assist such bodies in deciding, each within its field of competence, on the advisability of international measures likely to contribute to the effective progressive implementation of the present Covenant."

As all human rights implementation ultimately is a local matter, regional instruments can be a source a greater specificity in determining of State obligations and practical measures needed to uphold economic, social and cultural rights. For example, the African Charter on Human and Peoples' Rights (1981) provides a broad agreement on the term of international cooperation in its Article 21: 1, which establishes that:

All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it. 2. In case of spoliation, the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation. 3. The free disposal of wealth and natural resources shall be exercised without prejudice to *the obligation of promoting international economic cooperation based on mutual respect, equitable exchange and the principles of international law*. 4. State Parties to the present Charter shall individually and collectively exercise the right to free disposal of their wealth and natural resources with a view to strengthening African Unity and solidarity. 5. *State Parties to the present Charter shall undertake to eliminate all forms of foreign exploitation particularly that practised by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources.* [Emphasis added.]

States Parties are required to review multilateral agreements on investment, trade-related intellectual property arrangements, poverty-reduction strategy papers (PRSPs), bilateral and multilateral relations in the World Trade Organization context, World Bank lending and assistance terms, and the International Monetary Fund programs operating in, or otherwise affecting the State, in order to ensure consistency with covenanted obligations and avoid either retrogressivity or violations of its citizens' ESC rights. The State party is obliged to apply the Covenant *a priori* to ensure that any such conditionality would be subject to the ESC rights safeguards for its own inhabitants, and for those of another State party.

Privatization programs may lead to deprivation of the housing rights entitlement to tenure security. In the event of workers living in administrative housing who become laid off as part of a privatization or State-enterprise sell-off arrangement may lose their tenure altogether. Even in cases where local legislation is silent, international treaty obligations remain for the State party to defend the workers' human right to adequate housing by legal and enforceable protection for their secure tenure and all other housing rights entitlements.

As an extreme example of international cooperation conducted in explicit violation of ESC rights applying to adequate housing and secure tenure would be a scenario wherein a State engaged in, or condoning third parties to engage in acts or omissions that would contribute to population transfer or any of its related international crimes, such as mass deportations, ethnic cleansing, destruction of civilian or private property, implantation of settlers and settler colonies, or other forms of demographic manipulation of an internal or external self-determination unit. Duty prohibits States party from allowing public or private resources to accrue to settler colonies in an occupied territory, for example, or engage in any other acts or omissions that would facilitate another State party's violations of the Covenant or Convention in this way. There are numerous examples today in countries where these forms of violation continues unaddressed with the accomplice and collaboration of other States. Impunity still characterizes the conduct of many of these crimes, as the perpetrators have not yet been prosecuted at any level, including at the International Criminal Court.

A State's participation in international economic sanctions or blockades that lead to violations of the ESC rights of persons other than the State Party's own residents, citizens

and nationals may lead to conditions that undermine housing rights. CESCR has provided guidance to States parties of the Covenant on ESCRs affected by sanctions regimes and subject to protection measures to avoid regressivity and violation.²⁵⁷

Direct provision, or participation in multilateral programs of development and financial assistance actually may lead to violations of rights embodied in the Covenant (e.g., stagnation, deterioration or denial of work, education, health or housing rights, forced eviction, etc.) and constitute a breach of treaty obligations. Specifically, ICESCR and its enshrined rights should guide and govern a State's policies and conduct in any multilateral institution that imposes economic conditionalities on other States or their agents that bring about a negative consequences effect inhabitants housing rights conditions. The legacy of development banks' support for forced evictions of all possible scales and levels of deprivation has become notorious, and States that promote, finance or engage directly or indirectly in making decisions or executing these policies may be in breach of their human rights treaty obligations.

Applied to environmental goods and services

International development cooperation should result in improved protection for inhabitants' access to environmental goods and services, whether that be in the enhancement of administrative capacity, governance, service provision or technical cooperation of a material nature. Any cross-border cooperation or investment in human settlements and/or in other sector should not affect negatively the persons'/community's access to environmental goods and services.

✓ Other principles of application

The principles discussed above are those explicitly stated in the major international human rights treaties. At the same time, we can consider additional principles and concepts that also guide the application of the human right to adequate housing. These arise from the international jurisprudence of individual State party reviews by the treaty-monitoring bodies, as well as from their General Comments and General Recommendations. They also come to us from popular claims of people's movements, from the political resolutions of the multilateral organizations, from expert opinions found in the legal literature, and from the evolving experience at implementing human rights. Three such principles of application for us to consider are known as the "indivisibility of rights," "minimum core obligations" and "universality."

Indivisibility

The concept of all human rights as indivisible is as practical as it is theoretical. It arises from the realization that, when we unpack the contents of a right, we encounter aspects of the other rights as well.

Take, for example, the "habitability" entitlement contained in the human right to adequate housing. The deterioration of the structural features of the home leaving the inhabitants exposed to the elements, or pollution in the immediate vicinity of the housing surely effect the enjoyment of the human right to "a standard of living adequate for the health and well-being of himself and of his family," as recognized in Article 25 of the 1948 Universal Declaration of Human Rights (UDHR), and codified as the "the right of everyone to the

²⁵⁷ See CESCR General Comment No. 8, "the relationship between economic sanctions and respect for ESC rights."

enjoyment of the highest attainable standard of physical and mental health” in Article 12 of the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR).

Likewise, homelessness is a status synonymous with the denial of voting rights in most States, where registration and voting require a *domicile fixe*. Thus, the human right to adequate housing is linked with everyone’s “right to take part in the government of his [sic] country, directly or through freely chosen representatives,” as promised in UDHR (Article 21), and codified in the Covenant on Civil and Political Rights (ICCPR), in 1966, as everyone’s “right to take part in public life, directly or through freely chosen representatives” (Article 25). Incorporating the experience of HIC members and others around the globe, it has become clear that our monitoring methodology calls our attention also to the “congruent” human right to participation and self-expression among the constituent entitlements of the human right to adequate housing.

Sorting, categorizing and distinguishing subjects of any kind can be a useful exercise that makes manageable order out of complexity and facilitates understanding. Human rights are no exception. However, in practice, we find that human rights are interdependent, and categorical separation can become artificial and actually impede understanding. One example is in the division of human rights found in the UDHR into the two, separate Covenants. The reason for adopting two basic Covenants, instead of one, is largely attributed to the divergent Cold War ideologies that dominated the General Assembly when it adopted the Covenants in 1966. Ideology is also the reason that one of the largest and wealthiest industrialized States has failed to ratify the ICESCR until today, and ideology also prevailed to exclude a “human right to own property” from that Covenant, although that right is included in the UDHR (Article 17). Despite the false impression left by the Covenants dividing human rights into two instruments camps, the ICCPR’s nonetheless recognizes, in its preamble, that:

... in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights.

Without appreciating the over-riding principle of indivisibility, other distortions can arise. With civil and political rights traditionally gaining from more attention and specificity than economic/social/cultural rights (consistent with some Western Bloc preferences), some authors have proposed that we consider “generations” of rights.^{258[1]} Presenting distinct rights

^{258[1]} French jurist Karel Vasak is attributed with first proposing the division of human rights into three generations, while at the International Institute of Human Rights (Strasbourg), in 1979. His division adapted the French Revolution’s slogan of *Liberté, Égalité, Fraternité* as ordinal categories. The three generations are subsequently reflected in some of the rubrics of the European Charter of Fundamental Rights.

First-generation human rights deal essentially with liberty. In Vasak’s view, these are seen as fundamentally civil and political in nature and serve to protect the individual from excesses of the State. First-generation rights include, *inter alia*, freedom of speech, the right to a fair trial, and freedom of religion, as enshrined in Articles 3–21 of UDHR and ICCPR.

Second-generation human rights would be those related to equality, and are supposedly the social, economic, and cultural rights. This theory sees these essentially as positive rights; that is, actions that the State is required to provide to the people under its jurisdiction, as opposed to actions from which the State should refrain—e.g., forced eviction—in order to realize rights.

Third-generation human rights correspond with fraternity, or involving “solidarity.” They include group and collective rights, such as self-determination, economic and social development, sovereignty over natural resources, and the right to participate in the common heritage of mankind. Treated as third generation, the generational theory of rights presumes that these rights are not yet binding and dubiously judicial.

In an alternative explanation for the three-generational approach rests on the political divisions of the Cold War, where the West promoted allegedly first-generation (civil and political) rights, and the East promoted second-generation (economic, social and cultural) rights. The Third World (i.e., third priority in the putative hierarchy) promoted (third-

in such a priority order perpetuates the historic neglect of economic/social/cultural rights and promotes a logic that may culminate in violations. Nominating civil and political rights in a hierarchical order as “first generation” rights classifies economic/social/cultural rights as secondary: the “second generation” of rights. Group rights, as distinct from individual rights, environmental rights and, in certain cases, self-determination thus become degraded as “third generation.” This view is kept alive by a simple misunderstanding of “progressive” realization, required in ICESCR, such that slow realization of economic/social/cultural rights is acceptable and that all aspects of economic/social/cultural rights, as such, are subject to gradual implementation. The indivisibility of human rights belies such gradualist or generational notions. Therefore, this toolkit cannot accommodate the divisive, generational approach to human rights not for ideological reasons, but for the fact that theories neatly segregating rights are not sustained in practice.

It is with this recognition of the indivisibility of rights that CESCR commented:

...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....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.^{259[2]}

Core obligations

Alone, the very general reference to the human rights in treaty texts does not provide the specific guidance needed for States parties around the world to know their precise obligations. ICESCR’s English-language version requires States to “take steps.” The French texts calls on States “to act” (*s’engage à agir*) and, in Spanish, the Covenant requires States “to adopt measures” (*a adoptar medidas*), but offers little about what those steps/actions/measures should be, except to say that these should be “appropriate,” “progressive” (nonregressive/ nonretrogressive), nondiscriminatory (nondiscrimination), involve international cooperation and include legislative measures (rule of law). Therefore, the treaty-monitoring bodies bear the task of issuing General Comments and General Recommendations to supply the needed specificity, based on international public law and the implementation experience of all States parties.

In its General Comment No. 3: “The nature of States parties’ obligations,”^{260[3]} CESCR addressed the principle of “minimum core obligations”:

...a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party. Thus, for example, a State party in which any significant number of individuals is deprived of ...basic shelter and housing...is, *prima facie*, failing to discharge its obligations under the Covenant. If the Covenant were to be read in

generation), solidarity rights, as in the decolonization struggles of the 1970s, including decolonization processes delayed until today.

^{259[2]} General Comment No. 4: “the right to adequate housing” (1991), para. 9.

^{260[3]} Adopted by the CESCR in its fifth session (1990), E/1991/23.

such a way as not to establish such a minimum core obligation, it would be largely deprived of its *raison d'être*.^{261[4]}

The General Comment, like the Covenant, takes into consideration material limits of States. However, the Covenant's Article 2 (1) obligates each State party to take the necessary steps "to the maximum of its available resources," and the treaty body has determined that the nature of treaty obligations are such that a State bears a heavy burden of proof to demonstrate that "every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations."^{262[5]}

The "minimum core obligations" also include those appropriate steps to respect, defend, promote and fulfill the human right to adequate housing, like other economic/social/cultural rights, as a matter of immediate application. Among the appropriate measures, in addition to harmonizing domestic legislation with the covenanted rights, is to provide judicial remedies to victims within the national legal system. That would be among the most effective measures to ensure compliance with obligations to implement certain aspects of economic/social/cultural rights *immediately*, such as by ensuring nondiscrimination. The Committee has determined that it is "difficult to sustain" any suggestion that these immediate obligations are inherently non-self-executing. This legal authority is consistent also with the terms of the Vienna Convention on the Law of Treaties (1969), which provides that "A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty."^{263[6]} The treaty bodies have clarified further that neither political processes, domestic legislation, scarcity of resources, nor agreements with other parties could be invoked to justify nonimplementation of human rights treaty obligations.^{264[7]}

Nondiscrimination is perhaps the most obvious and urgent of the immediate principles in implementing the human right to adequate housing. CESCR has provided specific guidance such that, among other things, "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."^{265[8]}

The measures needed for States parties to comply with obligations of immediate application include negative obligations. That is, many of the measures to realize the human right to adequate housing would require little more than the State and its agents to refrain from certain harmful practices, such as arbitrary house demolitions and forced eviction, or a meaningful commitment to enabling "self-help" or "social production of habitat" by affected

^{261[4]} *Ibid.*, para. 10.

^{262[5]} *Ibid.*

^{263[6]} Vienna Convention on the Law of Treaties, signed at Vienna, 23 May 1969; entered into force, 27 January 1980, Article 27: "Internal law and observance of treaties." The Article also goes on to state that "this rule is without prejudice to Article 46." Article 46: "Provisions of internal law regarding competence to conclude treaties" states that "1. A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance. 2. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith."

^{264[7]} Letter of CESCR Chairperson Mme. Virginia Bonoan-Dandan to S.E. M. Yaakov Levy, Permanent Representative, Permanent Mission of Israel to the United Nations Office and Specialized Agencies at Geneva, 11 May 2001, annex to Letter by the Chairperson of the Committee on Economic, Social and Cultural Rights to the President of ECOSOC (11 May 2001).

^{265[8]} General Comment No. 3: "The nature of States parties' obligations,"^{265[8]} CESCR addressed the principle of "minimum core obligations," adopted by the CESCR in its fifth session (1990), E/1991/23, para. 11.

^{265[9]} The Vienna Convention sets forth, in Article 27, that "[A] party may not invoke the provisions of its internal law as justification to perform a treaty," and the customary law principle, arising from Article 8 of the Universal Declaration of Human Rights, states that "everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him [her] by the constitution or by law."

groups. Such changes in State behavior would not require significant expenditure of public resources.

Universality

The principle of human rights' "universality" is simply expressed in the UDHR's recognition that "All human beings are born free and equal in dignity and rights" (Article 1). Everyone, without exception, is entitled to human rights by virtue of belonging to the human family. From a moral point of view, the universality of human rights is an essential principle if the human civilization is to advance for the better. In international law, the text of ICESCR also speaks consistently of right of "everyone," which obliges States not to discriminate in adherence to minimum core obligations. In the field of housing, in particular, States are not permitted to interpret its minimum core obligations to apply selectively, that is, only to citizens, or only certain citizens, but also to ensure the human right to adequate housing is realized also for "everyone," including residents, immigrants and migrant workers, etc. The only conditionality permitted in law is that the subjects of human rights qualify as members of the human family.

Before the Universal Declaration, the social movements, revolutions, antislavery struggles and intellectual contributions of the past have served as vehicles for the promotion of human rights that eventually have been incorporated into local and international law and practice. However, many of these famous accomplishments were limited in their substance or application, geographically or socially, or were subject to reversal. Social science and philosophy have contributed greatly to the recognition of human rights, but have not carried the force of law. The recognition of the universality of human rights overcomes the shortcomings left by these otherwise-significant accomplishments:

Limits in scope of application:

- The rights and ethics delivered through the worlds moral systems, especially those found in the religions, also are limited in scope by the fact that they apply to adherents to a particular faith group, not applying universally;
- The Magna Carta of 1215 imposed limits on royal impunity that equate as new rights for citizens, especially property-owning citizens. However, this historical achievement had only local application in the geographical realm of the English king.

Exclusion of social sectors and substantive rights:

- The "American Revolution," in the English colonies that eventually became the original United States of America, realized the right to self-determination as a legal right and *raison d'état*. However, the right to self-determination, as inalienable as it is, applied in the American Revolution case as a right limited only to the white colonizers who identified themselves as a distinct people. The remaining indigenous peoples—whom the settlers mostly largely and replaced—have yet to achieve their self-determination to this day;
- The French Revolution, for all its achievements, realized rights for individuals. French farmers and workers sought recognition of their group rights in the context of the revolution; however, its leadership rejected those expansive notions of rights and insisted on *liberté, égalité and fraternité* with an individual focus;

- The results of the Bolshevik Revolution institutionalized recognition of group rights for workers, etc.; however, rejected a right to property ownership. However ethically grounded the rationale for that omission, the denial of property rights also has emerged as a common tool for depriving persons, communities and entire peoples of their means of subsistence, thereby demonstrating, by its violations, the importance of that neglected human right.

Retrogression:

- The antislavery movement in Haiti at the end of the 18th Century resulted in a democratic regime and Constitution under the leadership of former slave and eventual General Toussaint Louverture. However, the same France that produced the world-changing Revolution only 12 years before saw the French General Napoleon I crush the new democracy in 1801 for reasons of imperial interest, reversing the accomplishments of Haitian antislavery democracy, with consequences extending to this day.

Despite their shortcomings, these episodes in the gradual achievement of rights through local struggle all have contributed to the accumulation of human rights recognition as universally applicable. Human rights law today embodies that cumulative recognition into an international and universal code that seeks to leave no human group, geographical region or human need without mutual protection in the multilateral legal regime.

Universality of human rights now means that it is impermissible to neglect certain rights as if they were intended selectively for certain cultures, as if and people of other cultures deserve an inferior standard. Universality also means that no State or government is exempt from its obligations, either for reasons of specificity of local law, as the Vienna Convention has addressed, or to uphold traditional practices that violate rights or their over-riding principles of application.

Interpreting rights consistent with one's own culture (as in the cultural adequacy of housing) means applying locally specific options and idiomatic expressions consistent with the human rights framework. However, practices that preserve or condone unequal rights to secure tenure, inheritance or other entitlements of the human right to adequate housing are not consistent with the present framework and likely to violate both the gender-equality provisions of the Covenant, as well as essential provisions of the Vienna Convention on the Law of Treaties (1969).^{266[9]}

While local experience of application and struggle continue to provide specificity on how to realize human rights, reveal a variety of possible strategies and define emerging rights (such as the rights to water, land and energy), cultural specificity does not mean allowance for the derogation of rights to something short of the over-riding principles and entitlements reflected in this toolkit. As affirmed by moral arguments and legal authority, adequate housing is the right of everyone, everywhere.

Conclusion

The over-riding principles featured in the monitoring steps of this toolkit are those explicitly mentioned in the major human rights treaties. The "Other principles of application" are implied in the human rights instruments or recognized in international jurisprudence, but are not less important to keep in mind.

The HLRN toolkit attempts to go further than merely encouraging the monitor to keep these additional principles in mind, however. The toolkit's design actually incorporates all of these three principles, but without culling them out as additional steps in the monitoring process.

The indivisibility of rights is already present in the 12 entitlements; whereas, the first eight derive directly from the CESCR's General Comment No. 4 specifically on the right to housing. The "Congruent rights" derive from rights whose sources and concepts arise from the ICCPR, Refugee Convention and other instruments. Therefore, the housing rights entitlements themselves embody the indivisibility concept in a practical form.

The core minimum obligations applying in the case of the human right to adequate housing also are consistent with those entitlements outlined in the General Comment No. 4, which are embedded in this methodology (human right to adequate housing entitlements A–H). Naturally, the local specificity as to the nature and level of effort required to realize the human right to adequate housing is precisely your contribution through your monitoring effort, your critical process and by posing your solutions to problems in the field.

The universality of the human right to adequate housing is also inherent to this toolkit, by design. That is manifest in the wide range of international and regional instruments guaranteeing the right and incorporated into the Step 2 presentation of both the Sources in international law and Popular sources.

The good news is that, with these principles integrated in the design of the toolkit, you are able to apply them as a matter of course. Therefore, it would be unnecessary and redundant to create corresponding, additional tasks. By applying the methodology in this Housing and Land Rights Monitoring Toolkit, you will be putting all of these inter-related and interdependent principles into living practice.

3.4. Guarantees

Guarantees of the Human Right to Adequate Housing

We will now determine the existing assets guaranteeing the entitlements of the human right to adequate housing in your country situation. We can begin by making our assessment at the general and international level, then proceeding to the more instrumental and local level. The "guarantees" do not mean only legal provisions, but also institutional, policy and other assets that function to ensure, or at least contribute to implementation of the various contents of our human right to adequate housing.

Therefore, one should assess first the State's current obligations by its ratification of international (and then regional) treaties recognizing the human right to adequate housing, its over-riding principles and its specific entitlements. Then this method would have us determine any similar guarantees in the national constitution (or equivalent). At the more-specific level of legislation, the inquiry should have us identify which statutes, regulations and even municipal ordinances actually guarantee the right or any entitlement within the right. Presumably, public policies, programs, institutions and budgets in place should form the practical implementation counterparts to complement these legal criteria and the respect, defense, promotion and fulfillment of the human right at the most-localized operational level.

Inquiry Begins Here

Following this logic, our line of inquiry on “guarantees” poses a number of questions for the monitor to provide the answer. Now your role will become more active. Accordingly, we will follow the method of assessing the guarantees in your country situation for implementation of the human right to adequate housing from general to specific, thus, focusing on:

- ❑ **Ratifications and multilateral commitments:** Obligations arising from multilateral (international and regional) ratification of relevant treaties;
- ❑ **Constitutional provisions** relevant to the human right to adequate housing and land;
- ❑ **National legal system:** Legislation and other local law;
- ❑ **Institutions:** both binding and bonding institutions, whether as a formal structure, or a more-customary, social character;
- ❑ **Policies:** having nationwide application;
- ❑ **Programs:** long-term, policy-based and systematic efforts;
- ❑ **Projects:** having more temporary and localized application; and
- ❑ **Budgets** of public institutions.

In that order, our line of inquiry will explore these guarantees for each of the twelve entitlements of the human right to adequate housing and land. You will likely find that you may already have the answers to many of these questions from the previous sections on “Sources” and “Over-riding Principles.” For instance, you have already learned about, and identified many multilateral treaty instruments guaranteeing the human right to adequate housing. Now, you will be able to fill in the rest of the guarantees to complete the picture of how these norms translate into legal and functional assurances locally for this and every entitlement of our human right that you choose to monitor and assess.



This method ensures that the monitor take into consideration also the guarantees of the over-riding human rights principles (as explained above in “Over-riding principles applied to legal security of tenure and freedom from dispossession” in Step 3 of this toolkit). These principles, found in the first Articles of all the major human rights treaties, are to be generally and universally applied in order to ensure a context for the realization of all rights, not least the human right to adequate housing and land. Since these principles over-ride, or sit on top of the human rights framework applied to housing and land, they appear first in the list of questions in our line of inquiry. These questions include a list of legal instruments and commitments by States to guarantee these over-riding principles. (Please note that these are illustrative lists; they are not exclusive lists. You may know of other such guarantees, and you may find that some listed do not apply to your country situation.)

In the same way that we proceed from the general to the specific, the inquiry about the guarantees of the over-riding principles is followed by the more precise, practical guarantees that ensure the human right to adequate housing and land is made real in practice. Therefore, the systematic questions here include a test of (1) the present (general and contextual) guarantees for applying the over-riding principles of international human rights law in the case of the entitlement legal security of tenure and freedom from dispossession (i.e., self-determination, nondiscrimination, gender equality, rule of law, nonregressivity/nonretrogression and international cooperation), as well as (2) the (functional and specific) local guarantees of legal security of tenure and freedom from dispossession deriving from the guaranties listed above.

✓ Guarantees of the over-riding principles

Self-determination

Which international treaties has the State ratified, acceded to or succeeded to that guarantee that the principle of self-determination be applied, including in the housing context?

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention on the Elimination of All Forms of Racial Discrimination (1965)
- Convention on the Rights of the Child (1989)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- ILO No. 107 concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (1957)
- ILO Convention No. 169 concerning Indigenous Peoples in Independent Countries (1989)
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee that the principle of self-determination be applied, including in the housing context?

- Declaration on the Right to Development (1986)
- Declaration on Social Progress and Development (1969)
- Habitat II Agenda (1996)
- Istanbul Declaration (1996)
- Social Summit Declaration and Programme of Action (1995)
- Universal Declaration of Human Rights (1948)
- United Nations Commission on Human Rights resolutions
- UN General Assembly resolutions [various]
- Vienna Declaration and Programme of Action (1993)
- Durban Declaration and Programme of Action [of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] (2002)
- Johannesburg Declaration of the World Summit on Sustainable Development and Plan of Implementation (2001)

Which regional treaties has the State ratified, acceded to or succeeded to that guarantee that the principle of self-determination be applied, including in the housing context?

- African Charter on Human and Peoples Rights (1981)
- American Convention on Human Rights (1969)
- American Declaration of Human Rights (1948)
- Arab Charter on Human Rights (1994)
- (European) Convention for Protection of Human Rights and Fundamental Freedoms (1950)
- European Social Charter (1961)

Has the State participated in the adoption of multilateral agreements in the form of regional conferences, summits, or congresses, etc., or voted in favor of resolutions in regional organizations that guarantee that the principle of self-determination be applied, including in the housing context?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (2000)
- Rabat Declaration (1995)

Nondiscrimination

Which international treaties has the State ratified, acceded to or succeeded to that guarantee that the over-riding principle and human right to freedom from discrimination be applied, including also in the housing context?

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention on the Elimination of All Forms of Racial Discrimination (1965)
- Convention on the Rights of the Child (1989)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- International Labour Organisation Convention No. 107 concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (1957)
- International Labour Organisation Convention No. 117 *on Social Policy (Basic Aims and Standards)* (1962)
- ILO Convention No. 169 concerning Indigenous Peoples in Independent Countries (1989)
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)
- Refugee Convention (1951)
- Convention relating to the Status of Stateless Persons (1954)
- Convention on the Reduction of Statelessness (1961)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee that the over-riding principle and human right to freedom from discrimination be applied, including also in the housing context?

- Declaration on Asylum (1967)
- Declaration on the Right to Development (1986)
- Declaration on Social Progress and Development (1969)
- Declaration on the Elimination of Violence against Women (1993)
- Habitat II Agenda (1996)
- Declaration on Cities and Other Human Settlements in the New Millennium [Habitat II+5 UNGAR S-25/2] (2001)

- UN Guidelines on Internally Displaced Persons (1998) [vote in favor of adoption in UNHRCR E/CN.4/1998/53/Add.2, dated 11 February 1998]
- International Labour Organisation Recommendation No. 162 concerning Older Workers (1980)
- Istanbul Declaration (1996)
- Rio Declaration and Agenda 21 (1992)
- Social Summit Declaration and Programme of Action (1995)
- Universal Declaration of Human Rights (1948)
- UN General Assembly resolutions [various]
- United Nations Commission on Human Rights resolutions [various]
- Vancouver Declaration Human Settlements (1976)
- Vienna Declaration and Programme of Action (1993)
- Durban Declaration and Programme of Action [of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] (2002)
- Johannesburg Declaration of the World Summit on Sustainable Development Plan of Implementation (2001)

Which regional treaties has the State ratified, acceded to or succeeded to that guarantee that the over-riding principle and human right to freedom from discrimination be applied, including also in the housing context?

- African Charter on Human and Peoples Rights (1981)
- American Convention on Human Rights (1969)
- Arab Charter on Human Rights (1994)
- (European) Convention for Protection of Human Rights and Fundamental Freedoms (1950)
- European Social Charter (1961)

Has the State participated in the adoption of multilateral agreements in the form of regional-level conferences, summits, or congresses, etc., or voted in favor of resolutions in regional organizations that guarantee application of the over-riding principle and human right to freedom from discrimination, including also in the housing context?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (2000)
- Rabat Declaration (1995)

Gender equality

Which international treaties has the State ratified, acceded to or succeeded to that guarantee the application of the over-riding principle of gender equality be applied, including also in the housing context?

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention on the Rights of the Child (1989)

- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- International Labour Organisation Convention No. 117 *on Social Policy (Basic Aims and Standards)* (1962)
- International Labour Organisation Convention No. 131 Concerning Minimum Wage Fixing, with Special Reference to Developing Countries (1970)
- International Labour Organisation Convention Recommendation No. 115 concerning Workers' Housing (1961)
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee the application of the over-riding principle of gender equality be applied, including also in the housing context?

- Declaration on Asylum (1967)
- Declaration on the Right to Development (1986)
- Declaration on Social Progress and Development (1969)
- Habitat II Agenda (1996)
- Declaration on Cities and Other Human Settlements in the New Millennium [Habitat II+5 UNGAR S-25/2] (2001)
- International Labour Organisation Recommendation No. 162 concerning Older Workers (1980)
- Istanbul Declaration (1996)
- Rio Declaration and Agenda 21 (1992)
- Social Summit Declaration and Programme of Action (1995)
- Universal Declaration of Human Rights (1948)
- United Nations Commission on Human Rights resolutions
- Vienna Declaration and Programme of Action (1993)
- Durban Declaration and Programme of Action [of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] (2002)
- Johannesburg Declaration of the World Summit on Sustainable Development and Plan of Implementation (2001)

Which regional treaties has the State ratified, acceded to or succeeded to that guarantee the application of the over-riding principle of gender equality be applied, including also in the housing context?

- African Charter on Human and Peoples Rights (1981)
- American Convention on Human Rights (1969)
- American Declaration of Human Rights (1948)
- Arab Charter on Human Rights (1994)
- (European) Convention for Protection of Human Rights and Fundamental Freedoms (1950)
- European Social Charter (1961)

Has the State participated in the adoption of multilateral agreements in the form of regional conferences, summits, or congresses, etc., or voted in favor of resolutions in regional organizations that guarantee the application of the over-riding principle of gender equality be applied, including also in the housing context?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (2000)
- Rabat Declaration (1995)

Rule of law

Which international treaties has the State ratified, acceded to or succeeded to that guarantee the State's application of the over-riding principle of the rule of law, which also extends to the housing sphere?

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention on the Elimination of All Forms of Racial Discrimination (1965)
- Convention on the Rights of the Child (1989)
- Rome Statute on the Establishment of the International Criminal Court (1998)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- International Labour Organisation Convention No. 107 concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (1957)
- International Labour Organisation Convention No. 117 *on Social Policy (Basic Aims and Standards)* (1962)
- International Labour Organisation Convention No. 131 Concerning Minimum Wage Fixing, with Special Reference to Developing Countries (1970)
- ILO Convention No. 169 concerning Indigenous Peoples in Independent Countries (1989)
- International Labour Organisation Convention Recommendation No. 115 concerning Workers' Housing (1961)
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)
- Refugee Convention (1951)
- Convention relating to the Status of Stateless Persons (1954)
- Convention on the Reduction of Statelessness (1961)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee the State's application of the over-riding principle of the rule of law, which also extends to the housing sphere?

- Declaration on Asylum (1967)
- Declaration on the Right to Development (1986)
- Declaration on Social Progress and Development (1969)
- Habitat II Agenda (1996)
- Declaration on Cities and Other Human Settlements in the New Millennium [Habitat II+5 UNGAR S-25/2] (2001)
- International Labour Organisation Recommendation No. 162 concerning Older Workers (1980)

- Istanbul Declaration (1996)
- Rio Declaration and Agenda 21 (1992)
- Social Summit Declaration and Programme of Action (1995)
- Universal Declaration of Human Rights (1948)
- United Nations Commission on Human Rights resolutions
- Vancouver Declaration Human Settlements (1976)
- Vienna Declaration and Programme of Action (1993)
- Durban Declaration and Programme of Action [of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] (2002)
- Johannesburg Declaration of the World Summit on Sustainable Development and Plan of Implementation (2001)

Which regional treaties has the State ratified, acceded to or succeeded to that guarantee the State's application of the over-riding principle of the rule of law, which also extends to the housing sphere?

- African Charter on Human and Peoples Rights (1981)
- American Convention on Human Rights (1969)
- American Declaration of Human Rights (1948)
- Arab Charter on Human Rights (1994)
- (European) Convention for Protection of Human Rights and Fundamental Freedoms (1950)
- European Social Charter (1961)

Has the State participated in the adoption of multilateral agreements in the form of regional conferences, summits, or congresses, etc., or voted in favor of resolutions in regional organizations that guarantee the State's application of the over-riding principle of the rule of law, which also extends to the housing sphere?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (2000)
- Rabat Declaration (1995)

Nonregressivity/nonretrogression

Which international treaties has the State ratified, acceded to or succeeded to that guarantee the State's implementation of the principle of nonregressivity/nonretrogression in the respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human right to adequate housing and land?

- Convention on the Elimination of All Forms of Racial Discrimination (1965)
- Convention on the Rights of the Child (1989)
- International Covenant on Economic, Social and Cultural Rights (1966)
- International Labour Organisation Convention No. 117 *on Social Policy (Basic Aims and Standards)* (1962)
- International Labour Organisation Convention Recommendation No. 115 concerning Workers' Housing (1961)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee the State's implementation of the principle of nonregressivity/nonretrogression in the respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human right to adequate housing and land?

- Declaration on the Right to Development (1986)
- Declaration on Social Progress and Development (1969)
- Habitat II Agenda (1996)
- Declaration on Cities and Other Human Settlements in the New Millennium [Habitat II+5 UNGAR S-25/2] (2001)
- Istanbul Declaration (1996)
- Rio Declaration and Agenda 21 (1992)
- Social Summit Declaration and Programme of Action (1995)
- Universal Declaration of Human Rights (1948)
- United Nations Commission on Human Rights resolutions
- Vancouver Declaration Human Settlements (1976)
- Vienna Declaration and Programme of Action (1993)
- Durban Declaration and Programme of Action [of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] (2002)
- Johannesburg Declaration of the World Summit on Sustainable Development and Plan of Implementation (2001)

Which regional treaties has the State ratified, acceded to or succeeded to that guarantee the State's implementation of the principle of nonregressivity/nonretrogression in the respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human right to adequate housing and land?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (200)
- Rabat Declaration (1995)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee the State's implementation of the principle of nonregressivity/nonretrogression in the respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human right to adequate housing and land?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]

- al-Manama Declaration (2000)
- Rabat Declaration (1995)

International Cooperation

Which international treaties has the State ratified, acceded to or succeeded to that guarantee the State's implementation of the principle of international cooperation to ensure respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human rights to adequate housing and land?

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention on the Elimination of All Forms of Racial Discrimination (1965)
- Convention on the Rights of the Child (1989)
- Rome Statute on the Establishment of the International Criminal Court (1998)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- International Labour Organisation Convention No. 107 concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (1957)
- International Labour Organisation Convention No. 117 *on Social Policy (Basic Aims and Standards)* (1962)
- International Labour Organisation Convention No. 131 Concerning Minimum Wage Fixing, with Special Reference to Developing Countries (1970)
- ILO Convention No. 169 concerning Indigenous Peoples in Independent Countries (1989)
- International Labour Organisation Convention Recommendation No. 115 concerning Workers' Housing (1961)
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)
- Refugee Convention (1951)
- Convention relating to the Status of Stateless Persons (1954)
- Convention on the Reduction of Statelessness (1961)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee the State's implementation of the principle of international cooperation to ensure respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human rights to adequate housing and land?

- Agenda 21 (1992)
- Declaration on Environment and Development (1992)
- Declaration on Asylum (1967)
- Declaration on the Right to Development (1986)
- Declaration on Social Progress and Development (1969)
- Habitat II Agenda (1996)
- Declaration on Cities and Other Human Settlements in the New Millennium [Habitat II+5 UNGAR S-25/2] (2001)
- International Labour Organisation Recommendation No. 162 concerning Older Workers (1980)
- Istanbul Declaration (1996)
- Rio Declaration and Agenda 21 (1992)

- Social Summit Declaration and Programme of Action (1995)
- Universal Declaration of Human Rights (1948)
- United Nations Commission on Human Rights resolutions
- Vancouver Declaration Human Settlements (1976)
- Vienna Declaration and Programme of Action (1993)
- Durban Declaration and Programme of Action [of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] (2002)
- Johannesburg Declaration of the World Summit on Sustainable Development and Plan of Implementation (2001)

Which regional treaties has the State ratified, acceded to or succeeded to that guarantee the State's implementation of the principle of international cooperation to ensure respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human rights to adequate housing and land?

- African Charter on Human and Peoples Rights (1981)
- American Convention on Human Rights (1969)
- American Declaration of Human Rights (1948)
- Arab Charter on Human Rights (1994)
- (European) Convention for Protection of Human Rights and Fundamental Freedoms (1950)
- European Social Charter (1961)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee the State's implementation of the principle of international cooperation to ensure respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human rights to adequate housing and land?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (2000)
- Rabat Declaration (1995)

What additional multilateral commitments has the State made to guarantee nondiscrimination in the respect, protection, promotion and fulfillment of the human right to adequate housing and, by extension, access to environmental goods and services?

Do not forget that the body of the binding international treaties that the State already has ratified contains binding human rights obligations that take precedence over nonbinding declarations of mere intent or political will. Monitoring these obligations is the covenanted task of the treaty parties [ratifying States], which has been delegated to neutral treaty-monitoring bodies that are supported in their task by government and civil-society monitors. Keep in mind also that some multilateral declarations and many agreements with international financial and development institutions may contain standards less protective of human rights and freedoms than those of a binding nature under human rights treaties. Those agreements may even impede the enjoyment of economic/social/cultural rights. Such

agreements are to be evaluated subject to prior human rights treaty obligations—not vice versa.

✓ Local guarantees

Ratifications and international commitments

Which international treaties has the State ratified (acceded or succeeded to) that guarantee the human right to adequate housing, in particular access to environmental goods and services?

Constitutional provisions

- Does the State have a Constitution, or equivalent, guaranteeing the right to human right to housing and land, including access to environmental goods and services?
- Does the State have a Constitution, or equivalent, guaranteeing the right to local self-determination?
- Does the State have a Constitution, or equivalent, guaranteeing the right to freedom from discrimination?
- Does the State have a Constitution, or equivalent, guaranteeing gender equality?
- Does the State have a Constitution, or equivalent, guaranteeing the rule of law, including access to justice and democratic participation and representation?
- Does the State have a Constitution, or equivalent, guaranteeing the right to the continuous improvement of living conditions?
- Does the State have a Constitution, or equivalent, providing that international relations be conducted within the framework and objectives of human rights, including economic, social and cultural rights?

National legal system

- Is the right to adequate housing, including access to environmental goods and services recognized as a distinct right in the country's legal system?
- Is national and local legislation consistent with the human rights right to housing and land, including access to environmental goods and services?
- Is national and local legislation consistent with the principle of local self-determination?
- Is national and local legislation consistent with the right to freedom from discrimination? What statutes has the State/government legislated, and are in force, to ensure nondiscrimination in the respect, defense, promotion and implementation of the human right to adequate housing, in particular, access to environmental goods and services?
- Do the concerned persons or community have the sense that the terms of their entitlement to access to environmental goods and services are equal and consistent with others'?

- Does national and local law maintain the principle of gender equality, particular as it relates to housing, land and access to environmental goods and services?
- Do local and national laws and regulations uphold the rule of law, including access to justice and democratic participation and representation in matters related to housing, land and access to environmental goods and services?
- Does the State's legal system maintain the right to the continuous improvement of living conditions?
- Are the laws and regulations of the State consistent with the principle that international relations, including international entities operating locally, conduct themselves within the framework and objectives of human rights, including economic, social and cultural rights, in particular, the human right to adequate housing and land, including access to environmental goods and services?
- Does the performance of the law-enforcement services guarantee the practice and enforcement of the respect, defense, promotion and implementation of the human right to adequate housing, including access to environmental goods and services?
- Are judges and lawyers performing sufficiently and consistently to uphold the human right to adequate housing, including the entitlement of access to environmental goods and services? What are some examples?

Institutions

- Is there a sense in the community that the State and government institutions represent their aspirations to self-determination?
- What State and public institutions exist as a guarantee of nondiscrimination in the respect, defense, promotion and implementation of the human right to adequate housing, in particular, access to environmental goods and services?
- Do the concerned persons or community have the possibility to exercise an effective role in determining the terms and conditions of access to environmental goods and services?
- What State and public institutions exist as a guarantee of gender equality in the defense, promotion and implementation of the human right to adequate housing, in particular, access to environmental goods and services?
- What private and nongovernmental institutions exist as a guarantee of gender equality in the defense, promotion and implementation of the human right to adequate housing, in particular, access to environmental goods and services?
- What informal institutions (including social norms) function so as to help implement the human right to adequate housing and, in particular, access to environmental goods and services?²⁶⁷

²⁶⁷ The operative concept of institutions here encompasses both bonding and bridging institutions. "Institutions," in this sense, involve the rules of the game under which formal and informal activity is conducted, and include public institutions, private institutions, collective practices and norms, as well as changing norms (e.g., brought about through

- What social institutions and consistent social practices exist as a guarantee of gender equality in the defense, promotion and implementation of the human right to adequate housing, in particular, access to environmental goods and services?
- How have these institutions actually improved capacity to protect, or actual protection of access to environmental goods and services for those in need?

Policies

- What statewide policies are in place and implemented to guarantee of the human right to adequate housing and, in particular, access to environmental goods and services?

Keep in mind that the body of the binding international treaties that the State has ratified contain provisions that call for human rights to be implemented in the presence of the over-riding principles of self-determination, nondiscrimination, gender equality, the rule of law, international cooperation in the implementation of human rights, and progressive realization (nonregressivity/ nonretrogression) and the continuous improvement of living conditions.

- How have national policies enhanced local self-determination so as to ensure acceptable levels of access to environmental goods and services?
- How have national policies to ensure nondiscrimination positively affected access to environmental goods and services in the country?
- How have national gender policies led to improvements in the conditions of access to environmental goods and services in the housing sphere, especially for those in need?
- How have the State's policies on access to justice enhanced conditions of access to environmental goods and services, especially for those in need?
- How have national housing policies ensured the continuous improvement of living conditions, in particular the housing rights entitlement of access to environmental goods and services, especially for those in need?
- In what ways have national housing policies ensured that international relations and international entities operating within the country respect, defend, promote and fulfil the human right to housing, in particular the entitlement of access to environmental goods and services for those in need?
- To what extent have external parties positively influenced your country's official policies or practices in guaranteeing the entitlement to access to environmental goods and services?

Programs

- What progressive steps has the State made on a national scale in the past period (year[s], or since your last assessment) to improve housing rights, especially the

entitlement of access to environmental goods and services? (These may include: law reforms, improved infrastructure, more effective implementation methods, population registry programs, programs to consider ratification of international covenants, and evaluations of housing rights implementation, etc.)

Keep in mind that the body of binding international treaties that the State has ratified contain provisions that call for human rights to be implemented in the presence of the over-riding principles of self-determination, nondiscrimination, gender equality, the rule of law, international cooperation in the implementation of human rights, and progressive realization (nonregressivity/ nonretrogression) and the continuous improvement of living conditions.

- What private-sector or NGO programs are in place and implemented to guarantee the human right to adequate housing and, in particular, access to environmental goods and services?
- How have these national programs enhanced local self-determination in a way that has improved the conditions of access to environmental goods and services?
- What national programs are completed, ongoing, or planned to ensure nondiscrimination positively affected access to environmental goods and services in the country?
- Are there any national gender programs completed, ongoing or planned with the purpose and effect of improving the conditions of access to environmental goods and services in the housing sphere, especially for those in need? Do they cover land rights and inheritance issues?
- What are have the State's recent, present or future programs to enhance access to justice that are intended to improve housing and living conditions, especially for those in need? How have those programs implemented to date succeeded in enhancing access to environmental goods and services of housing?
- How have national housing programs ensured the continuous improvement of living conditions, in particular the housing rights entitlement of access to environmental goods and services, especially for those in need?
- In what ways have national housing programs ensured that international relations and international entities operating within the country respect, defend, promote and fulfil the human right to housing, in particular the entitlement of access to environmental goods and services for those in need?
- Has the government in the concerned State cooperated with other State or non-State parties to find identify and adapt good practices locally to improve access to environmental goods and services for all those living there?

Projects

- What progressive actions has the State undertaken in the way of limited-scale or pilot projects in the past period (year[s], or since your last assessment) to improve housing rights, especially the entitlement of access to environmental goods and services?

- ❑ What private-sector or NGO projects are in place and implemented to guarantee the human right to adequate housing and, in particular, access to environmental goods and services?
- ❑ How have such local projects enhanced local self-determination in a way that has improved the conditions of access to environmental goods and services?
- ❑ What projects completed, ongoing, or planned to ensure nondiscrimination positively affected access to environmental goods and services in the country?
- ❑ Are there any gender-based projects completed, ongoing or planned with the purpose and effect of improving the conditions of access to environmental goods and services in the housing sphere, especially for those in need? Do they cover land rights and inheritance issues?
- ❑ What are have the State's recent, present or future projects to enhance access to justice that are intended to improve housing and living conditions, especially for those in need? How have those programs implemented to date succeeded in enhancing access to environmental goods and services of housing?
- ❑ How have these projects ensured the continuous improvement of living conditions, in particular the housing rights entitlement of access to environmental goods and services, especially for those in need?
- ❑ In what ways have public or private projects ensured that international relations and international entities operating within the country respect, defend, promote and fulfil the human right to housing, in particular the entitlement of access to environmental goods and services for those in need?
- ❑ Has the government in the concerned State cooperated with other State or non-State parties to find identify and adapt good practices locally through projects that actually improve access to environmental goods and services for all those living affected?
- ❑ Are there foreign State or foreign private interests operating projects affecting the housing and human settlements sector in the country and affecting the situation under review? Are their roles positively affecting the enjoyment of access to environmental goods and services?

Budgets

- ❑ What public budgets are in place to guarantee the human right to adequate housing and, in particular, access to environmental goods and services? How does the budget correspond to actual spending and implementation targets?
- ❑ Is the necessary public budget information available to conduct a multiyear assessment of the financial performance of policies, programs and projects affecting housing and living conditions of those vulnerable and needy inhabitants of the country?
- ❑ Does the public have access to the budgets of private companies and organizations operating in the housing sphere and having an effect on the housing rights entitlement of access to environmental goods and services?

- ❑ Does the reliable budget information support the public claims of those responsible for the budgets intended for improvement of living conditions of the needy, particularly in the housing rights entitlement of access to environmental goods and services?
- ❑ What international obligations and commitments affect the public budget with ramifications on the housing sector, including the entitlement of access to environmental goods and services?
- ❑ What national obligations and commitments affect the public budget with ramifications on the housing sector, including the entitlement of access to environmental goods and services?
- ❑ What financial policies affect the public budget with ramifications on the housing sector, including the entitlement of access to environmental goods and services?

3.5. Obstacles, impediments, barriers

At the present stage in the monitoring process, you have well identified the elements arising from the human right and legal concept of adequate housing. You have completed the necessary review of international minimum standards that codify the right, along with the corresponding obligations on the ratifying State. Your process has taken you through the moral arguments of social movements and others, who are the very source of human rights throughout history. Those sources fill legal gaps and provide specificity to local human rights priorities and application. In your context, you also have identified which of the binding instruments and other theoretical guarantees apply to the case at hand.

At this point, you are advancing beyond the theoretical dimensions of the human right to adequate housing, its constituent elements and its guarantees. As a housing-and-land-rights monitor, you will now enter the practical dimension and assess the most difficult challenge in the field of human rights: implementation. The following sample questions guide the monitor to prepare needed data and arguments by detailing the present obstacles, impediments, barriers, threats and constraints that have brought about, or threaten to bring about a violation or deprivation of the right and the element of access to environmental goods and services, including natural resources, land and water, and safe environment, which you are currently addressing.

When monitoring documenting any stage of this toolkit inquiry, or assessing the conditions affecting any right, it is essential to ensure the highest quality of information possible. It has been said often that information is power. In our case, this is especially true, but the degree of that power will depend largely on the following qualities of your information:

- Completeness
- Level of detail and specificity
- Date (freshness) of the information
- Integrity of the information (i.e., lack of contradictions)
- Effective (articulate, concise, understandable and correct) use of language
- Relevance: linkage to the question of housing and land rights implementation
- Credibility of source (reputation, effective presentation, link to issue and community)

In order to begin assessing the compatibility of the theoretical affirmations of the human right to housing and land with the local reality, you will determine now whether, and to what extent barriers, contradictions, obstacles, and impediments contribute to actual and/or potential

violations of the entitlement to access to environmental goods and services. This process is aided with the following battery of questions:

✓ **Obstacles of the over-riding principles**

Selfdetermination

- Are the people dissatisfied with the terms of their access to environmental goods and services, in particular, natural resources, including adequate land and water?
- Do the concerned persons or community lack the possibility to exercise an effective role in determining the terms of access to environmental goods and services, in particular, natural resources, including adequate land and water?
- Does the community lack sufficient information or capacity sufficiently to enjoy the human right to adequate housing, in particular, the entitlement of environmental goods and services, including access to water, sanitation and energy? [See the “**Information, education, capacity and capacity building**” entitlement in this toolkit.]
- Is illiteracy an impediment to the community’s access to sufficient information to enjoy the human right to adequate housing, in particular, environmental goods and services, including access to water, sanitation and energy? [See the “**Information, education, capacity and capacity building**” entitlement in this toolkit.]

Nondiscrimination

- To what extent is discrimination an issue in realizing the entitlement to access to environmental goods and services, in particular, natural resources, including adequate land and water?
- Is there (does the affected community report) any type of discrimination practiced randomly, occasionally or on the social level, or institutionalized in some form, affecting access to environmental goods and services, in particular, natural resources, including adequate land and water?
- What are the nature of the discrimination and its effects of the entitlement of access to environmental goods and services, in particular, natural resources, including adequate land and water?
- Is the community subject to a pattern of environmental discrimination, causing the degradation of housing and subjecting them to pollution and other harmful physical and social conditions. [See also the entitlement of “**Locations**” in this toolkit.]
- Does the community lack sufficient information or capacity sufficiently to enjoy the human right to adequate housing, in particular, the entitlement of environmental goods and services, in particular, natural resources, including adequate land and water? [See the “Information, education, capacity and capacity building” entitlement in this toolkit.]
- Is illiteracy an impediment to the community’s access to sufficient information to enjoy the human right to adequate housing, in particular environmental goods and services, in particular, natural resources, including adequate land and water? [See the “Information, education, capacity and capacity building” entitlement in this toolkit.]

Gender equality

- Is there any gender-based discrimination applied in realizing the entitlement to access to environmental goods and services, in particular, natural resources, including adequate land and water?
- Is the discrimination practiced randomly, occasionally or on the social level, or is it institutionalized in some form such that affects access to environmental goods and services, in particular, natural resources, including adequate land and water?
- Does local law on inheritance, divorce or other specialization fail to provide equal rights to males and females of all ages? How?



Rule of law

- Has the State failed to ratify any of the relevant international or regional treaties guaranteeing the human right to adequate housing?
- Has the State issued any reservations, declarations or understandings to international or regional treaties that possibly limit the affect of human right to adequate housing guarantees, particularly so as to affect the entitlement of access to environmental goods and services, in particular, natural resources, including adequate land and water?
- Has the State government failed to conduct a legal evaluation of housing rights implementation?
- Has the State government failed to present timely reports to the relevant treaty-monitoring bodies covering the human right to adequate housing?
- Has the State and its government failed to implement in good faith the Concluding Observations of the various treaty bodies concerning implementation of the human right to adequate housing?
- Do the three branches of government (judiciary, legislative and executive) operate with autonomous authority?
- Do the three branches of government coordinate to uphold and enforce a single system of law?
- Does the State lack a Constitution, or equivalent, guaranteeing gender equality?
- Does the State lack a Constitution, or equivalent, guaranteeing the rule of law, including access to justice and democratic participation and representation?
- Does the State lack a Constitution, or equivalent, guaranteeing the right to the continuous improvement of living conditions?

- Does the State lack a Constitution, or equivalent, providing that international relations be conducted within the framework and objectives of human rights, including economic, social and cultural rights?
- Does the country's legal system lack recognition of the human right to adequate housing, including access to environmental goods and services, in particular, natural resources, including adequate land and water?
- Are land-use laws biased against the poor, arbitrarily denying access to land for those in need of land for housing and livelihood?
- Do legal or procedural shortcomings impede the admissibility of claims invoking international treaty obligations in the defense of human right to adequate housing, in particular, the entitlement to environmental goods and services, in particular, natural resources, including adequate land and water?
- Has the State failed to ratify the Rome Statute on the International Criminal Court, limiting the options to seek justice and remedy for gross violations of the human right to adequate housing?
- Does the political system in the country lack coordination among branches of executive, legislative and judicial government?
- Does the State lack a Constitution, or equivalent, guaranteeing the rule of law, including access to justice and democratic participation and representation?
- Are there contradictions in the national law affecting access to environmental goods and services, in particular, natural resources, including adequate land and water?
- Has the legislature failed to harmonize national laws with international human rights treaty obligations in the formulation of policies affecting the human right to adequate housing, in particular, with affect on environmental goods and services, in particular, natural resources, including adequate land and water?
- Is there insufficient enforcement of laws and/or policies against arbitrary eviction enforced, including safeguards for vulnerable groups, such as: women, children, orphans, etc.?
- Do local authorities fail to recognize explicitly the application of the international human rights treaties that the State has signed and/or ratified and that guarantee the human right to adequate housing, including the entitlement of access to environmental goods and services, in particular, natural resources, including adequate land and water?
- Is national and local legislation inconsistent with the human rights right to housing and land, including access to environmental goods and services, in particular, natural resources, including adequate land and water?
- Is law enforcement inadequate to ensure enjoyment of the entitlement of access to environmental goods and services, in particular, natural resources, including adequate land and water?

- Are law enforcement officers in need of training in, and information about the human right to adequate housing in order to uphold the entitlement of access to environmental goods and services, in particular, natural resources, including adequate land and water?
- Do lawyers, prosecutors and/or judges lack awareness and training in the housing and land rights law in order to uphold and defend the entitlement of access to environmental goods and services, in particular, natural resources, including adequate land and water?
- Has the national court system failed in any way to admit claims of housing and land rights victims, including those whose entitlement to access to environmental goods and services has been violated?
- Do the rule-of-law, regulations, or their enforcement fail to govern market forces effectively to ensure the respect, protection, promotion and fulfillment of the right to adequate housing (e.g., governing monopolies, procedures for legal redress)? How does fact affect the enjoyment of the housing rights entitlement to access to environmental goods and services, in particular, natural resources, including adequate land and water?
- Does local law restrict civil society associations from advocating rights or providing services that would advance the respect, defense, promotion and fulfillment of the human right to housing, including environmental goods and services, in particular, natural resources, including adequate land and water?

Nonregressivity / nonretrogression

- Have environmental conditions arising from pollution and other forms of degradation led to a decline in the enjoyment of the housing rights entitlement to natural resources?
- Have environmental conditions arising from pollution and other forms of degradation led to a decline in the enjoyment of the housing rights entitlement to productive land required for livelihood?
- Have environmental conditions arising from pollution and other forms of degradation led to a decline in the enjoyment of the congruent human right to safe and adequate water for drinking, household needs or agriculture required for livelihood?
- Has the State failed to take steps to improve housing rights, especially affecting access to environmental goods and services, in the past period (year[s], or since your last assessment)?
- Have new laws degraded protection of human right to adequate housing in the recent period, particularly affecting access to environmental goods and services, in particular, natural resources, including adequate land and water?
- Have new policies degraded protection or enjoyment of human right to adequate housing in the recent period, particularly affecting access to environmental goods and services, in particular, natural resources, including adequate land and water?
- Have national programs led to a decline in the enjoyment of human right to adequate housing in the recent period, particularly affecting access to environmental goods and services, in particular, natural resources, including adequate land and water?

- Have infrastructure or physical features of the built or natural environment led to a decline in the enjoyment of human right to adequate housing, particularly affecting access to environmental goods and services, in particular, natural resources, including adequate land and water?
- Have nationwide programs failed to improve, or led to a decline in, the enjoyment of human right to adequate housing, in particular the terms of access to environmental goods and services, in particular, natural resources, including adequate land and water?
- Have local projects supported by State or local authorities failed to improve, or led to a decline in, the enjoyment of human right to adequate housing, in particular the terms of access to environmental goods and services, in particular, natural resources, including adequate land and water?
- Have public budget allocations failed to improve, or led to a decline in, the enjoyment of human right to adequate housing, in particular the terms of access to environmental goods and services, in particular, natural resources, including adequate land and water?
- To what extent has the State government's efforts fallen short in the improvement the terms of access to environmental goods and services, especially of the poor, vulnerable and minorities?

International cooperation

- Are foreign State or non-State interests operating in the housing and human settlements sector in the country and affecting the entitlement of access to environmental goods and services, in particular, natural resources, including adequate land and water? Are their roles negatively affecting the enjoyment of access to environmental goods and services, in particular, natural resources, including adequate land and water?
- Has the State failed to implement the Kyoto Protocol and other environmental-protection norms in good faith cooperation with other governments in order to protect the global environment and implement cross border environmental-protection responsibilities such that negatively affects the community's enjoyment of the housing rights entitlement and congruent right to a safe a healthy living environment?
- Have one or more other governments failed to implement the Kyoto Protocol and other environmental-protection norms in good faith cooperation with your State in order to protect the global environment and implement cross border environmental-protection responsibilities such that negatively affects the community's enjoyment of the housing rights entitlement and congruent right to a safe a healthy living environment?
- To what extent have external parties (States, or international financial institutions) negatively influenced your country's official policies or practices in guaranteeing the right to access to environmental goods and services, in particular, natural resources, including adequate land and water?
- Has the State neglected to take steps, "individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources" and capacities to ensure (especially poor and vulnerable) people's access to environmental goods and services, in particular, natural resources, including adequate land and water?

✓ Local obstacles

Institutions

- As far as human right to adequate housing and access to environmental goods and services are concerned, are there gaps or shortcomings in the State, government and other public institutions positioned to improve living conditions, including the housing-rights entitlement of access to environmental goods and services, in particular, natural resources, including adequate land and water?
- What State and public institutions exist as a guarantee of gender equality in the defense, promotion and implementation of the human right to adequate housing, in particular, legal access to environmental goods and services, in particular, natural resources, including adequate land and water?
- Has there been a recent decrease in the quantity or quality of civil society institutions upon which the community now relies.
- Do the concerned private and nongovernmental institutions fail to guarantee gender equality in the defense, promotion and implementation of the human right to adequate housing, in particular, access to environmental goods and services, in particular, natural resources, including adequate land and water?
- What informal institutions (including social norms) function so as to impede the enjoyment of the human right to adequate housing and, in particular, access to environmental goods and services, in particular, natural resources, including adequate land and water?²⁶⁸
- Do these institutions actually lack the will or capacity to protect legal access to environmental goods and services for those in need?
- Do these institutions actually lack the will, knowledge or capacity to use the relevant treaty body Concluding Observations in work of monitoring and lobbying officials

Policies

- Do the relevant ministries omit to incorporate international human rights treaty obligations in the formulation of policies affecting the human right to adequate housing, in particular, with affect on environmental goods and services, in particular, natural resources, including adequate land and water?
- What statewide policies are still needed to guarantee of the human right to adequate housing and, in particular, access to environmental goods and services, in particular, natural resources, including adequate land and water?

²⁶⁸ The operative concept of institutions here encompasses both bonding and bridging institutions. "Institutions," in this sense, involve the rules of the game under which formal and informal activity is conducted, and include public institutions, private institutions, collective practices and norms, as well as changing norms (e.g., brought about through the youth, technology, economic or demographic shifts, and other emerging behaviours). According to Douglas C. North, 1993 Nobel economics laureate, institutions are "humanly devised constraints that shape human interaction."

Are land-use policies biased against the poor such that seeks and carries out eviction from public lands without alternative arrangements, or favoring investors' access to public lands or traditional-use lands at the expense of those relying on such resources for their survival needs?



Have the relevant national policies neglected to ensure acceptable levels of self-determination in determining the terms and conditions of access to environmental goods and services, in particular, natural resources, including adequate land and water? How and why?

Have national policies failed to reach their targets (even despite announcements of official intent) positively to affect access to environmental goods and services, in particular, natural resources, including adequate land and water? How and why?

Have national gender policies led to improvements in the conditions of legal access to environmental goods and services in the housing sphere, especially for those in need? How and why?

Have the State's policies on access to justice failed to improve conditions of legal access to environmental goods and services, especially for those in need?

Have national housing policies failed to ensure the continuous improvement of living conditions, in particular, by stagnating or degrading the housing rights entitlement of access to environmental goods and services, especially for those in need? How and why?

Do national housing policies lack consideration of, and/or reference to the international human rights instruments relevant to the human right to adequate housing and access to environmental goods and services, and to which the State is bound?

To what extent have external parties negatively influenced your country's official policies or practices in guaranteeing the access to environmental goods and services, in particular, natural resources, including adequate land and water?

Have State housing-policy implementing institutions omitted to seek international cooperation in the human right framework by conditioning international entities operating within the country also to respect, defend, promote and fulfil the human right to housing, in particular the entitlement of access to environmental goods and services, in particular, natural resources, including adequate land and water?

Programs

What negative steps has the State taken on a national scale in the past period (year[s], or since your last assessment) to improve housing rights, especially the entitlement of access to environmental goods and services, in particular, natural resources, including adequate land and water? These may include declining legal assistance laws, deteriorating infrastructure without repair, declining implementation efforts?

- ❑ What related private-sector or NGO programs have failed to enhance the enjoyment of the human right to adequate housing, in particular, access to environmental goods and services, in particular, natural resources, including adequate land and water?
- ❑ Is there a lack of, and need for national gender programs completed, ongoing or planned with the purpose and effect of improving the conditions of legal access to environmental goods and services in the housing sphere, especially for those in need?
- ❑ Do existing programs omit to cover land and inheritance rights?
- ❑ Have the intergovernmental relations declined between your State and others leading to a decline on options for international cooperation in advancing the respect, defense, promotion and/or fulfilment of the human right to adequate housing, in particular access to environmental goods and services, in particular, natural resources, including adequate land and water?
- ❑ Has the government in the concerned State declined to cooperate with other States, intergovernmental agencies, or foreign non-State parties to identify and adapt good practices locally to improve the entitlement to access to environmental goods and services, in particular, natural resources, including adequate land and water?

Projects

- ❑ What relevant State actions or omissions have led to the failure of limited-scale or pilot projects in the past period (year[s], or since your last assessment) to improve housing rights, especially the entitlement of access to environmental goods and services, in particular, natural resources, including adequate land and water?
- ❑ What private-sector or NGO projects have failed to seek, or fallen short of their intended goal to guarantee the human right to adequate housing and, in particular, access to environmental goods and services, in particular, natural resources, including adequate land and water?
- ❑ Have such local projects undermined local self-determination with negative effect on the conditions of access to environmental goods and services, in particular, natural resources, including adequate land and water? How and why?
- ❑ Are foreign State or foreign private interests operating projects negatively affecting the housing and human settlements sector in the country and affecting the entitlement of access to environmental goods and services, in particular, natural resources, including adequate land and water? How and why?
- ❑ Have projects conducted by local or international entities in the country privatized the provision of housing or public services replaced the role and responsibility of the State and local authorities to fulfil the human right to adequate housing, in particular the entitlement of access to environmental goods and services for those in need?



Budgets

- Are there obstacles to obtaining adequate information about public expenditures in the housing sector, or in areas affecting the enjoyment of the human right to adequate housing, including access to environmental goods and services, in particular, natural resources, including adequate land and water?
- Is there a lack of legal and actual protection of the right to information, including information and documentation on public budget expenditures in the housing sphere related to the entitlement of access to environmental goods and services, in particular, natural resources, including adequate land and water?
- Are public budgets inadequate to guarantee the human right to adequate housing and, in particular, access to environmental goods and services, in particular, natural resources, including adequate land and water?
- Is there underspending of the budget such that impedes the achievement of policy, program or project implementation targets, affecting access to environmental goods and services, in particular, natural resources, including adequate land and water?
- Do public budget items and actual financial performance reflect a lack of sufficient priority given to implementing policies, programs and projects to improve housing and living conditions, affecting also access to environmental goods and services, of those vulnerable and needy inhabitants of the country?
- Does the public have access to the budgets and financial performance data of private companies and organizations operating in the housing sphere and having an effect on the housing rights entitlement of access to environmental goods and services, in particular, natural resources, including adequate land and water?
- Does the reliable budget information contradict the public claims of officials and institutions responsible for the continuous improvement of living conditions of the needy, particularly in the housing rights entitlement of access to environmental goods and services, in particular, natural resources, including adequate land and water?
- Do international obligations and commitments negatively affect the public budget with ramifications on the housing sector, including with negative affect on the entitlement of access to environmental goods and services, in particular, natural resources, including adequate land and water?
- What national obligations and commitments affect the public budget with ramifications on the housing sector, including the entitlement of access to environmental goods and services, in particular, natural resources, including adequate land and water?
- What financial policies constrain the public budget with negative consequences on the housing sector, including the entitlement of access to environmental goods and services, in particular, natural resources, including adequate land and water?
- Is the achievement of access to environmental goods and services accompanied by an inordinate economic burden?

- Is the State failing to regulate effectively the terms and conditions of housing market, so as to avoid corruption, collusion, fraud, discrimination, nepotism and any arbitrary criteria? How is this affecting the entitlement of access to environmental goods and services, in particular, natural resources, including adequate land and water?
- Is the State prohibiting or impeding individual and community initiatives toward obtaining access to environmental goods and services, individually as well as collectively?
- Are State authorities permitting other parties to interfere with community efforts toward obtaining access to environmental goods and services, individually as well as collectively?
- Are present government mechanisms and structures inefficient at assisting the needy population from gaining access to access to environmental goods and services, in particular, natural resources, including adequate land and water?
- Does the State lack needed resources to ensure access to environmental goods and services, especially for the poor, vulnerable and needy?
- Does national political disharmony impede enjoyment of the human right to adequate housing and access to environmental goods and services, in particular, natural resources, including adequate land and water?
- Is there armed conflict in the country impeding the private and/or public institutions from carrying out development and delivering services that safeguard and improve access to environmental goods and services conditions?
- Has a natural disaster inflicted parts of the country, creating conditions that negatively affect the human right to adequate housing, including the entitlement to access to environmental goods and services, in particular, natural resources, including adequate land and water? Do these conditions impede relief or reconstruction assistance by public and private actors?



3.6. The victims and vulnerable persons: the actors

At this step in the housing and land rights monitoring process, you will have to provide relevant facts and figures concerning the people who already have been affected and those who remain vulnerable. You should also identify and describe precisely which part of the population is affected.

Those affected (victims or vulnerable) individuals and groups could be, for example, an indigenous community historically undergoing discriminatory treatment and land confiscation. It is essential to report the number of affected people, among them proportions of children, women and other groups having special needs, such as the elderly, who may be particularly affected.

In your inquiry into the identities of the victims and the vulnerable inhabitants, it is vital that you determine the place and time, as well as the characteristics of the affected persons in the case. The numbers and any demographic data of the composition of the affected

population are critical to understanding the case and characterizing the type of violations. The violation or vulnerability may be multidimensional (or intersectional), involving more than one form of discrimination. Knowing the victims and vulnerable persons can help determine which combinations of housing rights elements are simultaneously affected. In describing the population, knowing the particular vulnerabilities and special needs of the affected persons or community (whether arising from historical factors, gender, age or other demographics) complete the picture that you eventually will present to your intended audience.

✓ Distinguishing between the victims and vulnerable

It is also important for the monitor to distinguish between those victims, whom already have been violated, and those who are vulnerable to future violation or deprivation. Of course, this distinction will be strategically important later in the process, when the housing and land rights monitors and defenders choose an action in response to the violation. You will have to determine then if your intervention is to be remedial or preventive. In any case, an eye to those who remain vulnerable even after the principal violation, as well as after a particular solution to a case, will maintain the monitors focus—as necessary—on the further interventions needed toward the ultimate realization of the human right to adequate housing and land.

The following sample questions guide the monitor to prepare needed data and arguments, in the case of any present obstacles, but focusing on the human dimension in the case of a violation of the housing rights entitlement of to environmental goods and services.

Victims

- Identify the type and form of violation of the entitlement to access to environmental goods and services:
 - Homelessness
 - Forced eviction
 - Arbitrary demolition
 - Denial of equal inheritance rights
 - Confiscation of property by public officials and bodies
 - Confiscation by private actors (criminal gang, settlers, armed groups)

- Who has been affected by the violation of the entitlement of access to environmental goods and services, in particular, natural resources, including adequate land and water?

- How many people have been affected in the same way in the last year (any time period)? Does it demonstrate a pattern?

- Identify and provide demographic details of the victims, for example:
 - Numbers and proportions of refugees
 - Numbers and proportions of fisherfolk
 - Numbers and proportions of forest dwellers
 - Numbers and proportions of migrant workers
 - Numbers and proportions of minority persons
 - Numbers and proportions of males and females
 - Numbers and proportion of people of African descent
 - Numbers and proportions of environmentally dependent nomads
 - Numbers and proportions of indigenous and/or tribal and semitribal people

- Numbers and proportions of elderly, disabled, medically challenged persons with special needs
 - Numbers and proportions of members of groups subject to (current and historic) discrimination
 - Numbers and proportions of impoverished inhabitants, including those subject to discrimination on the basis of their economic status or work (e.g., Dalits)
 - Numbers and proportions of any other relevant group identity of victims
- Where does the violation of this right mostly occur (i.e., rural, urban, slums)?
- When does this violation mostly occur? Day or night? Weekend? Certain times of the year? Why does the violator choose this timing?

Vulnerable individuals and groups

- Identify the type and form of vulnerability to future violation of the entitlement to access to environmental goods and services:

- Homelessness
- Forced eviction
- Arbitrary demolition
- Denial of equal inheritance rights
- Confiscation of property by public officials and bodies
- Confiscation by private actors (criminal gang, settlers, armed groups)



- Who are the populations most likely to experience the violation of the right to access to environmental goods and services, in particular, natural resources, including adequate land and water? Why are they vulnerable?
- Identify and provide demographic details of the concerned vulnerable persons or groups:
- Numbers and proportions of refugees
 - Numbers and proportions of fisherfolk
 - Numbers and proportions of forest dwellers
 - Numbers and proportions of migrant workers
 - Numbers and proportions of minority persons
 - Numbers and proportions of males and females
 - Numbers and proportion of people of African descent
 - Numbers and proportions of environmentally dependent nomads
 - Numbers and proportions of indigenous and/or tribal and semitribal people
 - Numbers and proportions of elderly, disabled, medically challenged persons with special needs
 - Numbers and proportions of members of groups subject to (current and historic) discrimination
 - Numbers and proportions of impoverished inhabitants, including those subject to discrimination on the basis of their economic status or work (e.g., Dalits)
 - Numbers and proportions of any other relevant group identity of vulnerable persons
- Explain the insecurity of their situation and give details about the naturally vulnerable populations (women, children, indigenous, slum dwellers, refugees, workers/migrant workers, farmers, etc.).

Focus on multidimensional / intersectional affects

Your case will be enhanced when your information includes emphasis on the particular types of victimization or vulnerability by focusing on the social groups typically subject to multidimensional, or intersectional types of deprivation. The monitor should identify such multiple forms of deprivation for each of the groups already identified in this section (above). This step allows you to identify the nature and causes of the particular affects on certain groups who may be made vulnerable already in addition to, or in advance of the specific housing land rights violation, or anticipated violation. The following sample questions will lead you to clarify this point.

Women

- Are women in the given community or case subject to deprivation of their entitlement to access to environmental goods and services, in particular, natural resources, including adequate land and water?
- What are the reasons for this condition? Is it by some custom, religion or other ideological motivation?
- Does the practice of domestic or social violence against women somehow impede women's enjoyment of their entitlement to access to environmental goods and services, in particular, natural resources, including adequate land and water?
- Are the formal or informal terms of inheritance already biased against women in a way that negatively affects the enjoyment of the entitlement to access to environmental goods and services, in particular, natural resources, including adequate land and water?

Children

- Do housing conditions impede acceptable access to environmental goods and services as an element of the RAH, so as to obviate violence and abuse, including psychological & sexual abuse, within the home or community?
- Are housing conditions, in particular, the rights element of access to environmental goods and services, suitable for children to carry out their studies?
- Are housing conditions, including access to environmental goods and services, conducive to achieving the highest attainable standard of physical and mental health?

Racial, ethnic or other groups

- Who are the victims or vulnerable persons or community subject to discrimination that includes denial of access to environmental goods and services, in particular, natural resources, including adequate land and water?
- Have the affected persons or groups (either the vulnerable or the victims) been denied their right to suitable housing, and particularly to access to environmental goods and services, because they belong to a specific minority, ethnic or indigenous group?

❑ How has historic discrimination, if any, affected the current situation?

✓ **Victims' case documentation form**

3.7. Losses/consequences

✓ **Quantification methodology**

Quantifying violations to the right to adequate housing: a tool for evaluating the effects of demolitions, confiscations and forced evictions

The purpose of this tool is to help determine the value of costs and losses that victims incur as a consequence of the violation their housing rights. Using this tool will aid in the various necessary stages of proper monitoring of specific violations of the right to housing, including:

1. Documentation and recording
2. Monitoring and reporting
3. Quantifying/evaluating
4. Identifying and solving problems
5. Follow-up assessments
6. Fact-finding missions
7. Public information and campaigns
8. Social mobilization
9. Media work
10. Compensation efforts
11. Legal defense and prosecution
12. Monitoring international obligations



The quantification methodology and “Loss Matrix” are designed to aid human rights workers responsible for each stage in the monitoring process, including interventions that are both preventive and remedial. These stages may involve the same individual human rights worker at each stage, or may involve a division of team labor. In either case, this tool also can serve as a vehicle for organizing tasks in a coordinated and complementary way, when more than one individual or organization is involved in the process. For instance, if different teams or organizations are specializing in respective geographical areas, applying this tool commonly aids the process to avoid duplication and the discrediting contradiction of facts.

Whether or not your monitoring objective is legal defense, policy analysis, compensation or public information, the quantification of the effects of the violation strengthen your argument and, consequently, help mobilize support for the movement to end, redress and compensate/obtain restitution for the violations. In particular, your findings will substantiate the assertion that many housing rights violations actually widen and deepen poverty, having a de-development effect on the community and country.

The material and otherwise-calculable costs resulting from the violation are determined for each unit (household) affected and then totaling them. Alternatively, in the case of multiple units affected, a representative sample should be obtained to determine the average values, which then are to be multiplied by actual numbers of units affected.

Other incalculable losses still have to be recorded and reported in narrative terms. Such narrative explanation and analysis will be useful as an accompaniment to this quantification table.

Both short-term and long-term values are to be assessed. (You can follow examples of traffic dispute jurisprudence, or the law pertaining to insurance or divorce cases in your country to come up with a methodology of determining personal injury and pain-and-suffering damages claims for compensation purposes.) Accurate and thorough quantification of costs and losses calls for both a great deal of cooperation between the monitor and the affected community, and a continuous relationship over time. In order to capture many of the values, sustained monitoring and calculation are required over time. It is, therefore, recommended that such monitoring effort be undertaken or coordinated by those who maintain a program and commitment to the affected community over the long term.

This tool seeks to quantify the costs of victims, as well as public, or social costs. For our purposes, the principal victim(s) would be those persons whose property and lives are directly affected by the act, be it a demolition, confiscation and/or eviction, etc. (This tool would be used for any and all categories of violation.) Ancillary or indirect victims would be those who undergo the cost or other harm as a result of an act intended or directed at others. The indirect victims' losses and damage should be included in the overall assessment of the violation's effects.

The middle column, entitled "Methodology," in the quantification table found at the "**Loss Matrix**" link contains commentary on the contents of the calculated costs/losses and provides guidance on how to calculate them. It is there where you will record in your applied version of the "Loss Matrix" the type of items or values totaled under the particular type of cost/loss. There, too, you could cite whether or not the values are losses/costs to the principal victims only, or include those of indirect victims, such as those enduring collateral damage from a house demolition. The "Methodology" description should be as complete but concise as possible, within a short line or two.

It is possible to modify "Loss Matrix" to the user's discretion. (However, we emphasize that any modifications be shared among the community of monitors to ensure compatibility of findings.) For example, certain direct and indirect victims' losses may need to be separately calculated for some reason. In that case, an additional column can be added. In any case, however, it is important to arrive at a global cost figure for the violations under review. The column at the far right under each category of cost should be totaled using the imbedded Excel formula.

Follow the links to access the details of the quantification methodology and "**Loss Matrix.**"

- Victim's material losses
- Victim's nonmaterial losses
- Other than victim's material losses (public costs)
- Other than victim's nonmaterial losses (including social costs)

Contents and methodology for determining each category of loss/costs

Victims' Material Losses

The Structure

The fair market value of the house, shelter or other structure(s). This is probably greater than the cost, as indicated in official records of the most recent tax assessment, for example. That price may be a guide, but is likely to be out of date with the value that would be obtained if the property were to be sold on the market. The market value would also likely

be less than the “speculative value,” which is considered to be that value (price) that a speculator, investor or other interested party would anticipate after the demolition/eviction and after converting the structure—if partially retained—for eventual exchange or reassessment. The reference for determining the market value would be reliable real estate agents, banks, or other parties involved in the sale and exchange of such properties. The standard methodology would involve collecting three quotes/estimates and selecting the average, or taking the middle quote as the fair market value.

In the likely event that no such property market is actively issuing quotes on the value of the affected property. The remaining alternative method for determining market value would be the estimated cost of replacing the property at current market values.

Note that the victim incurring the loss in this case would be the owner(s) and or title holder(s), including those owning the property individually, or collectively, under formal title, or by traditional tenure systems.

Plot

The plot and the structure are considered separately in this methodology to accommodate systems where the two aspects of property value are determined separately, or by different methods. For example, a cooperative arrangement may provide for outright title to the structure, but a “share” of the land area under it. It also allows for disaggregating these values in the event of a dispute over one and not the other. In the event that the structure and the land are both held in title by the same owner and the values are customarily assessed in combination, the structure and plot values could be combined in the matrix.

The eviction and/or demolition may not involve the dispossession of land title or ownership of the plot on which the structure stands. In that case, the evaluator would proceed to the next categories and not enter a value for the plot. However, in some cases, such as in Israel, the land plot under a demolished structure may, perforce, be assumed by, or “revert to” the state as “state land” or “national land.” The evaluator must be familiar with the local laws and regulations to determine if that is the case in the event of an eviction or demolition. That may determine whether or not a value is entered in this category of the matrix or not.

In the case of a housing plot being confiscated by the state, determining the value of that plot may be difficult if, again, no market value can be determined for the affected area. In that case, the methodology would involve determining the cost at current market value of a comparable site in another location.

Contents

Each affected party should cooperate with the field workers to provide an inventory of the actual contents lost and damaged in the demolition. The value of those contents for this quantification purpose is the **replacement value** of the items, not the market value. The contents (furniture, clothing, foodstuffs, electronics, housewares items, etc.) would be subject to depreciation and the resale or fair-exchange values would not be sufficient to cover the cost of replacement. The replacement value represents the actual cost of repurchasing items comparable in quality to those lost or damaged by the demolition. (For heirlooms and other items sentimental value, a replacement cost should be included in this category; however, the nonmaterial loss or irreplaceability should be expressed in the

“Victims’ Nonmaterial Losses” section of the matrix, with a narrative either included in the matrix or attached to it.

Collateral damage

This section of the matrix allows for inclusion of the material losses to the indirect victims in particular, including neighbors’ and public property that are affected by the act. In cases of violent eviction or demolition, using bulldozer or explosives, for example, nearby property can be damaged in various degrees, or destroyed.

Infrastructure

This section refers to services and other infrastructure lost in the demolition/eviction/confiscation that would have to be replaced after the event. For example, electricity provided at the original site may have to be replaced by a generator or purchasing energy from an alternate source. Water, previously available from installed or nearby facilities may have to be replaced by purchasing water or hauling it from another source. The resulting added cost—including the relative cost of labor at the going rate of such work for hire, which is beyond the existing regular costs of obtaining same—is the value to be calculated here.

Business losses

If the demolition/eviction/confiscation results in the loss of a business, or a portion of business, that cost is to be included here. Those losses are the subject of subcategories to be detailed below.

Equipment/inventory

This includes the value of machinery and equipment, other installations, such as furnishings and built ins, as well as all stock and supplies. This should include also the property belonging to others lost or damaged in the event. For example, a laundry or repair service would hold clients’ property to be processed and returned. The values of those items are also to be included in this figure.

Prospective income

The loss resulting from inability to deliver goods and services, and the anticipate profit from existing stores, orders, contracts, etc. that would be unfulfilled due to the event. The short-term and long-term affects are to be calculated by different methods. This category of loss follows the method developed locally for determining “goodwill” as an asset, which would include the projected income from a pattern of business developed through the lifetime of the enterprise. [Refer to insurance law methods.]

Mortgage, other debts and penalties

The demolition/eviction/confiscation removes the owner’s relationship with the land and/or structure, contents, livestock, inventory and other matters of material value, such as materials and work performed for physical improvement to the property. However, the event does not relieve the owner from responsibility to repay for those values obtained on a credit basis. Those values, including any penalties and increased interest resulting from the event,

are to be included here for both the short-term and long-term. If a situation prevails, as in many legal systems, that a debtor relinquishes claims (as in a natural disaster, for example), then that cost should nonetheless be calculated and listed under the category of “Other than Victim’s Losses.”

Livestock

The value of livestock lost and the treatment of those injured by the event is calculated here. This would include also the labor costs for time spent in rounding up dispersed livestock at the rate of pay for such work for hire. The calculus for these values includes the loss of anticipated returns from normal sale of, and/or produce from the animals, including their normally anticipated progeny over the short-term and long-term. In the case of the animals’ value as beasts of burden, the returns on their labor are to be included in the figures provided under lost revenue, increased transportation costs, returns from crop loss, or other appropriate category.

Land

The landed property not associated with the affected structure itself is to be calculated on the basis of fair market value, as with the structure and its plot entered above. This could be land adjacent to the dwelling or other affected structure, or land confiscated separately. This land could be lost entirely through confiscation, or its value could be reduced as a result of the eviction or demolition. In the case of eviction, land title might not be lost outright, but the conditions created by the eviction may prevent the owner(s) from returning to or reclaiming their land. In that case, the land in question would be calculated as an outright loss.

Trees/crops

The value of a lost or damaged nonfruit-bearing, or otherwise unharvestable tree or other vegetation would be determined by the cost of purchasing and replanting a comparable replacement. The nonmaterial, aesthetic, or sentimental value of the tree or other vegetation would be included by narrative in the Victim’s Nonmaterial Losses item under Environment or Heritage, as appropriate. The value of harvestable trees and crops would include the value of the replacement itself for fruit-bearing trees and crops, as well as the (short-term and long-term) value of the harvest. The loss of timber would be calculated accordingly also, with the value being the anticipated return from the harvesting or sale of the tree itself.

The ecological loss of vegetation, depending on the nature of the event—if by demolition were by fire or other destructive means—also carries a value. Ecological damage is calculated on the basis of the restoration costs entailed. Collateral damage to wildlife and other natural assets, owing to the damage and the time required to restore it, may be of both a calculable and incalculable loss. Where possible, such calculable values should be included here. Otherwise, those losses are to be recorded in the narrative section of both the Victim’s and Nonvictim’s Nonmaterial Losses, for those losses would be of a more public nature.

Lost/decreased wages/income

The loss of a home, including subsequent short-term or long-term resettlement, may involve the loss of livelihood, whether that livelihood is linked to the dwelling and/or land lost. In any event, wages would inevitably be lost (to victim or her/his employer) for nonproductive time

attending to the event and its aftermath. Resettlement can lead to loss of a job or jobs altogether, or necessitate securing alternative employment, especially if temporary or long-term resettlement is far from the regular workplace. To calculate that value, one would subtract the short-term and long-term wages and other income of affected persons from the normal, anticipated wages and other income before the event. Since obtaining new employment and other income involves a loss of certain benefits, such as accumulated vacation leave, seniority and other benefits, the relative loss of those values should be included here if calculable. Job seniority may not be calculable value in monetary terms if it involves merely standing vis-à-vis colleagues. However, if that seniority arguably would have led to promotion with material effect in the short or long terms, that value is to be factored here as well.

Health care

The event itself or its aftermath may have negative health consequences. Social science has recorded the effects of eviction and resettlement upon the increased mortality and morbidity rates of the affected communities. While these notable consequences belong among the Victim's Nonmaterial Losses, the care for these consequences has clearly calculable values. The loss of life, limb and other health effects are the subject of the laws of states for the purposes of calculating victim compensation in insurance and other cases involving law suits. A sample of such methods taken from such statutes could form a composite methodology for calculating victims' health losses here.

The overcrowding, such as in interim or alternative housing arrangements, often leads to negative health consequences for those evicted, as well as for those providing the alternative shelter in their own quarters. The care and treatment of these health consequences (such as influenza, scabies, malnutrition, etc.) are an additional value added to these health care costs.

Interim housing

Eviction, confiscation and demolition victims often seek alternative housing with relatives or friends, either within the community or elsewhere. This housing has a value, which is to be calculated on the basis of fair rental rates for such shelter, whether rent is paid or not. It remains a cost and value that is subsidized in one form or another. It also can lead to an actual expanded definition of what constitutes the victim, for persons and groups offering assistance in various forms can be counted as second tier victims by virtue of the loss—voluntary or otherwise—incurred as a result of servicing the persons directly affected by the eviction, confiscation or demolition.

Bureaucratic and legal fees

While under threat of a violation, such as eviction, demolition and confiscation, the eventual victim would likely undergo costs related to both time spent and out-of-pocket costs in order to restrain or defend against the impending violation (if the threat is known in advance). Both the time and monetary costs incurred by both bureaucratic processes and legal advice and defense work should be quantified. Even if the legal advice given is free of charge to the affected person(s), those rendering the advice (NGO, CBO, other *pro bono* service) should put a value on that service for the purposes of this costing exercise. (The costs of bureaucratic efforts by public personnel is determined below under "Other than Victims' Nonmaterial Costs.")

Before the victim(s) can restore their proper housing, s/he conventionally undergoes a procedure and cost toward obtaining a license to rebuild or otherwise restore a dwelling. The costs incurred in this process, including fees, legal service, bribes and other out-of-pocket expenses should be included as a category in its own right.

Alternative/replacement housing

The cost of securing comparable housing on a permanent basis is represented here. (Temporary lodging costs are treated above under “Interim housing.”) The comparable housing is meant to include a dwelling with similar spatial dimensions, infrastructure, location and services as the home lost in the violation. This may involve calculation of the replaceable features of the original dwelling with some adjustments, depending on circumstances. For instance, a comparable dwelling space may be found near the source of livelihood, but may be in a differently priced market, and the adjusted figure would account for that. That dwelling may be comparable in most aspects, but lack services or infrastructure. In that case, the cost of obtaining the replacement services or infrastructure at the local rate would have to be added. Likewise, if the replacement housing is comparable to the original dwelling lost, but its location is less convenient for commuting to one’s source of livelihood or family and original community members, that additional transportation cost would be included in the “Transportation” item below.

Since this category of cost is of a more-or-less permanent nature, it should be cited in the “Long-term” cost column of the matrix. Typically, obtaining permanent replacement housing is a lengthy process; therefore, calculating this costs would be a subject for, and a further argument for follow up monitoring of violation cases.

Resettlement

The expenses of traveling and transport of goods to both interim and replacement housing sites form part of the resettlement cost. This, too, would likely involve the efforts and time on the part of several persons—with equivalent values—in order to locate and secure the short-term and long-term housing alternatives. All related costs should be calculated as much as possible.

Transportation costs

This category is the amount of difference between the amounts spent on transportation as a result of the eviction, demolition or confiscation and the amounts spent (if any) on transportation in the normal conduct of life at the original place of residence. Such values include expenses *and* time spent commuting to and from the source of livelihood, visiting family and community members, going to market, carrying out cultural and religious activities, visiting grave sites, conducting other official or private business, etc.

Victims’ nonmaterial losses

Health

In addition to the cost of medical treatment, the loss of health has a value seldom calculated in monetary terms. Methods for calculating the values of losses of life and limb can be found

in local legal practice concerning divorce, traffic and insurance. This loss will have to be described in some detail in order to make your case.

Living space

A reduction in living space can have negative physical and emotional effects, as when an evicted family takes refuge with friends and relatives in small, temporary quarters. Consequences may include nervousness, loss of sleep or skin ailments. Be sure to describe this situation as part of the victim's experience.

Reconstruction licensing

Long waiting and frustration may result from the search for a license to rebuild after demolition, eviction or confiscation. This loss can be measured in time and stress, and should be included here.

Psychological harm

The victims may suffer mental stress and psychological harm, especially in the context of violence during eviction, or the trauma that accompanies homelessness after the violation. Children are particularly susceptible. Their story needs to be told. You may find criteria for quantifying the value of pain and suffering from the specialized practice of local law on traffic and insurance.

Disintegration of family

Displacement and other violations of adequate housing could lead to separation of family members and the deterioration of family relationships. With the psychological depression arising from housing and land loss, some victims may engage in antisocial behavior, such as violence or substance abuse that harms family relations.

Loss of community

Eviction, resettlement or land loss can fragment communities and reduce social capital built up over time. It can separate people from support systems (including child-care arrangements, domestic division of labor, etc.) upon which they depend for livelihood and social activities, while women bear an extra burden of maintaining an uprooted home.

Investment in infrastructure

Even—and especially—the most-impooverished communities have to invest in local infrastructure (e.g., electricity, water, transport, roads), particularly if the municipal institutions exclude them. Separation from these facilities by forced eviction, confiscation or demolition means a total loss of that investment, which may not be quantified, partly because they are the product of volunteer labor.

Investment in sanitation and waste-management systems

A community may provide its own waste-management solutions, however simple it may be, especially in the absence of public services. The vital functions of waste management may no longer be possible because of the separation, causing a loss of labor divisions or disposal options and spell a deterioration in the quality of life, including entitlements to environmental health as a result of the violation.

Investment in security protection systems

Informal communities are typically forced to seek their own security arrangements, since civil police may fail to serve them, or deteriorating living conditions may coincide with increased social violence.

Investment in educational infrastructure

Local communities' arrangements for popular education may be curtailed with eviction, leading also to the disruption of formal education (e.g., lost school days). Each home also is a locus of educational infrastructure, especially where children carry out their homework.

Heritage

For heirlooms and other items of sentimental value, as for land-based identity and culture, a replacement cost should be included in this category. However, the incalculable nonmaterial dimension, or irreplaceability should be expressed in the "Victims' Nonmaterial Losses" section of the matrix, with a narrative either included in the matrix or attached to it.

Victims' nonmaterial costs

Environment/ecology

Various forms of housing rights violation can spell the loss of environmental safety, health and recreation. Displacement and eviction sever the relationship between the inhabitants and their habitat. It may also force them to live in precarious or unsafe environments as a consequence.

Standing/seniority

A home owner who loses her/his housing also loses the status that comes with the property and securely tenured lifestyle. The formerly real or perceived capacity of the victims to advise and support others dissipates with the violation of their right to adequate housing, especially through land loss.

Relocating long-standing communities to new areas makes them low-status newcomers in competition with new, indigenous neighbors. Environmental degradation or rezoning may affect the status of a community negatively, leading to intangible—but sometimes also quantifiable—losses.

Political marginalization

Homeless people in many States are denied the right to vote for lack of a fixed address. Resettlement renders inhabitants politically weak vis-à-vis new neighbors, especially without the benefit of local connections and established relationships.

Social marginalization

Losing one's home and place to live often means losing also the social integration once enjoyed in the former residence. Spatial marginalization to the outskirts of the city may be synonymous with exclusion from social services and infrastructure.

Further vulnerabilities

The loss of home, land and social capital (i.e., productive relations within the community) can leave the victim(s) without protection from the natural elements, and/or without livelihood and sources of income. The homeless woman becomes further vulnerable to threats against her personal security and integrity long after the housing-rights violation.

Other-than-victims' material costs (public costs)

Police

The law enforcement officials engaged in either committing or remedying a housing and land rights violation, for example, represent a cost to the public purse. You can calculate their number, multiplied by the hours/days engaged and by corresponding wages and benefits to derive an estimate of the public costs incurred.

Bulldozers

In some cases (e.g., in Israel), courts issue orders to targeted inhabitants and communities to demolish their own homes. If they do not comply, the State carries out the deed and charges the victim for the service. In other cases, the housing rights monitor would have to calculate the cost of using the equipment and the wages of the operator to determine the public expenditure in carrying out that part of the violation.

Legal practitioners

Lawyers, either arguing against or defending housing and land rights, as well as judges, prosecutors and court staff dedicate time and materials that are covered from public budgets. Their level of effort and cost per unit of time (hours or days) could form a method of calculating these public costs.

Army

Military personnel and equipment used in the violation (or defense against a violation) also represent a cost. Quantifying these costs may be a more-elusive exercise, but it may be useful to pose estimates for your public's consideration.

Other forces

The public bodies may subcontract tasks and functions to private parties; however, those expenditures related to the case at hand would factor among the nonvictim's material costs.

Bureaucratic and personnel costs

The inspection, administrative processing, clerical and other desk work in public institutions may be carried out in connection with your case and paid by the tax payer. Your educated estimate of these values forms part of the public cost scenario.

Other-than-victims' nonmaterial costs

Social costs

Housing rights violations can be a cause or consequence of social unrest in a country. Depressed living conditions within a community often coincide with increased social violence, and dislocation often generates new adversary relations among inhabitants competing over territory and property, either at the original site, or in resettlement. Squalid living conditions also could give rise to practices and pathogens that bear a social cost in the form of declining public health.

Civic order

Linked to adequate housing and other economic and social rights, civic order typically deteriorates commensurate with the deprivation of living conditions. Resistance to eviction and forced relocation, demolitions and dispossession by any party is the natural response to a breakdown in civic order, including that characterized by the State omitting to implement its obligation to respect, defend, promote and fulfill the human right to adequate housing and land.

Political legitimacy

Depending on the facts and scale of a particular situation, a housing and land rights violation could undermine the legitimacy of the political party, government or even State in whose name the violation is committed. Alternatively, resolving and remedying a violation could have the opposite effect of recovering the loss of official credibility and legitimacy.

✓ **Loss matrix**

✓ **Housing contents inventory**

3.8. Duty holders

The professional monitor of the human right to adequate housing should provide a list as complete as possible of the duty holders both legally and morally responsible. This legal duty holder (i.e., the State and its agents) may be operating in conjunction with others in either the violation or the potential solution. The audience of your eventual action, whether they are the general public, journalists, or a prosecutor or judge, will need a clear and complete picture of the legal personalities, those who are responsible for their acts of commission and/or acts of omission, and who does what to whom, from the beginning to the present.

As borne out in the foregoing sections on sources of law and guarantees, the concerned State is always the principal duty holder. The State is the legal personality that is treaty bound by the obligation to respect, protect, promote and fulfil human rights, but also to aid those who have been deprived of them. The State's duties are threefold:

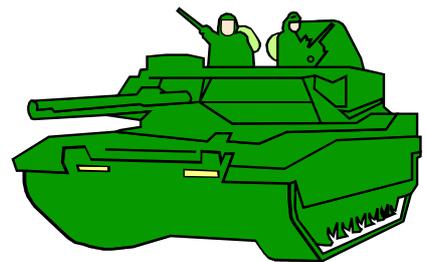
- To avoid deprivation,
- To protect and defend those facing deprivation,
- To provide remedy in the forms of assistance and justice to those deprived.

You may find that the State, as duty holder, has committed acts that cause deprivation, or omitted to protect or remedy a deprivation through the obstacles identified above. One might also find that the duty holder is constrained by other actors or factors, such as natural disaster, or global economic recession.

Identifiable institutions and man-made forces, either internal or external, may be known to contribute to a violation. These may include actors such as the International Monetary Fund (IMF), the World Bank, a multinational corporation or national planners. You may find that these parties are either directly or indirectly responsible for the deprivation, or conditions leading up to it. So, too, are factors such as debt or traditional social practices. Especially when the role of the State is passive (i.e., by denial or failure to protect and ensure remedy to the victims), other actors may come to the fore. Private companies, including multinational corporations, for instance, regularly acquire assets and carry out projects that involve forced evictions and land confiscation. In some cases, the regional and international development banks have their well-articulated policies on compensation/relocation. However, these companies may be the right hand of State policies, or implementers of international public projects. That is why it can be crucial to record the relations between the different actors forming a whole chain of duty holders.

One must not overlook the possibility that duty holders, particularly as violators owing remedy and restitution to victims, might also be members of the community, or even family members of the victim(s). Where does the State duty lie in such a situation?

As the legal personality obliged to respect, defend, promote and fulfil the human right to adequate housing, the State's duty lies squarely in the execution of its human rights obligations to regulate behavior of legal persons within its jurisdiction (and areas where it exercises effective control) in order to uphold rights. The human rights treaties and other instruments provide the guidance on how States—and statecraft—should address human rights violations by third parties not only as matters of civil or criminal law, but also as means to ensure the legitimacy of the concerned government, or even State itself.



To have a full outline of questions for identifying the duty holders and the applicable legal obligations, you can use this "Toolkit" very effectively, since each element of the right to adequate housing that you have identified as relevant to your case has corresponding duty holders.

Primary duty holders: State authorities

- ❑ Has the State failed to take to prevent the violation of housing rights, especially access to environmental goods and services, in particular, natural resources, including adequate land and water? What are those neglected steps?
- ❑ Has the State protected the impoverished and vulnerable inhabitants and aided the victims (e.g., by prosecution, return, compensation, etc.) in the violation of housing rights, especially access to environmental goods and services, in particular, natural resources, including adequate land and water? Which are the particular bodies responsible for these preventive and remedial steps?
- ❑ Has the State taken sufficient measures to promote the entitlement of access to environmental goods and services (e.g., human rights education, campaigns, public-service announcements, awareness-raising publications, etc)? Which are the specific bodies responsible for those measures?
- ❑ What is the State's relationship with other duties holders regarding the assessed violations? Explain the nature of that relationship. Is it a contract, foreign aid package, nepotism, political patronage, etc.?

Secondary: Have other actors affected the denial of environmental goods and services, in particular, natural resources, including adequate land and water?

- ❑ Are other local, non-State actors somehow engaged in the denial of access to environmental goods and services, in particular, natural resources, including adequate land and water? Who are they and what is their role?
- ❑ Have local or transnational companies contributed to the degradation of the environment such that negatively affects the human right to health and/or physical access to adequate housing? [See the entitlements of "**Habitability**" and "**Physical access**" in this toolkit.]
- ❑ What role do international financial institutions (IFIs) such as the World Bank, IMF, a regional development bank, or the World Trade Organisation have in determining the policies or conditions affecting natural resources, including adequate land and water in the affected community/country?
- ❑ What role and influence do multinational corporations or international development agencies have in determining the policies or conditions of natural resources, including adequate land and water in the affected community/country?
- ❑ How are these secondary duty holders responsible for the violation of the right to access to environmental goods and services, in particular, natural resources, including adequate land and water? To what extent do they influence State policies, programs, and laws having an effect on the violation?
- ❑ Do the secondary duty holders have internal policies/codes of conduct regarding housing rights, especially affecting the entitlement to access to environmental goods and services, in particular, natural resources, including adequate land and water? If so, are they publicly accessible?
- ❑ What are the relevant details of those policies or codes? How do they protect the human right to adequate housing and the entitlement of access to environmental goods and services, in particular, natural resources, including adequate land and water?

- Are these conditions part of an implementation contract or other cooperative agreement with State bodies or other partners?
- Before implementation, do they study the impact the projects will have or consider the possible unintended consequences?
- If there are several secondary duty holders, what is their relationship to each other, and how do they share responsibility for the assessed violation of the entitlement to access to environmental goods and services, in particular, natural resources, including adequate land and water? What is the relationship between each of them and the State?
- Do local authorities lack sufficient autonomy in housing and community development to apply locally relevant options to ensure the human right to adequate housing, especially access to environmental goods and services, in particular, natural resources, including adequate land and water?
- Do local authorities use their autonomy to protect and influence the central authorities of the State in a positive way, or do they participate in the violation and denial of the State's obligations and national policies?

Assessment

- To what extent is the State responsible for the vulnerability or violation of the housing rights entitlement to access to environmental goods and services, in particular, natural resources, including adequate land and water?
- To what extent are non-State actors responsible for the vulnerability or violation of the housing rights entitlement to access to environmental goods and services, in particular, natural resources, including adequate land and water?

3.9. Actions

The following table of actions (comprised of both preparation and implementation tasks) arranges a variety of possible problem-solving options for you by categorizing them for organizational and selective decision-making purposes. It is not an exhaustive set of options, but merely part of an array of possibilities for you to undertake with the affected community, depending on the present strengths (assets), weaknesses (liabilities), opportunities and threats.



Before selecting your actions, you should conduct a strategic planning exercise. For guidance click [here](#).

Footnotes shown here refer to relevant manuals, training materials, expertise, trainers, recorded experiences and/or methodologies already available to guide your chosen action toward a desired goal/result/solution. Toolkit users are encouraged to consult the HIC-HLRN website regularly for updates and further reference (www.hlrn.org) on constantly evolving

updates, including strategies and practices arising from experiences throughout the global HIC and HIC-HLRN community.

Action		Solution
Preparation	Implementation	
Alternative tenure options		
Gather information for community to consider tenure options	Develop "limited equity cooperatives" ²⁶⁹	Legal secure tenure in adequate housing and sustainable land
	Inform and train community in pursuing land-tenure options ²⁷⁰	
Community capacity building		
Conduct training for community on their human right to adequate housing ²⁷¹	Mobilize community in local and national human rights campaigns	Greater community participation in projects, programs and policy formulation with well-defined human rights orientations
Legal service organizations and centers provide legal advice and representation to disadvantaged individuals and communities ²⁷²	Organize popular resistance to HRAH violations (demonstrations, petitions, sit-ins, street theater, etc.) ²⁷³	Community blocks housing rights violations by State and non-State entities
<i>Pro bono</i> (volunteer) lawyers provide legal advice and representation to disadvantaged individuals and communities	Organize national campaign on RAH ²⁷⁴	Coordinated community action and reaction to influence State authorities on housing policies

²⁶⁹ The limited-equity cooperative is a form of housing tenure in which shareholder residents manage their buildings, within limits imposed by a charter, and have the right to get back what they have paid for their shares plus an allowance for improvements, if and when they decide to leave. See Duncan Kennedy, "The Limited Equity Coop as a Vehicle for Affordable Housing in a Race and Class Divided Society," 46 *Howard Law Journal* 85–125, 85 (Fall 2002).

²⁷⁰ Luanne Warnock, *Sharing the Cost of Land Tenure and Stewardship* (Davis CA: Sustainable Agriculture Research and Education Program, University of California, 1996).

²⁷¹ See Circle of Rights (Washington: 2000); Jules N. Pretty, Irene Guijt, John Thompson and Ian Scoones, *Participatory Learning and Action, A Trainer's Guide* (London: International Institute for Environment and Development, 1995), available from Earthprint at www.earthprint.com; also materials of Peoples' Movement for Human Rights Education, <http://www.pdhre.org>.

²⁷² Gridley Hall and Burton Fretz, "Legal Services in the Third World," *Clearinghouse Review* (December 1990); Jose Diokno, *Developmental Legal Aid in Rural Asean: Problems and Prospects* (Washington: 1981); Richard J. Wilson and Jennifer Rasmussen, *Promoting Justice: A Practical Guide to Strategic Human Rights Lawyering* (Washington: Human Rights Law Group: 2001).

²⁷³ Morjane Baba, *Guérilla Kit* (Paris: La Découverte, 2003); Mike Prokosh and Laura Raymond, *The Global Activist's Manual: Local Ways to Change the World* (New York: Nation Books, 2002).

²⁷⁴ "Global Struggle and National Focus Note" (Geneva: HIC, 1996).

Build capacity of community-based and other civil society organizations to manage projects and campaigns ²⁷⁵	CBOs and NGOs more capable to support the affected people in responding rapidly and effectively to crises/violations
Train communities (in HRAH, strategic planning, technical skills, etc.) ²⁷⁶	Public agencies provide adequate technical, marketing and research assistance to disadvantaged community on an affirmative-action basis
Raise public awareness toward social mobilization through public education ²⁷⁷	Mobilize peaceful public protests to housing rights violations
Enhance monitoring-and-documentation skills and methods (e.g., archiving, statistics, multimedia, etc.) to build strong argumentation ²⁷⁸	Urgent Action appeals (organize regional and/or international mobilization) ²⁷⁹ Public-information campaigns ²⁸⁰
Design and implement alternative planning (community generated techniques in the people's initiative to design their own living environment) ²⁸¹	Participatory alternative housing projects adapted to the community's needs
Conduct an inventory (enumeration) of community human	Organize and divide volunteer labor of affected communities; and to areas
	Community housing and built environment upgraded on-site as alternative to relocation.

²⁷⁵ Kaplan, Allan, *The Development of Capacity* (Geneva: UN Nongovernmental Liaison Service, 1999); Goggey, Shirley, *Rural Community Resource Centers: A Guide for Developing Countries* (London and Basingstoke: MacMillan, 1988).

²⁷⁶ Barrameda, Teresita V. and Lea I. Espallardo, *Learning, Reflecting and Acting for a Human Rights Future: A Training Manual for the Education of the Human Right to Housing in Urban Communities* (Quezon City: Process, Inc. and New York: PDHRE, 2000).

²⁷⁷ *Writing for change: An interactive guide to effective writing, writing for science, writing for advocacy* [CD and user's guide] (Oxford: fahamu and IDRC, 2000); International Human Rights Internship Program, *Ripple in Still Water: Reflections by Activists on Local- and National- Level Work on Economic, Social and Cultural Rights* (Washington: University of Minnesota Human Rights Resource Center, 1997), Chapter 6, online at <http://www1.umn.edu/humanrts/edumat/IHRIP/ripple/toc.html>; Allan McChesney, *Promoting and Defending Economic, Social and Cultural Rights: A Handbook* (Washington: AAAS and HURIDOCS, 2000) Chapter 7 online at: <http://shr.aaas.org/escr/handbook/>.

²⁷⁸ For guidance and methodology in documenting housing rights cases, see HLRN, *Urgent Action! HLRN Guide to Practical Solidarity for Defending the Human Right to Adequate Housing* [Arabic, English, French and Spanish versions] (Cairo: HLRN, 2003); and HIC Housing and Land Rights Network website: www.hlrn.org.

²⁷⁹ For guidance and methodology in building housing rights cases argumentation and mobilise solidarity, see HLRN, *Urgent Action! HLRN Guide to Practical Solidarity for Defending the Human Right to Adequate Housing* [Arabic, English, French and Spanish versions] (Cairo: HLRN, 2003); and HIC Housing and Land Rights Network website: www.hlrn.org.

²⁸⁰ *Strategic Campaigning* (London: Amnesty International, 2003).

²⁸¹ Youth in Unity for Voluntary Action--YUVA and University of Tasmania, "Settlement Upgrading Manual" [Sakkardara alterantive plan] (October 2000); UNCHS, *Human Settlements Development through Community Participation* (Nairobi, UNCHS, 1991); Nick Waters, *The Community Planning Handbook: How People Can Shape Their Cities, Towns and Villages in Any Part of the World* (London: Earthscan, 2001).

resources and social capital ²⁸²	to develop alternative plans	Obtain adequate relocation site with suitable location, environmental conditions and livelihood options
	Community representatives lobby officials and legislators to cooperate with/approve community-proposed alternatives	
Community organizing		
Consult with community representatives and conduct an inventory (enumeration) of community human resources and social capital	Establish a tenants union ²⁸³	Community presents a common position in defense of its rights and interests
Identify and locate absentee landlord ²⁸⁴		
Cooperate and negotiate²⁸⁵		
Learn/use conflict resolution techniques and, including alternative dispute resolution ²⁸⁶	Decriminalize actions taken to obtain elements of HRAH	Administrative recognition of tenure and the human right to adequate housing of people without economic access
Mobilize inhabitants	Organize squatter actions and squatter-empowerment interventions ²⁸⁷	

²⁸² Ibid.

²⁸³ "Tenant organizing resources" on the National Alliance of HUD Tenants website: <http://www.saveourhomes.org/>. Practical steps for forming a tenants union can be found on http://www.radio4all.org/aia/pro_tenant.html.

²⁸⁴ "Who is my landlord anyway?" (Seattle: The Tenants Union, 2004), go to <http://www.tenantsunion.org/research.html>.

²⁸⁵ For a collection of popular experiences in government-nongovernment cooperation in the field of human settlements, see Habitat International Coalition, Building the City with the People: New Trends in Community Initiatives with Local Governments (Mexico City: Habitat International Coalition, 1997), contents also available on line at HIC General Secretariat website, at <http://www.hic-net.org/library.asp>.

²⁸⁶ American Arbitration Association (AAA), Grievance Mediation Procedures (New York: AAA, 1992); AAA, Resolving Your Disputes (New York: AAA, 1993); American Bar Association, Alternative Dispute Resolution: An ADR Primer (Washington: Standing Committee on Dispute Resolution, 1989); Carpenter, Susan L. and W.J.D. Kennedy, Managing Public Disputes: A Practical Guide to Handling and Reaching Agreements (San Francisco: Jossey-Bass Publisher, 1988); Cochrane, Michael G. ed., Attorneys General and New Methods of Dispute Resolution (Washington: American Bar Association, 1990); Costantino, Cathy, A. and Merchant, Christina, S. Designing Conflict Management Systems (San Francisco: Jossey-Bass Publisher, 1996); Edelman, Lester, Frank Carr, and James L. Creighton, The MiniTrial (Ft. Belvoir VA: U.S. Army Corps of Engineers Institute for Water Resources, 1989); Edelman, Lester, Frank Carr, Charles Lancaster, and James L. Creighton, Non-Binding Arbitration (Ft. Belvoir VA: U.S. Army Corps of Engineers Institute for Water Resources, 1990); Fine, Erika S. and Elizabeth S. Plapinger, eds. for the CPR legal Program, Containing Legal Costs: ADR Strategies for Corporation, Law Firms, and Government (Butterworth Legal Publishers, 1988); ; Folberg, Jay and Alison Taylor, Mediation: A Comprehensive Guide to Resolving Conflicts without Litigation (San Francisco: Jossey-Bass Publishers, 1984). For a bibliography and resources guide on alternative dispute resolution, see Office of Personnel Management website: <http://www.opm.gov/er/adrguide/Section7.asp>.

²⁸⁷ Diana Mitlin and David Satterthwaite eds., Empowering Squatter Citizen: Local Government, Civil Society and Urban Poverty Reduction (London: International Institute for Environment and Development, 2004), available from Earthprint at www.earthprint.com.

Cooperate with National Human Rights Institutions ²⁸⁸	Propose and lobby for the implementation of National Plans of Action for Human Rights ²⁸⁹	National housing shortage, upgrading needs and land conflicts addressed in a National Plan of Action with provision for law and policy reform
Negotiate with municipal authorities to include the community/civil society as a partner ²⁹⁰	Increase community participation in design, planning, implementation and maintenance of housing ²⁹¹	Maintained and upgraded social housing
Train in negotiation and mediation skills ²⁹²	Negotiation toward reconciling evictions/removals and land grabbing ²⁹³	Indigenous peoples regain historic land claims
Develop community/local government cooperation	Monitor transparency in decision-making processes	Obtain social housing (provided by government), based on need, with amortization based on minimum wage level (affordability)
	Design infrastructure projects	
	Reform public policy toward providing affordable housing	
	Propose and implement National Shelter Strategy ²⁹⁴	
	Design national (comprehensive) development plans	

²⁸⁸ OHCHR, National Institutions for the Promotion and Protection of Human Rights [Human Rights Series No. 19] (Geneva: OHCHR, undated), at <http://www.unhcr.ch/html/menu6/2/fs19.htm>.

²⁸⁹ Office of the High Commissioner for Human Rights, Handbook on National Human Rights Plans of Action [Professional Training Series No. 10] (Geneva and New York: OHCHR, 2002), at: <http://www.ohchr.org/english/about/publications/docs/nhrap.pdf>.

²⁹⁰ Janelle Plummer, Municipalities and Community Participation: A Sourcebook for Capacity Building (London: Earthscan, 2001); Janelle Plummer, ed., Focusing Partnership: A Sourcebook for Municipal Capacity Building in Public-Private Partnerships (London: Earthscan, 2002); Diane Warburton, ed., Community and Sustainable Development: Participation in the Future (London: Earthscan, 200X).

²⁹¹ UNCHS, Human Settlements Development through Community Participation (Nairobi, UNCHS, 1991).

²⁹² Scott Beattie, "Is Mediation a Real Alternative to Law? Pitfalls for Aboriginal Participants," Australian Dispute Resolution Journal 8 (1997) 57; Larissa Behrendt, Aboriginal Dispute Resolution: A Step towards Self-Determination and Community Autonomy. (Sydney: Federation Press, 1995).

²⁹³ Michael Asch and Norman Zlotkin, "Affirming Aboriginal Title: A New Basis for Comprehensive Claims Negotiations," in Michael Asch, ed., Aboriginal and Treaty Rights in Canada: Essays on Law, Equality, and Respect for Difference (Vancouver: University of British Columbia Press, 1997).

²⁹⁴ UNCHS, Developing a National Shelter Strategy: Lessons from Four Countries (Nairobi: UNCHS, 1990); OHCHR, Handbook on National Human Rights Plans of Action (Geneva: OHCHR, 2001)

Develop the cooperative sector	Promote cooperative sector initiatives to provide affordable housing	
Use/lobby/cooperate with the international human rights system (interventions with factual, legal and political mechanisms of the UN and regional human rights systems) ²⁹⁵	Undertake negotiations at international/ multilateral level (whereby negotiators representing the State assert their prior obligations under international human rights treaty law against IFI [Word Bank, regional development bank, IMF, etc.] and WTO conditionalities leading to housing rights regressive / retrogressive violations) ²⁹⁶	Obtain/ensure continuous regulation of housing market practices (e.g., to ensure tenure security, accessibility of housing, building materials, direct investment, etc.)
		End to practices of land confiscation through foreclosure, adverse possession and eminent domain without adequate, consensual alternatives
Develop / reform / enforce law²⁹⁷		
Initiate/reform legislation and regulatory processes in compliance with the human-right-to-adequate - housing framework	Undertake class action suits (with minimum of [e.g., at least 15] physical or legal persons undertaking a litigation action, generally in the name of a whole group of the population), or public-interest litigation (e.g., India) ²⁹⁸	Law and policy enforced to respect, defend, promote and fulfill housing rights
		Law enforcement officers protect population from and implied protection
Collect sufficient data to determine material and		Violators prosecuted and punished

²⁹⁵ See "NGO participation in the activities of the Committee on Economic, Social and Cultural Rights," UN doc. E/C.12/2000/6, 7 July 2000, website: <http://www.hchr.un.ch>; and "Revised general guidelines regarding the form and contents of reports to be submitted by states parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights," UN doc. E/C.12/1991/1, 17 June 1991.

²⁹⁶ INCHRITI, Trade, Investment, Finance and Human Rights: Essential Documents (Geneva: INCHRITI, 2001).

²⁹⁷ Mario Rosário, "[Action "Tsimá Ga Ku Aka" to build together](#)" (1996); Janeth López, "[Asesoría en vivienda para el proceso de reinserción en Colombia](#)" (1996); K.A. Jayaratne, "[Collaborative Partnership to Improve the Low Income Neighbourhoods](#)," (1996); Michael Shapcott, "[Rupert Pilot Project. A self-Help and Community Rehabilitation Project in Canada](#)" (1996); Leopold Mutembei, "[Struggles of the urban poor to improve their living conditions](#)" (1996); Leonard Chileshe Mulenga, "[The case of Bauleni Upgrading](#)" (1995); Johan Silas, "[The Improvement of Low Cost Housing and Environment](#)" (1996); in Habitat International Coalition, Building the City with the People: New Trends in Community Initiatives with Local Governments (Mexico City: Habitat International Coalition, 1997), contents also available on line at HIC General Secretariat website, at <http://www.hic-net.org/library.asp>.

²⁹⁸ "Public interest litigation" (PIL) is a form of litigation filed in a court of law, for the protection of "public interest." Most prominently used in the Indian context, it is not defined in any statute or act. It has been interpreted by judges to consider the intent of public at large. Although, the main and only focus of such litigation is public interest, PIL can be filed in cases involving, e.g., such issues as pollution, "terrorism," road safety, constructional hazards, violated human rights of the poor, the content or conduct of government policy, to compel municipal authorities to perform a public duty, etc. See, for example: Upendra Baxi, "Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India" [revised], in Upendra Baxi, ed., Law and Poverty: Critical Essays (Bombay: Tripathi 1988); Mario Gomez, In the Public Interest: Essays on Public Interest Litigation and Participatory Justice (Colombo: Legal Aid Centre, University of Colombo, 1993); Sampat Jain, Public Interest Legislation (New Delhi, Deep & Deep, 2002); Shri. V.S.Vadivel, "Public Interest Litigation (PIL) A Boon or Bane?" (Legal Services India, 2004),

<http://www.legalserviceindia.com/articles/pil.htm>; see also Help Line Law website: <http://www.helpinelaw.com/docs/main.php3?id=PIL11>.

nonmaterial losses to victims of housing and land rights violations		Victims receive restitution and full compensation for violation and material and nonmaterial losses
Conduct national housing and land rights assessment ²⁹⁹	Lobby parliament	Law promotes housing and land acquisition and retention in disadvantaged communities consistent with international commitments to promote just patterns of land distribution
	Raise test cases, constitutional challenges through court system	
	Develop laws on properties left without will and testate in order to narrow the class of heirs and prevent fractionation of the ownership	
	Nationwide constitutional review campaign	Constitutional reform ³⁰⁰
Institutional reform		
Establish and maintain an effective Land Trust to support communities subject to discrimination and dispossession		Land ownership expanded for disadvantaged communities on an affirmative-action basis
Monitor and survey practices of public and private lending institutions for discrimination practices and patterns	Lobby for disciplinary action and rehabilitation of institutions to end discriminatory practices	Institutions apply uniform criteria in housing and community development programs, policies and transactions
International human rights system interventions		
Prepare and present collective parallel report to human rights treaty bodies (or submit cases under individual complaints procedures under Optional Protocols)		UN treaty body Concluding Observations coincide with community's evaluation of housing rights conditions and proposals for solutions

²⁹⁹ Apply this HIC-HLRN Housing and Land Rights Monitoring Toolkit on a national scale to all elements of the human right to adequate housing.

³⁰⁰ See, for example, "The history of constitutional reform in Kenya," World History Archives (2004), <http://www.hartford-hwp.com/archives/36/index-bbh.html>.

Raise cases and submit briefs before regional human rights courts and commissions ³⁰¹		State compelled to implement its treaty obligations to respect, defend, promote and fulfill the human right to adequate housing and land
Use Concluding Observations in public information and media campaigns, litigation		
Submit cases to UN Commission on Human Rights 1503 Procedure		States intervene to resolve impasse in housing rights violation case
Submit question/case to UNESCO complaints procedure		States intervene to resolve impasse in housing rights violation case
Legal defense		
Develop and deliver legal literacy and litigation strategy training ³⁰²	Provide legal-aid services to defend individual and community housing and land rights	Judicial rulings include legal precedents for future litigation and law reform to ensure individual and group rights to adequate housing and land
Collect detailed data on violations, perpetrators, values of losses and other consequences ³⁰³	Present admissible evidence in litigation on behalf of victims ³⁰⁴	
		Judicial remedies, including legal precedents for future litigation and law reform to ensure gender equality
Develop gender-awareness and gender-justice training for communities, police,	Provide legal-aid services to defend equal rights to housing and land for	Victims receive restitution and full compensation for violation and material and nonmaterial

³⁰¹ Litigating Economic, Social and Cultural Rights: Achievements, Challenges and Strategies (Geneva: COHRE, 2004), available at <http://www.cohre.org/library/Litigating%20ESCR%20Report.pdf>; Amicus Curiae in Grupo Interdisciplinario por los Derechos Humanos v. Colombia [submitted by COHRE to Inter-American Commission on Human Rights on case of housing destruction by paramilitary groups in Ituango and El Aro, Colombia], on line at <http://www.cohre.org/downloads/amicuscolombia1.doc>; Amicus Curiae in Justiça Global, et al. v. Government of Brazil, Inter-American Commission on Human Rights [submitted by COHRE on actual and threatened violations of housing rights, including forced evictions, with the planned Alcântara Spaceport expansion, in Brazil] available at <http://www.cohre.org/downloads/amicusbrazil1.doc>; Amicus Curiae in CELS & CEJIL v Argentina, Inter-American Commission on Human Rights [submitted by COHRE to Inter-American Commission on Human Rights on case local authorities conducting forced evictions in Barrio Ejército de los Andes, Provincia de Buenos Aires, Argentina], available at <http://www.cohre.org/downloads/amicusargentina1.doc>. See also COHRE Case Law Database on line at <http://www.cohre.org/tframe.htm>; Case law database for economic, social and cultural rights available on the ESCR-Net website at <http://www.escr-net.org/>; found in “Case Law” at http://www.escr-net.org/EngGeneral/Case_law.asp, or “Jurisprudencia” at http://www.escr-net.org/EspGeneral/Case_law.asp.

³⁰² Margaret Schuler and Sakuntala Kadirgamar-Rajasingham, Legal Literacy: A Tool for Women’s Empowerment (Washington: Women, Law and Development, OEF International, 1992).

³⁰³ See “Housing and Land Rights Violation Case Documentation Form” in this toolkit.

³⁰⁴ Domestic Implementation of International Human Rights: Litigating Economic, Social and Cultural Rights, on Human Rights Internet website at http://www.hri.ca/fortherecordCanada/vol1/guide-part_11.htm; Case Law Database for Economic, Social and Cultural Rights available on the ESCR-Net website at <http://www.escr-net.org/>; found in “Case Law” at http://www.escr-net.org/EngGeneral/Case_law.asp, or “Jurisprudencia” at http://www.escr-net.org/EspGeneral/Case_law.asp.

lawyers, prosecutors and judges ³⁰⁵	women and gender-discrimination victims	losses ³⁰⁶
Develop judicial procedures and expertise to provide for land-consolidation courts	Consolidate and reduce unstable “in-common” tenancy to maintain family and community land retention, especially to uphold land base for minority groups and indigenous peoples	Communities restore and retain their land base
Media cooperation and campaigns		
Conduct training for media professional in the human right to adequate, corresponding obligations, interviewing victims, quantifying victims’ losses and community follow-up ³⁰⁷	Meet journalists and media professionals to follow-up on training and present new documentation and information on developments	Informed public supports community alternative-development and/or anti-eviction proposals
Provide media outlets with economic analyses of various possible alternatives (on-site upgrading v. relocation)		
Provide media outlets with alternative plans and community proposals for their development		
Policy reform		
Reverse and prosecute discriminatory practices toward disadvantages individuals and communities by both public and private lending institutions		Fairness-in-lending policy formulated and enforced for housing and land purchase, rehabilitation and sustainability
Expand public-private initiatives to stimulate investment and multipurpose development communities		Integrated development with low-cost housing on public and donated lands
Provide housing and relief		
Exchange expertise in temporary housing and	Organize emergency relief (immediate provision of	Eviction and displacement victims receive emergency

³⁰⁵ Shelter Rights Initiative, Gender Specific Rights Litigation and Protection Strategies (Lagos: SRI, 1998); SRI, Manual on Judicial Protection of Economic, Social and Cultural Rights (Lagos: SRI, 2000).

³⁰⁶ “Seminar on the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms,” Netherlands Quarterly on Human Rights Special Issue (1993); S. Nadasen, “Restitution, Reconstruction, Reconciliation and Restribution: Land Reform—Balancing the Interests of the Dispossessed, the Homeless and Development,” Stellenbosch Law Review (1997), 360–77. For a bibliography of global restitution and compensation experience, go to: <http://userpage.fu-berlin.de/~theissen/biblio/>.

³⁰⁷ HIC-HLRN training module on “Housing and Land Rights for Media Professionals.”

relief provision	housing and/or housing resources at no cost to those denied: water, medical services, economic relief, housing resources and building materials, etc.)	(temporary) housing
Resource mobilization		
Conduct an inventory (accounting) of community (human and material) resources	Design, adapt and implement alternative-finance schemes; (e.g., small savings toward common projects) and self-financing for needy inhabitants (with freehold tenure options) ³⁰⁸	Upgrading and generally improved living conditions on site, as alternative to relocation
	Establish and operate nonbank institutions as lenders and builder of adequate, low-income housing ³⁰⁹	
	Organize self-help cooperation through rotating community credit (building & upgrading infrastructure, social production of housing ³¹⁰)	

³⁰⁸ Alternative Financing Models: Hybrids of Homeownership Mutual Housing (The Enterprise Foundation, 2003); "Capitalizing on Collaboratives: New Partners for Comm. Dev. Finance" (Washington: Center for Policy Alternatives, July 1996); Enrique Ortiz, FONHAPO: The Experience of the National Fund for Low Income Housing in Mexico (London: International Institute for Environment and Development, 1998), available from Earthprint at www.earthprint.com.

³⁰⁹ Jeffrey Carmichael and Michael Pomerleano, The Development and Regulation of Non-Bank Financial Institutions (Washington: World Bank, 2002); Indonesia: Housing Finance for the Urban Poor (Manila: Asia Development Bank, 2001); Peer Smet, "Indian Housing Finance Alliances and the Urban Poor," Global Built Environment Review Vol. 2, No. 1, 58–66, <http://www.edgehill.ac.uk/gber/pdf/vol2/issue1/Eight.pdf>.

³¹⁰ Joseph Schechla, ed., *Anatomies of a Social Movement* (Cairo: HIC-HLRN, 2004); Habitat International Coalition, *Building the City With the People. New Trends in Community Initiatives in Cooperation with Local Governments* (Mexico City: Habitat International Coalition, 1997); Prem Pangora, *Citizen's Initiatives for environmental improvements: The case of River Sabarmati, Ahmedabad, India* (Mexico City: Habitat International Coalition, 1997); Joël Audefroy, *Construyendo la Ciudad con la Gente. Nuevas tendencias en la colaboración entre las iniciativas comunitarias y los gobiernos locales* (Mexico City: Coalición Internacional para el Habitat, 1998); Gustavo Romero, La producción social del hábitat: reflexiones sobre su historia, concepciones y propuestas (2000), available on line at http://www.hic-net.org/online/Romero_PSH-intro.pdf; Eike Jacob, *Social Production of Habitat in Latin America* (2003); Habitat International Coalition-América Latina, "Social Production of Habitat. Conceptual framework" (2003); Enrique Ortiz, Social Production of Habitat: Marginal option or reality-transforming strategy? (2003), available on line at http://www.hic-net.org/online/Ortiz_SPH.pdf; Enrique Ortiz, *Vivitos y Coleando. 40 años trabajando por el hábitat popular en América Latina* (2002).

	<p>Immediate, diligent and effective increase in advice-and-lending services, on an affirmative-action basis within public lending institutions</p>	
	<p>Develop microcredit schemes (for upgrading and construction, but with social and legal components providing HRAH content)³¹¹</p>	
<p>Analyze economic costs of the various possible alternatives (on-site upgrading v. relocation)</p>		
<p>Raise material support (raise funds) from private, public and intergovernmental donors), including microcredit³¹²</p>		
<p>Plan/undertake reconstruction,³¹³ upgrading and general improvement of living conditions (with multiple parties cooperating)</p>		
<p>Restoration and increase housing subsidy programs for low-income people, including by tax reform (e.g., reversal of tax cuts for the wealthiest tax payers)</p>		<p>Low-income people pay no more than 30% of monthly incomes for adequate housing</p>
<p>Conduct an inventory of community financial and material resources</p>	<p>Develop community savings schemes</p>	<p>Social production of habitat: Community/self-financed upgrading of housing and improvement of living conditions</p>

³¹¹ Nazrul Islam, [Grameen Bank Bangladesh. A credit institution for housing](#) (1996); Jaffer Murtaza, [The Tanzania-Bondeni Community Lands Trust](#) (1996).

³¹² Nazrul Islam, [Grameen Bank Bangladesh. A credit institution for housing](#) (1996); Jaffer Murtaza, [The Tanzania-Bondeni Community Lands Trust](#) (1996).

³¹³ See York University Postwar Reconstruction and Development Unit, website: <http://www.york.ac.uk/depts/poli/prdu>.

Conduct public budget analysis from the housing rights perspective ³¹⁴	Develop participatory budgeting ³¹⁵ (ensuring that necessary programs and projects are budgeting according to housing rights obligations)	Public budgets comply with State's housing rights obligations to ensure "progressive realization" with "maximum of available resources"
Training other actors (outside community)		
Train civil servants in HRAH (including international treaty obligations upon the State and local authorities)	Reform urban/land planning criteria, procedures and objectives to harmonize with local community needs and criteria ³¹⁶	Physical planning integrates human rights obligations, language and priorities directed to needy and vulnerable communities
Train lawyers in HRAH, (including international treaty obligations upon the State, as well as litigation strategies) ³¹⁷	Legal argument, litigation and judicial decisions invoke international norms and treaty obligations	Legal recognition of traditional legal and tenure systems and provision of secure title ³¹⁸
		Legal recognition of tenure and the human right to adequate housing of people without economic access

³¹⁴ Ravikant Joshi, *A Case for Reform: how municipal budgets can change our cities* (Mumbai: YUVA Books, 2001); Maria Socorro I. Diokno, "A Rights-based Approach towards Budget Analysis" (Washington: International Human Rights Internship Program, 1999); Institute for Development Policy Analysis and Advocacy—IDPAA (Atiur Rahman et al.), *Alternative Budget Analysis: A Series of Studies on the National Budget for the Perspective of Poverty Eradication* [three volumes: Budget and the Poor, The Budget-making Process, People's Budget: An Alternative Exercise Using Participatory Tools] (Dhaka: University Press Ltd., 2002).

³¹⁵ Rebecca Abers, 1998, "From clientelism to cooperation: Local government, participatory policy, and civic organizing in Porto Alegre, Brazil"; *Politics and Society*. 26(4)c 511–37; Rebecca Abers, *Inventing Local Democracy: Grassroots Politics in Brazil* (Boulder: Lynne Rynner, 2000); Baierle, Sergio, 1998, "The Explosion of Citizenship: The Emergence of a New Ethical-Political Principal in Popular Movement in Porto Alegre, Brazil," in Sonia E. Alvarez, Evelina Dagnino and Arturo Escobar, *Cultures of Politics/Politics of Cultures: Revisioning Latin America Social Movements* (Boulder: Westview Press, 1998); Sousa Boaventura de Santos, "Participatory Budgeting in Porto Alegre: Toward a Redistributive Democracy." *Politics and Society* 26(4) (1998), 461-509; *Quem é o público do Orçamento Participativo: se perfil, porque participa, e o que pensa do processo* (Porto Alegre: Cidade de Porto Alegre, 1999); Luciano Fedozzi, *Orçamento Participativo: Reflexões sobre a experiência de Porto Alegre* (Porto Alegre: Tomo Editorial, 1998); Pedro Jacobi and Macro Antonio Carvalho Teixeira, "Orçamento Participativo: co-responsabilidade na gestão das cidades," *São Paulo em Perspectiva*, 10 (3) (1996) 119–28; Brain Wampler, "Orçamento Participativo: Os paradoxos da participação e governo no Recife," *Cadernos de Estudos Sociais*, 15(2) (1999), 343–73; Brian Wampler, *A Guide to Participatory Budgeting* (October 2000). Internet sources: Participatory budget: The Case of Porto Alegre (Brazil) at:

<http://www.goethe.de/br/poa/buerg/en/framebag.htm> (2004);

World Bank: http://www.worldbank.org/html/fpd/urban/urb_age/porto.htm,

<http://www.worldbank.org/wbiep/decentralization/Topics13.7.htm>, <http://www.worldbank.org/participation/>; Inter-American Development Bank: <http://www.iadb.org/exr/IDB/stories/2000/eng/JAN00E/c200c1.htm>,

<http://www.iadb.org/exr/idb/sidebars/2000/eng/c200c4.htm>; Conference Proceedings on Participatory Budgeting:

<http://www.idre.ca/lacro/docs/conferencias/stren.html>, <http://www.ssc.wisc.edu/~wright/deliberative.html>,

<http://www.pqualc.org>.

³¹⁶ UNCHS, *Developing a National Shelter Strategy: Lessons from Four Countries* (Nairobi: UNCHS, 1990); OHCHR, *Handbook on National Human Rights Plans of Action* (Geneva: OHCHR, revised draft May 2001).

³¹⁷ Shelter Rights Initiative, *Gender Specific Rights Litigation and Protection Strategies* (Lagos: SRI, 1998); SRI, *Manual on Judicial Protection of Economic, Social and Cultural Rights* (Lagos: SRI, 2000).

³¹⁸ Peter R. Grose, "An Indigenous Imperative: The Rationale for the Recognition of Aboriginal Dispute Resolution Mechanisms." *Mediation Quarterly* 12 (4) (summer 1995), 327–38.

		Judge issues restraining orders halting forced evictions and removals, land confiscation, property destruction and other housing and land rights
Train judges in HRAH (including international treaty obligations upon the State) ³¹⁹		Judicial decision orders return, restitution and compensation for evictees, IDPs, refugees ³²⁰
Train law enforcement officials in the human right to adequate housing (including international treaty obligations upon the State)	Quantify losses/costs of housing rights violations	Victims compensated for losses ³²¹
Transitional justice (post conflict) ³²²		
Document details on violations, perpetrators, values of losses and other consequences ³²³	Present evidence to truth (and reconciliation} commission ³²⁴	Public aware of population transfer, mass dispossessions and other crimes committed during conflict

³¹⁹ Shelter Rights Initiative, Manual on Housing Rights Protection Strategies for Lower Court Judges (Lagos: SRI, 2000).

³²⁰ UNCHS, Housing and Property Rights in Kosovo (Pristina: UNCHS, March 2000).

³²¹ For elaboration of the principles of compensation to victims of human rights violations, see Theo Van Boven, "Basic Principles and Guidelines on the Right to Reparation for Victims of Gross Violations of Human Rights and Humanitarian Law, Appendix 8 ("The van Boven Principles"), Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, E/CN.4/Sub.2/1996/17; also E/CN.4/1997/104, annex and subsequently revised as "Basic principles and guidelines on the right to a remedy and reparation for victims of violations of international human rights and humanitarian law," by Cherif Bassiouni, independent expert, Commission on Human Rights (E/CN.4/2000/62, annex). John Dugard, "Is the Truth and Reconciliation Process Compatible with International Law? An Unanswered Question," South African Journal on Human Rights Vol. 13, 258–68. For quantification methodology, see HIC-HLRN Loss Matrix in this Housing and Land Rights Monitoring Toolkit, or go to www.hlrn.org; for implementation, see to UNCHS, Housing and Property Rights in Kosovo (Pristina: UNCHS, 2000).

³²² For a general bibliography on transitional justice, go to <http://www.peacemakers.ca/bibliography/bib26reconciliation.html> or <http://userpage.fu-berlin.de/~theissen/biblio/> (on experiences of Germany and South Africa).

³²³ Use "Housing and Land Rights Violation Case Documentation Form" in this toolkit.

³²⁴ Kerry Able, and Jean Friesen, eds., Aboriginal Resource Use in Canada: Historical and Legal Aspects (Winnipeg: University of Manitoba Press, 1991); Alfred, Gerald R., and Franke Wilmer. "Indigenous Peoples, States and Conflict," in D. Carment and P. James, eds., Wars in the Midst of Peace: The International Politics of Ethnic Conflict (Pittsburg: University of Pittsburgh Press, 1997); Michael Coyle, "Claims Resolution: A Healing Process?" in J. Oakes, R. Riewe, K. Kinew and E. Maloney, eds., Sacred Lands: Aboriginal World Views, Claims and Conflicts (Calgary: Canadian Circumpolar Institute, 1998); Robert Rotberg and Dennis Thompson, eds., Truth v. Justice: The Morality of Truth Commissions (Princeton: Princeton University Press, 2000); Truth and Reconciliation Commission of South Africa Report, Vols. 1–5 (Cape Town: Juta, 1998); Theo van Boven, "Study Concerning the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms" [final report of Special Rapporteur] (Geneva: Commission on Human Rights, Subcommission on Prevention of Discrimination and Protection of Minorities) E/CN.4/Sub.2/1993/8. For an extensive bibliography of sources, go to: <http://userpage.fu-berlin.de/~theissen/biblio/>.

	Issue amnesty for past crimes and perpetrators of forced evictions/removals ³²⁵	Social reconciliation
	Present evidence to Truth and Justice Commission	Social reconciliation
		Crimes and perpetrators prosecuted and punished
Present evidence to “mixed courts”	Return, restitution and compensation for evictees, IDPs, refugees ³²⁶	

Of course, an illustrative list of potential interventions does not sufficiently convey the wealth of local governmental and nongovernmental experience available for review and exchange. Moreover, it is, as always, at the local level of implementation where human rights, including the human right to adequate housing, are transformed from moral suasion and legal theory to implementable reality. Therefore, both the practical, case-based perspective and the theoretical-and-comparative perspective become mutually dependent, mutually reinforcing and, hence, equally needed.

3.10. Evaluation & follow-up

Evaluation of any action you choose should be an ongoing function parallel to the events and development as they happen. This note offers some simple guidance on the specific evaluation tasks you will face. They are described in stages, with particular emphasis on the final stages and the vision for the future.

For our purposes, evaluation and follow-up imply two levels of assessment: (1) evaluation the action and (2) following the situation after the action concludes. The former is internal in nature and helps your organization, community or network become a learning institution by building on the lessons (successes, near-successes, failures and unanticipated results) of your efforts. The latter enables you, your organization, community or network to test the outcome to ascertain whether or not it has tangible benefits for those persons, communities, populations and peoples affected and targeted in your action. Ultimately, the follow-up process should lead you to the necessary conclusion as to what, if anything, to do next.

✓ Evaluating the action

³²⁵ John Dugard, *Dealing with Crimes of a Past Regime: Is Amnesty Still an Option?* [The Third Manfred Lachs Memorial Lecture] (1999); Carla Edelenbosch, “Human Rights Violations - A Duty to Prosecute?” *Leiden Journal of International Law* Vol. 7, No. 2 (1994), 5–22; Dianne F. Orentlicher, “Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime,” *The Yale Law Journal* Vol. 100, No. 8 (1991) 2537–615.

³²⁶ Uma Dhupelia Mesthrie, *The Truth and Reconciliation Commission and the Commission on Restitution of Land Rights: Some Comparative Thoughts* [“The TRC: Commissioning the Past” conference] (Johannesburg: University of the Witwatersrand, 1999); S. Nadasen, “Restitution, Reconstruction, Reconciliation and Redistribution: Land Reform: Balancing the Interests of the Dispossessed, the Homeless and Development,” *Stellenbosch Law Review* (1997) 360–77; David B. Southern, “Restitution or Compensation: The Land Question in East Germany,” *International and Comparative Law Quarterly* Vol. 42, No. 3 (1993), 690–97; David B. Southern, “Restitution or Compensation: The Open Property Question,” *German Politics* Vol. 2, No. 3, 436–49. For a bibliography of global restitution and compensation experience, go to: <http://userpage.fu-berlin.de/~theissen/biblio/>.

Evaluation your action includes three integrated but conceptually distinct processes: (1) monitoring progress, (2) formative evaluation and (3) measuring the development impact.

1. Monitoring implementation progress

Monitoring the implementation of your action is the most frequent—indeed constant—aspect of the learning process. This should involve periodic reports on production of outcomes, financial accounting and levels and nature of inputs (e.g., technical assistance, training, social production of habitat). The periodicity of the reporting could be quarterly, if the action is expected to proceed for a year or more. Alternatively, reporting could be more frequent, especially if it is a short-term action, or if it takes place in a fast-paced environment such as a threatened eviction or natural disaster situation, and particularly if extreme deprivation of human well-being is at stake.

The responsibility for monitoring is to be shared by a group of actors. Remembering that, like in the “Toolkit” guide for strategic planning, the more participation, the more-favorable the result (“more participation = more dignity”).

Reporting on the action, based on the monitoring of implementation progress, should be specifically assigned, most probably to the coordinator of the action or the chief executive officer of the principal body organizing the action. The audience of the reports should be both internal, for the benefit of those engaged, and external, depending on the obligations you have to supporters, members and/or funders. The assignment of duties, division of labor and timing of evaluation events should be completed also in the planning stage of your activity (see [“Strategic planning”](#) link above).

2. Formative Evaluation Indicators of Accomplishments

Midway in the process of your action, you should conduct an assessment of the *quality and adequacy* of the tasks undertaken by assessing the actual outcomes against the standard of expected results you already have set out for yourselves.

You should develop an evaluation plan and data collection instruments as part of the project implementation. That means, you should plan ahead to collect information that will verify your intended results, whether that be in the form of documents, press reports, opinion surveys, affidavits, water-quality test results, etc. The formative evaluation activities probably will require site visits, rapid assessment and low-cost data collection techniques such as focus groups, interviews, training evaluation forms, and simple targeted studies to identify key issues for action management.

3. Development-impact Assessment and Indicators

Development-impact assessments that you and your organization/community undertake less frequently, perhaps on an annual basis, will track changes in the outcomes, in order to determine the degree to which the larger environment of the human right to adequate housing is improving—or deteriorating, as the case may be.

Your action could—and should—produce an initial baseline report at the initial stage that coincides with your first inventory, site visits and/or assessment arising from your first use of this “Toolkit.” That report should record what you consider to be the key assumptions going into the activity, and will serve you in the subsequent stages of your action, especially at the

final stages, to test those assumptions and adjust strategies to incorporate the knowledge you have created.

For the purpose of your organization's integrity and the tactical responses you may require in the future, your action should be seen critically in the light of the purposes and goals you set out in your planning process (see "**Strategic planning**" link above). Some sample questions to include in your evaluation include the following:

- How does the action relate to your purpose statement of your organization/ community?
- How does the action relate to the goals(s) of your organization/community?
- Was the action planned or spontaneous?
- What was the expected result?
- Was that result achieved? If not, why?
- Were unintended results achieved?
- What were the lessons learned from this activity?
- How did this activity build/strengthen/develop your organization? What gains did you and others realize?
- How did your organization/community record and report the experience?
- How did your organization/community share and exchange the experience and lessons learned with others? Who? When? Where? What was the result?
- Has there been follow-up? Why? What? Who? When? Where?
- Click on "Following up the situation" for guidance on the last point.

✓ **Following up the situation**

Each successful or unsuccessful action needs to be tested further for at least two reasons: (1) in order to determine if the achievement is real or merely theoretical and (2) to determine what your next move is going to be.

The now famous *Irene Grootboom and Others v. Oostenberg Municipality*³²⁷ case before the South African Constitutional Court (1999) found in favor of the plaintiffs by applying the principles of international law on the human right to adequate housing and the legal strictures on the practice of forced eviction. The Court ordered the Western Cape Provincial Government and the Oostenberg Municipality to grant housing and utilities to the 390 adults and 510 children wrongfully evicted community at Wallacedene their right to return and remain and to benefit from public services corresponding to that right. Until today, that decision has not been fully implemented.

Likewise, the landmark case of *Qa'dan v. Katzir*,³²⁸ in Israel, resulted in the 2000 High Court ruling that Katzir (a settlement built on Palestinian land, directed and funded in large part by the Jewish Agency) acted unlawfully when discriminating on the basis of "nationality" by excluding a non-Jewish from obtaining housing there. Until this day, that decision has not been honored, the indigenous Adil and Iman Qa'dan family of Arab citizens of Israel do not have their home in Katzir, and the Jewish Agency continues to provide land and housing benefits only to those holding "Jewish nationality," and to the exclusion of others.

³²⁷ Irene Grootboom and Others versus Oostenberg Municipality, Cape Metropolitan Council, the Premier of the Province of the Western Cape, National Housing Board, and Government of the Republic of South Africa, Constitutional Court of South Africa Case No: 6826/99..

³²⁸ Qa'adan versus Israel Lands Administration (ILA), Ministry of Construction and Housing, Tal-Iron Local Municipal Council, Jewish Agency for the Land of Israel (JA), KATZIR: Cooperative Association for Community Settlement in Samaria Ltd., and the Farmers Association; Case No. 6698/95 of the Israeli Supreme Court, sitting as the High Court of Justice.

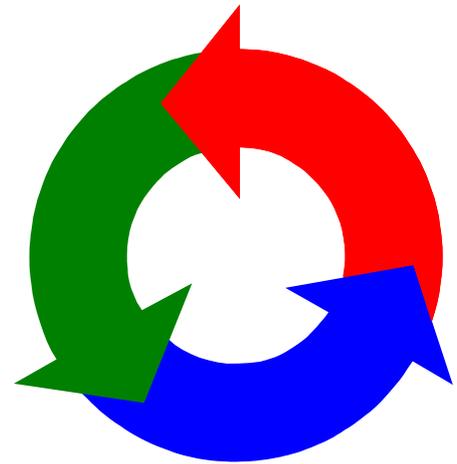
There are numerous examples of slum clearance and resettlement that result in the promised secure tenure of housing, but fail to comply with other elements of the human right in their implementation. [Note: HLRN and this “Toolkit” do not advocate slum clearance or resettlement.] Inhabitants in resettlement often lack access to public goods and services, suitable location, are denied compensation for losses and are subject to a process inconsistent with the over-riding principle of self-determination.³²⁹

All such gaps and shortcomings in the outcome of any housing rights defense effort remain to be addressed, even though some advocates and service-providing NGOs may consider these developments to be victorious at some level. The true test remains, however, to determine the tangibility of the results within the framework of the human right to adequate housing, and over the long term.

With all of its emphasis on the law, this “Toolkit” is intended to assist in the realization of the human right to adequate housing as a complement to the theoretical elaboration of the right in law. Implementation is the ultimate objective of human rights, as well as this “Toolkit.” Therefore, the tools provided here should serve also as the final evaluation criteria to examine whether or not the composite dimensions of the human rights are implemented and present or not.

You should use the elements (entitlements) of the human right to adequate housing here as your guide; these are also the binding criteria for all State parties and their representatives to apply as well. If you and your organization/community determine that certain criteria have been breached or neglected, then, alas, further remedial action will be required.

The bad news, perhaps, is that there may yet be more work to be done. However, even if one has to go back to the drawing board, at least the needed tools are available to the cyclical task. So, now, you can just do it.



³²⁹ See Housing and Land Rights Network, *Restructuring New Delhi's Urban Habitat: Building an Apartheid City?* (HIC-HLRN: New Delhi, 2002).

4. Affordability, Finance

4.1. Concept and meaning

Individuals and communities should have access to affordable housing and must have the corresponding right to livelihood so as to be able to afford decent housing. To this end, the state must ensure, through subsidies or market regulation, that a maximum of one-third of any household income be required to obtain adequate housing. Moreover, the state must effectively regulate the operation of private actors that influence the affordability of adequate housing.

Individuals and communities must have access to financial resources including, inter alia, wages, loans, grants, cooperative schemes and subsidies, in order to secure an adequate place to live. The state must ensure that finance is sufficiently available on an equitable basis, and finance options must be responsive to diverse needs and ensure sufficiency. Laws, policies and regulations must facilitate such access, particularly for vulnerable and marginal groups, and those who are victims of the injustices of historic discrimination.

4.2. Sources

In this section, your **Step 2**, the HLRN “Toolkit” provides the most important international legal basis and the popular claims that ground each element of the human right to adequate housing. This compilation attempts to be as comprehensive as possible; however, additional popular sources and legal developments will augment this inventory in the future.

It is vital to establish both the established sources in international law and the popular claims. The authority of the legal sources carries corresponding obligations on most States, and applies universally to all people on the planet as *human* rights. The popular sources advance claims that are “emerging” with human rights language eventually to be codified in the law. All legally established human rights norms originated as popular claims carried forth through various forms of historic struggle.

The Legal Authority

Please note that the legal instruments cited here carry differing levels of obligation, and they are organized for you accordingly. Customary law is made up of those norms and principles that legal opinion and interstate institutions consider so basic and so repeatedly affirmed as to be binding on all legal personalities. The Universal Declaration of Human Rights, the antecedent to all subsequent human rights treaties, is the most relevant example of customary law for our purposes, even though it does not establish a monitoring and enforcement mechanism to ensure compliance.

The ratified treaties (Covenants, Charters, Conventions, etc.) are binding on all their ratifying States parties, and each establishes an independent body to monitor and guide implementation. The treaty-monitoring process provides an opportunity for civil society, States and the international legal bodies each to play a role. These international treaties are also characterized as hard law (*lex lata*), because of their binding nature. Treaty law, by definition, is any agreement between two or more States. The treaties considered here are those of both international and regional nature.

The “soft-law” instruments (*lex feranda*) include the Declarations, Basic Principles, Minimum Rules, General Comments, etc., that are the multilateral commitments arising from international conferences, assemblies, summits, congresses and other specialised meetings. Also included in this category are the general and country-specific guidance that the treaty-monitoring bodies issue to guide and specify treaty obligations, as well as those instruments

of inter-State agreement (decisions and resolutions) arising from the various political bodies of the international system (e.g., UN Commission on Human Rights, International Labour Organisation General Assembly, etc.). These instruments contain standards that are declaratory of already-binding international law, reflect the collective political will of States and provide specificity to the general Articles in the binding instruments. However, these form legal and policy guidance without the corresponding obligations of treaty law and without the corresponding legal monitoring mechanisms.

Thus, the list of legal sources in this section of the HLRN “Toolkit” maintains a corresponding priority order such that presents the binding instruments first (in chronological order of their adoption), and follows with the nonbinding, declaratory sources (in their chronological order):

- ***International Treaty Law***
- ***Regional Treaty Law***
- ***Declaratory Instruments and Jurisprudence***

The Moral Argument

The popular sources are useful especially in demonstrating ground-level recognition of the various elements of adequate housing as rights in and of themselves, but also provide a list of human rights that reflect common human needs, but await codification as *bona fide* rights. The “emerging rights” include elements inextricable from the human right to adequate housing: water, land and energy, among others. The popular sources are indicators of the ever-evolving specificity of human rights law and the legal and problem-solving horizons toward which social movements and the human rights community are heading.

The relevant excerpts from these collective moral are listed in the “Toolkit” Sources (Step 2) as *Popular Sources*. These are moral, rather than legal, in nature. However, as claims, they bear legal dimensions in the sense that they are the substance of future legal standards. We continue to include these claims in the HLRN “Toolkit” as they emerge from popular struggles, natural and social sciences, nongovernmental forums, social movements, campaigns and labour action (strikes), as well as other forms of popular and collective problem-solving initiatives.

In this “Toolkit,” *Popular Sources* are distinguished from the legal sources by their presentation in *italic* script.

Another source of the human right with a legal dimension is the jurisprudence of course-based decisions on cases involving housing and land rights. These also could provide the basis for legal argument even in distant jurisdictions. Examples include the case-specific—but internationally relevant—rulings in famous decisions in favor of housing rights claims such as those arising from legal struggles in Cyprus, Palestine/Israel and South Africa:

Qa’adan versus Israel Lands Administration (ILA), Ministry of Construction and Housing, Tal-Iron Local Municipal Council, Jewish Agency for the Land of Israel (JA), KATZIR: Cooperative Association for Community Settlement in Samaria Ltd., and the Farmers Association; Case No. 6698/95 of the Israeli Supreme Court, sitting as the High Court of Justice.

Irene Grootboom and Others versus Oostenberg Municipality, Cape Metropolitan Council, the Premier of the Province of the Western Cape, National Housing Board, and Government of the Republic of South Africa, Constitutional Court of South Africa Case No: 6826/99 (1999).

Loizidou versus Turkey (Article 50 and Merits), European Court of Human Rights Case 40/1993/435/514 (18 December 1996).

✓ Legal sources

Affordability

Customary International Law

Universal Declaration of Human Rights (UDHR) (1948)

Article 23.1, 23.3. “Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment...Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.”

International Treaty Law

International Labour Organisation Convention No. 131 Concerning Minimum Wage Fixing, with Special Reference to Developing Countries (1970)

Article 3. “The elements to be taken into consideration in determining the level of minimum wages shall, so far as possible and appropriate in relation to national practice and conditions, include:... (a) the needs of workers and their families, taking into account the general level of wages in the country, the cost of living, social security benefits, and the relative living standards of other social groups...”

International Covenant on Economic, Social and Cultural Rights (1966)

Article 7.a (ii) “The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular: remuneration which provides all workers, as a minimum, with...a decent living for themselves and their families in accordance with the provisions of the present Covenant.”

Regional Treaty Law

Charter of the Organization of American States (1948)

Article 45 “The Member States, convinced that man can only achieve the full realization of his aspirations within a just social order, along with economic development and true peace, agree to dedicate every effort to the application of the following principles and mechanisms:...e. The operation of systems of public administration, banking and credit, enterprise, and distribution and sales, in such a way, in harmony with the private sector, as to meet the requirements and interests of the community...”

Declaratory Instruments and Jurisprudence

Berlin Declaration on the Urban Future, Urban 21 Conference (2000)

“...We therefore recommend the following actions as the most urgent:...Cities should adopt appropriate land use planning and implementation measures with a view to promoting vibrant economies, functioning land markets, affordable housing and suitable infrastructure.”

Istanbul Declaration on Human Settlements (Habitat II) (1996)

8. "We reaffirm our commitment to 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 nongovernmental 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."

Habitat Agenda, adopted by the second United Nations Conference on Human Settlements (Habitat II) (1996)

39. "We reaffirm our commitment to the full and progressive realization of the right to adequate housing, as provided for in international instruments. In this context, we recognize an obligation by Governments to enable people to obtain shelter and to protect and improve dwellings and neighbourhoods. We commit ourselves to the goal of improving living and working conditions on an equitable and sustainable basis, so that everyone will have adequate shelter that is affordable... We shall implement and promote this objective in a manner fully consistent with human rights standards."

Arab Declaration on Sustainable Development for Human Settlements (Rabat Declaration) (1995)

General Principles and Goals...

2. The Family is the fundamental nucleus of the society. All appropriate conditions must be provided to maintain its safety, to upgrade its living standard, to safeguard its values and solidarity, and to provide it with adequate housing, job opportunities, and a dignified living for its members, including the elderly and the handicapped.

The right to adequate housing: progress report submitted by Mr. Rajindar Sachar, Special Rapporteur Sub-Commission on the Promotion and Protection of Human Rights (E/CN.4/Sub.2/1993/15)

44. "'Adequate housing' is defined in the unanimously adopted Global Strategy as meaning: 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."

Committee on Economic, Social and Cultural Rights (CESCR) General Comment No. 4, "the right to adequate housing" (1991) (1991)

8. (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."

International Labour Organisation Recommendation No. 115 concerning Worker's Housing (1961)

II.4. “The aim should be that adequate and decent housing accommodation should not cost the worker more than a reasonable proportion of income, whether by way of rent for, or by way of payments towards the purchase of, such accommodation.”

Finance

Customary International Law

Universal Declaration of Human Rights (UDHR) (1948)

Article 23.1, 23.2: "Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment. Everyone, without any discrimination, has the right to equal pay for equal work."

International Treaty Law

International Convention on the Elimination of All Forms of Discrimination against Women (1979)

13.a, 13.b. “States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular: the right to family benefits; the right to bank loans, mortgages and other forms of financial credit.

Declaratory Instruments and Jurisprudence

World Summit on Sustainable Development Plan of Implementation (2002)

[Eradicating poverty...would require actions at all levels to] **10. (b)** Use low-cost and sustainable materials and appropriate technologies for the construction of adequate and secure housing for the poor, with financial and technological assistance to developing countries, taking into account their culture, climate, specific social conditions and vulnerability to natural disasters;

Declaration on Cities and Other Human Settlements in the New Millennium (Habitat II +5 United Nations General Assembly resolution S-25/2 [2001])

45. “Also commit ourselves to strengthening existing financial mechanisms and identifying and developing appropriate innovative approaches for financing shelter and human settlements development at all levels. Furthermore, we resolve to continue to undertake legislative and administrative reforms to give women full and equal access to economic resources, including the right to inheritance and the ownership of land and other property, credit, natural resources and appropriate technologies, as well as ensuring their right to security of tenure and to enter into contractual agreements. We resolve to promote increased and equal access for all people to open, efficient, effective and appropriate housing finance, to support savings mechanisms in the informal sector, where appropriate, and to strengthen regulatory and legal frameworks and financial management capacity at all appropriate levels;”

Commission on Human Rights resolution 2000/13, “Women’s equal ownership of, access to and control over housing”

“Affirms that discrimination in law against women with respect to acquiring and securing land, property and housing, as well as financing for land, property and housing, constitutes a violation of women's human right to protection against discrimination...”

Urges Governments to comply fully with their international and regional obligations and commitments concerning land tenure and the equal rights of women to own property and to an adequate standard of living, including adequate housing...”

Decides to consider the issue of women's equal ownership of, access to and control over land and the equal rights to own property and to adequate housing at its fifty-seventh session under the agenda item entitled "Economic, social and cultural rights.”

Habitat Agenda, adopted by the second United Nations Conference on Human Settlements (Habitat II) (1996)

39. "We reaffirm our commitment to the full and progressive realization of the right to adequate housing, as provided for in international instruments. In this context, we recognize an obligation by Governments to enable people to obtain shelter and to protect and improve dwellings and neighbourhoods. We commit ourselves to the goal of improving living and working conditions on an equitable and sustainable basis, so that everyone will have adequate shelter that is... affordable... We shall implement and promote this objective in a manner fully consistent with human rights standards"

Social Summit Declaration and Programme of Action (1995)

Article 32(b) “Rural poverty should be addressed by promoting fair wages and improving the conditions of agricultural labour, and increasing the access of small farmers to water, credit, extension services and appropriate technology, including for women, persons with disabilities and vulnerable groups on the basis of equality.”

Article 56(b) “The full participation of women in the labour market and their equal access to employment opportunities require...eliminating gender discrimination, including by taking positive action, where appropriate, in hiring, wages, access to credit, benefits, promotion, training, career development, job assignment, working conditions, job security and social security benefits.”

Committee on Economic, Social and Cultural Rights (CESCR) General Comment No. 4, “the right to adequate housing” (1991)

8. (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.”

Regional Treaty Law

European Social Charter (1961)

Article 16. “The right of the family to social, legal and economic protection: With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Contracting Parties undertake to promote the economic,

legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married, and other appropriate means.“

✓ Popular sources

Affordability

The European Charter for Human Rights in the City (2000)

Article XVI. “*Right to a Home 1. All citizens have the right to a proper, safe and healthy home. 2. The municipal authorities endeavour to ensure the existence of an appropriate offer of homes and district amenities for all their inhabitants, without distinction by reason of their resources....*”

Jerusalem Declaration (1995)

[Draft Charter of the Palestinian Housing Rights Movement]

1. “*...Affordable housing, with provision for housing subsidies and protection to ensure that the financial costs of housing do not threaten or compromise the attainment and satisfaction of other basic needs.*”

Finance

The European Charter for Human Rights in the City (2000)

Article VI. “*International Municipal Cooperation 1. The cities promote mutual awareness of peoples and their cultures....3. The cities particularly urge financial agents to participate in cooperation programmes and to make all the population become associated with them, with the purpose of developing a feeling of solidarity and full equality between the peoples which surpasses urban and national frontiers.*”

Jerusalem Declaration (1995)

[Draft Charter of the Palestinian Housing Rights Movement]

1. “*...Affordable housing, with provision for housing subsidies and protection to ensure that the financial costs of housing do not threaten or compromise the attainment and satisfaction of other basic needs.*”

4.3. Over-riding principles

Principles found in the initial Articles common to all the major international human rights treaties affirm standards of justice arising from the major legal systems of the world. These include principles of immediate application, such as the inalienable rights to self-determination; non-discrimination, in general; gender equality; and the rule of law, including access to justice and domestic application of the human rights contained in each treaty, particularly by adopting legislative measures.

In the case of economic, social and cultural rights, the International Covenant on Economic, Social and Cultural Rights (ICESCR) is the principle source of these rights in treaty form. The Covenant also clarifies that the State party’s treaty obligation entails ensuring the “progressive realisation” of the rights “to the maximum of its available resources” (Article 2.1), including the human right to adequate housing (Article 11). Therefore, a process of

realising the rights should not regress, but should ensure “the continuous improvement of living conditions” (Article 11).

The ICESCR’s Article 2.1 also requires States to undertake steps, individually and through international assistance and cooperation, especially economic and technical, progressively to achieve the full realization of the covenanted rights by all appropriate means. Thus, States party to the Covenant bear an obligation to apply these principles extraterritorially and in their international relations. Therefore, “international cooperation” forms an important practical aspect of ESC rights application and, therefore, one of the principles over-riding States’ duties to implement human rights.

Comprehensive monitoring of the human right to adequate housing requires assessing each entitlement (element) in light of the rights and corresponding obligations arising from these over-riding legal principles:

- **Self-determination**
- **Nondiscrimination**
- **Gender equality**
- **Rule of law**
- **Progressive realization (nonregressivity/nonretrogression)**
- **International cooperation**

The normative approach provided in the international human rights system prevails upon the monitor to pose a number of relevant questions related to implementation not only of the specific content of the particular right, but also these over-riding principles common to the principal human rights treaties and applicable to all rights. This section will guide the monitor in applying these six over-riding principles in the respect, defense, promotion and fulfilment of the human right to adequate housing and land.

✓ **Self-determination**

General description

The principle of equal rights and self-determination of peoples is considered to have been a general principle of international law arising from common State practice already at the founding of the League of Nations. However, self-determination was first codified in the Charter of the United Nations in 1945, which sets forth the purposes of the United Nations as:

2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace...³³⁰

The Charter’s Article 55 stipulates further:

With a view to the creation of conditions of stability and well-being, which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

- a. higher standards of living, full employment, and conditions of economic and social progress and development,³³¹

³³⁰ Charter of the United Nations, 26 June 1945, Article 1(2).

³³¹ Ibid., Chapter IX, “International Economic and Social Co-operation,” Article 55.

- b. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and
- c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

Every State has the duty, therefore, through unilateral, bilateral and multilateral action to promote universal respect for, and observance of human rights and fundamental freedoms in accordance with the Charter. Its Article 2.2 clarifies the universal duty of State membership such that:

All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with the present Charter.

The principle of self-determination has been progressively reaffirmed and legally defined throughout the UN system since its founding.³³² The material significance of self-determination is further elaborated in the Covenants on human rights adopted in 1966.³³³ The common Article 1(2) of both the ICCPR and ICESCR sets forth that:

All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

How concerned persons/communities exercise an effective role in determining the terms by which they realize the human right to adequate housing is also a subject of the inalienable right of self-determination. Self-determination is the right of peoples, not of States. It is the State, however, that is the legal personality obliged to ensure the protection, defense, promotion and fulfillment of self-determination as a duty under international public law, as well as the essential legitimizing factor of the State itself.³³⁴

The concept of, and right to self-determination manifest in a spectrum of types and expressions of effective local control over developments and relations within a community and territory may involve either external or internal self-determination; that is, national independence as in the formal distinction of a self-determination unit with its own internationally recognized borders, a self-determination unit within the internationally recognized borders of a unitary State, or a community's³³⁵ effective control over developments and relations affecting it as an independent State.³³⁶

³³² For example, see Declaration on the Granting of Independence to Colonial Countries and Peoples (1960), preamble and Article 7; "Permanent sovereignty over natural resources," General Assembly resolution 1803 (XVII) (1962), preamble and paras. 1–2, 5–7; International Convention on the Elimination of All Forms of Racism and Racial Discrimination (1965), Articles 1 and 5; Declaration on Social Progress and Development (1969), Articles 2, 3 and Part II; Declaration on Principles of International Law (1970), preamble and, esp., "The principle of equal rights and self-determination of peoples"; ECOSOC Declaration on Race and Racial Prejudice (1978), Articles 1, 3, 5 and 9 Declaration on the Right to Development (1986) preamble and Article 1, 6 and 8.

³³³ International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI), 16 December 1966 (entered into force 3 January 1976 in accordance with Article 27); Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI), 16 December 1966 (entered into force 23 March 1976 in accordance with Article 49).

³³⁴ Consistent with the principle of the Universal Declaration of Human Rights, Article 21, which states that "the will of the people shall be the basis of the authority of government."

³³⁵ While a standard legal definition of nation and people remains a subject of debate, the International Court of Justice has offered criteria for a community, having distinct rights as "a group of persons living in a given country or locality, having a race, religion, language and traditions of their own and united by the identity of race, religion, language and traditions in a sentiment of solidarity, with a view to preserving their traditions, maintaining their form of worship, insuring

In its General Comment No. 12 on “the right of self-determination of peoples” (1984), The UN Human Rights Committee (HRC) gave its guidance on the corresponding obligations of States, with the following:

1. In accordance with the purposes and principles of the Charter of the United Nations, Article 1 of the International Covenant on Civil and Political Rights recognizes that all peoples have the right of self-determination. The right of self-determination is of particular importance because its realization is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights. It is for that reason that States set forth the right of self-determination in a provision of positive law in both Covenants and placed this provision as Article 1 apart from and before all of the other rights in the two Covenants.

2. Article 1 [of ICCPR] enshrines an inalienable right of all peoples as described in its paragraphs 1 and 2. By virtue of that right they freely "determine their political status and freely pursue their economic, social and cultural development". The Article imposes on all States parties corresponding obligations. This right and the corresponding obligations concerning its implementation are interrelated with other provisions of the Covenant and rules of international law.

3. Although the reporting obligations of all States parties include Article 1, only some reports give detailed explanations regarding each of its paragraphs. The Committee has noted that many of them completely ignore Article 1, provide inadequate information in regard to it or confine themselves to a reference to election laws. The Committee considers it highly desirable that States parties' reports should contain information on each paragraph of Article 1.

4. With regard to paragraph 1 of Article 1, States parties should describe the constitutional and political processes which in practice allow the exercise of this right.

5. Paragraph 2 affirms a particular aspect of the economic content of the right of self-determination, namely the right of peoples, for their own ends, freely to "dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence." This right entails corresponding duties for all States and the international community. States should indicate any factors or difficulties which prevent the free disposal of their natural wealth and resources contrary to the provisions of this paragraph and to what extent that affects the enjoyment of other rights set forth in the Covenant.

6. Paragraph 3, in the Committee's opinion, is particularly important in that it imposes specific obligations on States parties, not only in relation to their own peoples but *vis-à-vis* all peoples which have not been able to exercise or have been deprived of the possibility of exercising their right to self-determination. The general nature of this paragraph is confirmed by its drafting history. It stipulates that "The States Parties to the present Covenant, including those having

the instruction and upbringing of their children in accordance with the spirit and traditions of their race and rendering mutual assistance to each other," Permanent Court of International Justice, The Greco-Bulgarian "Communities" Advisory Opinion No. 17, 13 July 1939 (Leyden: Sijthoff, 1930), 21.

³³⁶ For a comprehensive consideration of the human right of self-determination and its applications, see Hurst Hannum. *Autonomy, Sovereignty, and Self-Determination: The Accommodation of Conflicting Rights* (Philadelphia: University of Pennsylvania Press, 1996).

responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations". The obligations exist irrespective of whether a people entitled to self-determination depends on a State party to the Covenant or not. It follows that all States parties to the Covenant should take positive action to facilitate realization of and respect for the right of peoples to self-determination. Such positive action must be consistent with the States' obligations under the Charter of the United Nations and under international law: in particular, States must refrain from interfering in the internal affairs of other States and thereby adversely affecting the exercise of the right to self-determination. The reports should contain information on the performance of these obligations and the measures taken to that end.

7. In connection with Article 1 of the Covenant, the Committee refers to other international instruments concerning the right of all peoples to self-determination, in particular the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, adopted by the General Assembly on 24 October 1970 (General Assembly resolution 2625 (XXV)).

8. The Committee considers that history has proved that the realization of and respect for the right of self-determination of peoples contributes to the establishment of friendly relations and cooperation between States and to strengthening international peace and understanding.

Self-determination applied to communities

The over-riding principle of self-determination in this "Toolkit" is inspired by classic (customary and treaty) law criteria, as well as popular claims to the same. In both senses, the claim is legally fixed in the common Article 1 of the human rights treaties. Using the ICESCR as a basic and integrated instrument, the "ToolKit" especially applies this over-riding principle to Article 11, which guarantees the human right to housing.

In making the case for ultimate "self-determination" at the community level, this "Toolkit" draws on a number of popular instruments (mostly written and collectively endorsed statements, but also those rooted in oral traditions) asserting the "right" of communities to determine their own destiny. "Community" also enjoys a legal definition (see below).

Self-determination becomes as vital as any other need that grounds other human rights, including those other over-riding principles of rule of law, nondiscrimination, gender equality and international cooperation consistent with all human rights. In their collective dimension, these all become community "needs" and, consequently, "rights" insofar as their absence leads to erosion and violation of a bundle of individual, stand-alone rights and can lead to the deprivation or demise of a community as such.

It should be noted that States and others have recognized the real problem of "ethnocide" and "cultural genocide" resulting from assimilation policies so as to compel the rewriting of the International Labour Organisation (ILO) Convention No. 107 on Indigenous and Tribal Populations in Independent Countries (1956), eventually to adopt the Indigenous and Tribal Peoples Convention No. 169 (1989). Relevant to the practice of self-determination is the question of land tenure, which ILO Convention No. 169 treats in Articles 13–19, while at the same time disclaiming that the term "people" in the Convention does not convey implications as a term of international law (i.e., conferring the right of self-determination).

However, it is the human consequence of the deprivation, rather than the legal "peoplehood," that makes self-determination vital for any putative victims. Therefore, collective self-determination becomes the right of communities as necessary, even if they are not (or not yet) internationally recognized as a "people" or "nation," the category To avoid the horrendous consequences of demise and deprivation, and to ensure survival of communities as a "right"—especially marginal and otherwise vulnerable ones such as those facing ethnic cleansing and/or elimination through military, administrative, globalization, forced eviction or development measures—local self-determination is vital, no matter what assimilationist governments individually or jointly say. In human rights, it is the human who has the first and final subject of respect, protection, promotion and fulfillment.

That having been said, and recognizing that self-determination can be either internal or external, the international public law term of art "internal self-determination unit" applies in the case of group or community, and is subject to case-by-case interpretation. This could refer to the rightful place of a minority or an indigenous people. It could conceivable apply also to a community of urban poor, particularly if their survival and/or well-being is threatened and their self-determination then becomes a need/right and requisite to the realization of other rights (life, adequate housing, culture, health, etc.).

In any case, the claimant of self-determination, whether an external or internal type, must meet the challenge and legal test of asserting that the claim at any level does not conflict with—or at least is balanced with—the rights of others. That may mean, of course, ensuring that self-determination claims do not negate general ecological values, others' self-determination rights, the rights of women to gender equality, security of person, regional peace and security, etc.

What are the criteria for *bona fide* claimants to local self-determination in the terms of international law as developed? The criteria presented by Martinez-Cobo (*Study of Discrimination against Indigenous Peoples*, UN document E/CN.4/Sub.2/1986/7/Add.4) has grounded much of the self-determination thinking about indigenous peoplehood and the rights arising. Based on his criteria for indigenous "people," the characteristics constituting a community with the right to claim external or internal self-determination could also be that the community (1) predate the influx of "others," (2) possess distinct cultural attributes, (3) occupy an identifiable territory and (4) identify itself as a people/community having the right to self-determination.

Legally defining the subjects of self-determination

Definitions of "people" or "nation," the legal self-determination rights holders, are generally unpopular with States and their sitting governments, unless the definition applies to an existing "nation-state." Of course, very few States can claim adherence to this definition, that is, to contain a single native people or nation (except, perhaps, Portugal, excluding immigrants). The General Assembly has assumed the task of defining self-determination (particularly in resolution 1514(XV), 14 December 1960). That has been construed typically as applying to cases of decolonization (Angola, Algeria, Namibia, Mozambique, Palestine, Puerto Rico, etc.). In its Advisory Opinion on Namibia, the International Court of Justice recognized Namibians as a "people" and "nation" in light of the value of, and for the purpose of decolonization. Despite this legal reference, the actual definition of "people" and "nation" remains under debate for political and practical reasons.

In addition to the guidance on "people," including indigenous peoples, as explicit self-determination rights holders, we have an international law definition of what constitutes a "community." The "community" definition does not deviate significantly from the four-part construct that Martínez-Cobo offered (above). It comes to us from the first International Court in a case sorting out criteria for transferring the ethnically Greek and Turkish communities between the Republic of Turkey and Greece after the First World War:

A group of persons living in a given country or locality having a race, religion, language and tradition of their own and united in the identity of race, religion, language and tradition in a sentiment of solidarity, with a view to preserving traditions, maintaining their form of worship, insuring the instruction and upbringing of their children in accordance with the spirit and traditions of their race and rendering mutual assistance to each other.³³⁷

Leaving aside the probability that the purpose of the Court's opinion (population transfer) would be legally impermissible today,³³⁸ the legal definition of "community" it provided is actually less ambiguous than that of "people" or "nation." The "people" definition remains elusive largely because some States find it a political Pandora's box that could challenge their jurisdiction and/or effective control over territory. Until now, some governments instead persist in proffering the legally vacuous term "indigenous populations," so that the legally more-significant term "people/s" would wane into disuse, as would also the corresponding rightful and self-preserving claims of its subjects to self-determination. However, if one is looking for a way to apply self-determination to "communities," one has this definition of the ICJ's predecessor as a reference.

Significant also is the fact that the Court's definitive Advisory Opinion was intended for a narrow and specific purpose. That was not to recognize an external self-determination right, but to rationalize a population transfer scheme that today would be considered a clear violation of international public law. That is not only because of the absence of consent and the obvious human suffering population transfer causes, but also because it deviates from the most basic concept of contemporary statecraft and democratic governance, which is that the State administer—including by way of implementing the right to self-determination—for *all* of its citizens. Population transfers and external self-determination claims, therefore, serve as a seismograph of a government's failure at effective statecraft.

This dissertation on self-determination has admittedly merged concepts and definitions of communities with peoples/nations, as the Permanent Court of International Justice effectively has done. Nonetheless, the values that sustain them are akin, and so should the safeguards that promise to prevent the worst of consequences arising from human rights violations against any identifiable group. In summary, self-determination has a local and community-based expression and basis as a right. For the purposes of advancing human rights through the "Toolkit," both "communities" as well as "nations/peoples" hold the right and responsibility to determine their own habitat, the essence of a people and/or community's survival and sustainability with dignity in its dwelling place.

Applied to affordability of adequate housing

Applied to affordability of adequate housing, the over-riding principle of self-determination, in its classical expression, provides that every people has the inalienable right to determine the

³³⁷ Permanent Court of International Justice, The Greco-Bulgarian "Communities," Advisory Opinion No. 17, 31 July 1930 (Leyden: Sijthoff, 1930), p. 21.

³³⁸ See report of the Special Rapporteurs Aun al-Khasawneh and Ribot Hatano, "The human rights dimensions of population transfer, including the implantation of settlers and settlements," E/CN.4/Sub.2/1993/17.

criteria for what affordability of adequate housing means throughout its administrative and territorial unit(s). Thus, real prices of adequate housing in the market or nonmarket programs commonly means that housing costs should not exceed **30%** of the inhabiting family's income. The same applies to a people or community in determining the terms of access to housing finance resources in their country. This determination must be made according to local specificity, reflecting consultation with, and the consent of the people or community subject to the right to self-determination, but also within the obligations provided in the ICESCR and the CESCR's General Comment No. 4 (cited above). *Ad minimum*, States should "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." Such measures open a variety of possibilities for financing mechanisms for upgrading and enhancing tenure options (including, but not limited to, ownership). Therefore, for peoples, as such, or for other affected persons, a measure of self-determination, assured through "genuine consultation," is required to realize access to environmental goods and services, including water and land at affordable prices, regardless of the type of tenure.

✓ Nondiscrimination

General description

Like self-determination, an inalienable human right common to the major legal systems throughout the world, a fundamental requisite of justice is the absence of discrimination on any arbitrary basis. Discrimination typically results in deprivation of human needs and rights.

Given its centrality, the principle of nondiscrimination, consequently, is an over-riding human rights principle embodied in the first Articles of each major human rights treaty. Nondiscrimination, and its corresponding State obligation to ensure nondiscrimination, are enshrined in the preamble of all international declarations and resolutions concerned with human rights matters, governance and the relations between and among States, nations and peoples.

Common to Article 2 in both the Covenants, nondiscrimination stands out as an over-riding principle with *immediate* application to all the rights contained in those instruments.³³⁹ The Covenants prohibit arbitrary preferential or punitive treatment and oblige States parties to undertake steps to ensure that rights be exercised without distinction or discrimination "of any kind [as to] race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."³⁴⁰

The International Convention on the Elimination of All Forms of Racial Discrimination (1965) defines discrimination as:

any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.³⁴¹

³³⁹ For further guidance on the legal obligations to immediate implementation of the nondiscrimination principle applied to housing rights, see the report of the Special Rapporteur on Adequate Housing E/CN.4/2002/59.

³⁴⁰ ICESCR, Article 2.2; ICCPR, Article 2.1.

³⁴¹ Article 1, International Convention on the Elimination of All Forms of Racial Discrimination, adopted by General Assembly resolution 2106 (XX) of 21 December 1965, entered into force, 4 January 1969.

Article 5 of that Convention actually offers the historic first codification of the human right to housing, with particular reference to the over-riding principle of nondiscrimination. It reads:

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

In the Convention and its negotiation history, an important distinction emerges: While it is the obligation of States' parties and their governments to combat both "racism" and "racial discrimination," the former is a state of mind that should be eradicated through measures including education and other efforts to bring about a cultural and social transformation toward antidiscrimination. The latter, "racial discrimination" is the actual activation of prejudice which, in its manifestation, is a material violation of the rights of others. Any official action or omission of practicing or condoning racial discrimination is a violation of an *immediate* obligation of the State, not subject to "progressive realization."

This distinction between (1) theoretical racism and (2) racial discrimination in practice has historic roots. It is found also in moral systems, as reflected in the Holy Qur'an, which recognizes the existence of prejudice, but, nevertheless, entreats against putting that into practice:

O you who believe, be upright for God, bearers of witness with justice; and let not hatred of a people incite you not to act equitably. Be just, [for] that is nearer to the observance of duty [the nearest thing to piety].³⁴²

This moral distinction was found relevant nearly one millennium later, during the French Revolution. Then, the revolutionary slogan and moral call to the Human Rights of Man and Citizen was "*liberté, égalité, fraternité*. While all three qualities were found desirable and necessary to build a new, democratic society, only liberty and equality could actually be legislated. Fraternity (or sorority) could be developed and encouraged by the State and civil society much more likely than it could be enforced. Nonetheless, a range of practical measures can be undertaken to nondiscrimination in actual practice.

Inherent in the principle of nondiscrimination is the understanding that programs formally providing advantages to persons and groups historically subject to discrimination are not considered to constitute unlawful discrimination. On the contrary, international public law calls upon States to provide additional assistance to those persons and groups subject to past and/or present discrimination, as in corrective/positive discrimination or affirmative action programs that redress foregoing patterns of deprivation.³⁴³

Applied to affordability of adequate housing

Applied to affordability of adequate housing, the nondiscrimination principle ensures that individuals and groups are not deprived of equal opportunities to access to financial assistance options, including legal enforcement, protection and remedy. No one should be denied access to financial assistance or be discriminated against in the price of adequate

³⁴² Chapter 5: The Food [al-Ma'da], Section 2: "Duty of Uprightness," verse 8. Maulana Muhammad Ali, transl. The Holy Qur'an (Lahore: Ahmadiyya Anjuman Isha'at Islam, 1963), p. 243.

³⁴³ See Marjorie Cohn, "Affirmative Action and the Equality Principle in Human Rights Treaties: United States' Violation of Its International Obligations," Virginia Journal of International Law, Vol. 43 (2002), 249-74.

housing or related goods and services on the basis of race, color, creed, gender, sex, sexual orientation, political opinion, social or economic status, language, physical ability/disability, property, form of legitimate work, descent, or any other origin or arbitrary criterion. Likewise, no State possesses the legal authority to practice or condone *de jure* or *de facto* discrimination that leads to such forms of discrimination against any member of any group, particularly to the unfair advantage of another. This applies to the practice of nepotism and other forms of corruption that allow disproportionate benefits to family members or political partisans, as well as preferences given to groups such that ignite sectarian or other forms of conflict. The State obligation to ensure nondiscrimination is not subject to “progressive realization,” but of an immediate nature.³⁴⁴

International public law calls States to provide special assistance to persons and groups who have been subject to past and/or present discrimination, as in affirmative action programs that redress foregoing patterns of deprivation.³⁴⁵

✓ Gender equality

General description

Despite the universal acceptance of the principle of gender equality in international law, many women are denied equal treatment and discriminated against in their housing on the basis of sex or gender. Approximately one-third of the world’s women may be homeless, living in inadequate housing and own less than one percent of the world’s property.³⁴⁶ The intersectionality of poverty or other factors (i.e., class, indigenous, refugee, migration, caste, sexual orientation, ethnic minority, age, disability, widowhood, citizenship or nationality status, etc.) further marginalize women. In the context of the increased feminization of poverty, decreased access to public services, and destruction of natural environments, all of which are accelerating with the process of globalization, women are increasingly placed in situations where they do not have adequate housing.

The denial of adequate housing for women is a violation of women’s human rights. It can also result in the violation of women’s other human rights such as rights to life, livelihood, adequate food, employment and political participation (e.g., voting rights). In particular, the lack of adequate housing also can make women more vulnerable to various forms of violence against women (e.g., domestic violence, trafficking, sexual and gender-based violence against migrant workers etc.).

The right to nondiscrimination in gender relations, as an over-riding principle in human rights implementation, is generally stated in UDHR, Article 2 (nondiscrimination) and throughout the Declaration in its language of human rights for “everyone” and “all are equal before the law.” More specifically, gender equality has emerged as a binding, over-riding principle in the two Covenants’ common Article 3:

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all... rights set forth in the present Covenant.

³⁴⁴ For further guidance on the legal obligations to immediate implementation of the nondiscrimination principle applied to housing rights, see the report of the Special Rapporteur on Adequate Housing E/CN.4/2002/59.

³⁴⁵ See Marjorie Cohn, “Affirmative Action and the Equality Principle in Human Rights Treaties: United States’ Violation of Its International Obligations,” *Virginia Journal of International Law*, Vol. 43 (2002), 249–74.

³⁴⁶ COHRE Fact Sheet on Women’s Right to Housing, Land and Property.

This principle is further elaborated in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).³⁴⁷ Article 13 obliges States parties to take all appropriate measures to eliminate discrimination against women in areas of economic and social life, and to ensure women's equal right to bank loans, mortgages, and other forms of social credit. In Article 14, paragraph 2, CEDAW specifically addresses women's equal rights in human settlements as the right of women in rural areas to enjoy adequate standard of living conditions, particularly, in relation to housing sanitation, electricity and water supply, transportation, education, communications and access to credit. This extends explicitly to women's "equal treatment in land and agrarian reform as well as in land resettlement schemes." Article 15 also addresses women's equal right to conclude contracts and administer property; while Article 16, paragraph 1 (c) guarantees women's equal rights and responsibilities during marriage and its dissolution, including equal rights for both spouses in respect of ownership, acquisition, management, administration, enjoyment and disposition of property.

This legal norm is carried forward in the Beijing Platform for Action (BPFA), which calls on Governments to remove all obstacles for women in obtaining affordable housing and access to land.³⁴⁸ This remains standard in the subsequent multilateral agreements formulated in the Istanbul Declaration and the Habitat Agenda (1996)³⁴⁹ and the World Summit on Sustainable Development (WSSD) Plan of Implementation (2002).³⁵⁰

The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (1997), which were developed for understanding and determining violations of economic, social and cultural rights, affirmed that, in order to eliminate discrimination against women's rights recognized in the Covenant, the State party should face the need and legal obligation to eliminate discrimination against women that arises out of social, cultural and other structural advantages.³⁵¹

Typically, for women the home is the single most important place in the world. Beyond shelter, it is a place for the vast majority of woman to generate income, care for children, and seek respite from violence and patriarchy in the community at large. For many still, it is the only place where women can participate fully in decisions and social activities.

Applied to affordability of adequate housing

Similar forms of gender discrimination are commonly experienced by women of all walks of life, as well as practiced against men and transgendered persons on the basis of their presumed "passive" sexual roles. Women historically live in the context of feminized poverty. The increased feminization of poverty is characterized in part by decreased access to affordable housing, greater monetization and capital concentration, all of which are accelerating in the current contexts of globalization. Women are increasingly placed in situations where they do not have adequate housing, including by denying them access to affordable housing and housing finance options. The intersectionality of poverty or other factors (i.e., class, indigenous, refugee, migration, caste, sexual orientation, ethnic minority,

³⁴⁷ Adopted and opened for signature, ratification and accession by General Assembly resolution 34/180, 18 December 1979; entered into force, 3 September 1981, in accordance with Article 27(1).

³⁴⁸ Para 58(m).

³⁴⁹ Para 40 (b), 78 (e) and (g).

³⁵⁰ Para 67 (b).

³⁵¹ Related sources of gender equality for women in human settlements can be found in CEDAW Articles 1, 2(f), 3 and 5 (a); UDHR, Articles 2, 16, 17 and 25; UDHR, Articles 5 (d) (v) and (vi), 5 (e) (iii); ICERD, Article 2, para 1, Articles 3, 9, 16, 17, Article 23, para 4, ICCPR, Article 26; ICESCR, Article 2, para 2, Article 3, and Article 11, para 1; and CRC, Article 1, 16, para 1 and Article 27.

age, disability, widowhood, citizenship or nationality status, etc.) further marginalize women as persons accessing housing markets.

Freely exercising one's own culture (cultural adequacy) means allowing for cultural choice and expression in order to find locally appropriate ways to meet State obligations to respect, defend, promote and fulfill human rights. Preserving a practice of unequal rights to access financial resources, inequality in inheritance and the narrowing of livelihood options through unequal enjoyment of other economic/social/cultural rights are inconsistent with the human rights framework and likely would violate both the gender-equality provisions of the Covenant, as well as provisions of the Vienna Convention on the Law of Treaties (1969).³⁵²

✓ Rule of law

General description

In the over-riding principles pertaining to previously discussed forms of discrimination, human rights are, by their nature, equal, inalienable and universal. By this is meant that the criteria for applying the standards and norms are to be inconsistent in their application. One way to ensure that is through the formal and institutionalized rule of law.

As enshrined in UDHR, Article 6, "Everyone has the right to recognition everywhere as a person before the law." This right is codified in the ICCPR (Article 16), and is supported by regional instruments affirming the same.³⁵³ The equal inalienable and universal right to a fair trial, including the presumption of innocence, is enshrined in ICCPR,³⁵⁴ as well as the regional instruments.³⁵⁵

The law-abiding State and its officers must not withhold or impede remedies, apply the law inconsistently or arbitrarily, or exercise any form of discrimination that affects the human right to adequate housing. Inhabitants who have lost or undergone damage to their housing unjustly or illegally have the right to unobstructed access to legal remedy, including compensation for victims, which the State bears the corresponding obligation to respect, defend, promote and fulfill.

States are required to maintain the rule of law in order to ensure a consistent, predictable and accessible resolution of disputes with remedy and compensation for the victims. This covers the right of equal access to public services, such as law enforcement, public defense and judicial services. The conduct of law enforcement officers, prosecutors and judges can determine whether or not the rule of law is respected or violated. Therefore, there is a tremendous need for the State to train, discipline and rehabilitate legal enforcers and practitioners. In the case of police services, the use of force is required to follow strictly the principle of presumed innocence and the criteria of necessity and proportionality in case where State force is used.³⁵⁶ Where local statutory law may be silent on housing rights

³⁵² The Vienna Convention sets forth, in Article 27, that "[A] party may not invoke the provisions of its internal law as justification to perform a treaty," and the customary law principle, arising from Article 8 of the Universal Declaration of Human Rights, states that "everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him [or her] by the constitution or by law."

³⁵³ African Convention on Human and Peoples' Rights, Article 5; Inter-American Convention on Human Rights, Article 3.

³⁵⁴ Article 10 reads: "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his[her] rights and obligations and of any criminal charge before him[her]." [Bracketed text added.] Article 14.2 sets forth that "Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to the law."

³⁵⁵ African Charter, Article 7; Inter-American Convention, Article 8; European Convention on Human Rights, Article 6.

³⁵⁶ Code of Conduct for Law Enforcement Officials, adopted by General Assembly resolution 34/169, 17 December 1979, Article 3; Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted at the Eight United

safeguards, lawyers and judges bear an extra professional duty to apply the human rights norms to the extent possible.

The principles of remedy and reparation have been firmly established in instruments declaratory of the human right to access to justice. Culminating the development of international law derived from the major legal systems in the world, the revised Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law (2003) outline the right and corresponding State obligations as follows:

VII. Victim's Right to Remedy

Remedies for violations of international human rights and humanitarian law include the victim's right to:

- (a) Access justice;
- (b) Reparation for harm suffered; and
- (c) Access the factual information concerning the violations.

VIII. Victims' Right to Access Justice

A victim's right of access to justice includes all available judicial, administrative and other public proceedings, mechanisms and modalities that exist under domestic laws, as well as under international law. Obligations arising under international law to secure the individual or collective right to access justice and fair and impartial proceedings should be made available under domestic laws. To that end, States should:

Make known, through public and private mechanisms, all available remedies for violations of international human rights and humanitarian law;

Take measures to minimize the inconvenience to victims, protect their privacy as appropriate, and ensure their safety from intimidation and retaliation, as well as that of their families and witnesses, before, during, and after judicial, administrative, or other proceedings that affect the interests of victims;

Facilitate assistance to victims seeking access to justice.

Make available all appropriate diplomatic and legal means to ensure that victims can exercise their rights to a remedy and reparation for violations of international human rights or humanitarian law.

In addition to individual access to justice, adequate provisions should also be made to allow groups of victims to present collective claims for reparation and to receive reparation collectively.

The right to an adequate, effective and prompt remedy against a violation of international human rights or humanitarian law includes all available international processes in which an individual may have legal standing and should be without prejudice to any other domestic remedies.³⁵⁷

The restitution of housing and property is one form of restitutive/restorative justice sought in the rule of law applied to housing rights violation victims. Efforts continue to develop these

Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August–7 September 1990, preamble and Articles 1–11.

³⁵⁷ As revised in accordance with UN Commission on Human Rights resolution E/CN.4/2003/34 (2003).

methods and disparate efforts, not least in the development of draft guidelines on restitution for refugees.³⁵⁸

Applied to affordability of adequate housing

In the case of a dispute over access to affordable housing, the State bears an obligation to ensure that the rule of law is applied in a context of equality, inalienability and universality of rights, particularly with regard to the human right to adequate housing. In the case where the State (e.g., courts or police) assume a role in a dispute over access to housing resources, the State bears the responsibility to abide by its human rights obligations and refrain from violations of the right to housing, including secure tenure, such as unlawful forced eviction, or other forms of violence, or other punitive behavior inconsistent with the principles of (1) presumption of innocence until proven guilty and, in the use of force, (2) necessity and (3) proportionality.

The law-abiding State, its agents and offices must not—nor condone others—to withhold or manipulate pricing of housing resources arbitrarily, or exercise any form of arbitrary discrimination against prospective buyers or renters that negatively affects the affordability of adequate housing. Inhabitants who have been excluded from adequate housing because of unjust or illegal pricing or arbitrary denial of access to finance have the right to unobstructed access to legal remedy, including compensation for victims, for which the State bears the corresponding obligation.

✓ Nonretrogression/progressive realization

General description

ICESCR's Article 2 identifies the State party's obligation to ensure the "progressive realisation" of ESC rights. That is widely interpreted to mean that the State party breaches this provision if it tolerates or causes "regressivity" in the enjoyment of the right. The relevant jurisprudence has established that, even in the case of scarce resources, the State must exert good-faith efforts, including through international cooperation, to advance—and not derogate—the enjoyment of ESC rights, including adequate housing and its constituent entitlements.

The treaty bodies have clarified further that neither political processes, domestic legislation, scarcity of resources, or agreements with other parties can be invoked to justify nonimplementation of human rights treaty obligations.³⁵⁹ For example, the binding nature of a treaty obligation is further clarified in the Vienna Convention on the Law of Treaties (1969), clarifying in its Articles 27 and 46, that invoking an internal law is not admissible as a justification for nonimplementation of a treaty obligation.³⁶⁰ To harmonize treaty obligations

³⁵⁸ Progress report of the Special Rapporteur, Paulo Sérgio Pinheiro, "Housing and property restitution in the context of the return of refugees and internally displaced persons," E/CN.4/Sub.2/2004/22, 2 June 2004.

³⁵⁹ Letter of CESCR Chairperson Mme. Virginia Bonoan-Dandan to S.E. M. Yaakov Levy, Permanent Representative, Permanent Mission of Israel to the United Nations Office and Specialized Agencies at Geneva, 11 May 2001, annex to Letter by the Chairperson of the Committee on Economic, Social and Cultural Rights to the President of ECOSOC (11 May 2001).

³⁶⁰ Article 27 (Internal law and observance of treaties): "A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to Article 46." Article 46 (Provisions of internal law regarding competence to conclude treaties) states that: 1. A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance. 2. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith."

with local implementation, human rights obligations arising from the treaties and case law should guide policy formulation and decision-making processes in law-abiding States. Therefore, a process of realising the rights should not regress, but should ensure “the continuous improvement of living conditions” (Article 11).

This over-riding principle of “nonregressivity” has been reaffirmed in the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights (1986) and Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (1997),³⁶¹ as well as numerous cases of international jurisprudence through the monitoring functions of CESCR.

The many examples of globalization-era economic reforms demonstrate how the withdrawal of the State from its obligations to fulfill economic/social/cultural rights can lead to deprivation. The State nonetheless bears a covenanted obligation to ensure that economic policies do not make tenure more precarious and insecure, whether arising from domestic political change or pressures of an external actor, such as an international financial institution. In order to ensure “progressive realization,” therefore, it is vital to ensure that the human right to adequate housing forms a part of the overall human rights framework for development policy, especially guiding international cooperation arrangements. This civilizing process requires improved coordination among the relevant government bodies, such as ministries of Justice, Finance and Foreign Affairs. This is not only out of domestic duty toward citizens for States to ensure that development partnerships effect “progressive realization,” but also an extraterritorial obligation of the State party under ICESCR, Article 2.

The CESCR has commented also on the “core obligations” of States to implement the human right to adequate housing. It noted that, regardless of the state of development of any country, certain steps must be taken immediately, in addition to the over-riding principles of human rights law. These include abstaining from measures that would impinge upon the right, as well as to engage positively in practices to facilitate the people’s processes of groups seeking to improve their living conditions, in accordance with the specific elements outlined above.³⁶²

Applied to affordability of adequate housing

The State’s offices and agents, as well as its policies and legislation should ensure that market forces and available financial assistance are becoming more effective at safeguarding the inhabitants’ access to affordable, adequate housing. This means that new laws or policies, as well as trends in official behavior and practice should improve in the direction of greater justice for all and protection for those vulnerable or victim to denial to their entitlement to housing affordability. It also means that those same parties should develop greater capacity for, and actually delivery of relief to those who have no access to adequate home or shelter because of inability to access the housing market.

✓ International Cooperation

³⁶¹ Text available at <http://ip.aaas.org/escrdocs.nsf/>.

³⁶² “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.” General Comment No. 4, para. 10.

General description

States parties to both Covenants bear an obligation to implement human rights within a context of “international economic cooperation.”³⁶³ The ICESCR’s Article 2.1 requires States party to undertake steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

In the spirit of the numerous multilateral agreements on human rights and development, “progressive realization of ESC rights,” as a borderless objective, logically engages “international cooperation” duties for States to conduct themselves accordingly through their relations with other States, nations and peoples:

In fraternity and solidarity
Domestically and extraterritorially
Individually, jointly and/or collectively.

The preamble of the United Nations Charter specifies the purposes of the world organization insofar as “we the peoples of the United Nations” are determined “to promote social progress and better standards of life in larger freedom.” Article 1, para. 3 of the Charter sets out one of the UN’s purposes as “to achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.”

Linking international cooperation and self-determination as essential to the peaceful order of the United Nations, the Charter’s Article 55 reads:

With a view to the creation of conditions or stability and well-being[,] which are necessary for peace and friendly relations among nations based on respect for the principles of equal rights and self-determination of peoples, the United Nations shall promote universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

The Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations considers as essential:

the progressive development and codification of the following principles:... (d) the duty of States to cooperate with one another in accordance with the Charter;...(g) the principle that States shall fulfill in good faith the obligations assumed by them in accordance with the Charter, so as to secure their more-effective application within the international community would promote the realization of the purposes of the United Nations;...³⁶⁴

The UN States members share a duty to cooperate with one another, irrespective of their differences, to maintain international peace and security and promote international economic

³⁶³ Common Article 1.2.

³⁶⁴ Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly in its resolution 2625 (XXV) of 24 October 1970 Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly in its resolution 2625 (XXV) of 24 October 1970

stability and progress, the general welfare of nations and international cooperation free from discrimination. To this noble end, the Declaration embodied by UN members commitments such that:

(c) States shall conduct their international relations in the economic, social, cultural, technical and trade fields in accordance with the principles of sovereign equality and nonintervention;

(d) States Members of the United Nations have the duty to take joint and separate action in cooperation with the United Nations in accordance with the relevant provisions of the Charter.

States should cooperate in the economic, social and cultural fields as well as in the field of science and technology and to the promotion of international cultural and educational progress. States should cooperate in the promotion of economic growth throughout the world, especially that of the developing countries.³⁶⁵

In addition to its Article 2, ICESCR also sets out to identify the UN systems itself as a vehicle for international cooperation to uphold the Covenant. The Covenant empowers ECOSOC to raise the Covenant-monitoring reports as a guide for UN technical assistance.³⁶⁶

Other instruments of international public law are dedicated to specifying norms for international cooperation agreements between and among States. Consistent with human rights norms and other *jus cogens* principles of law, the Vienna Convention, Article 53, provides clarity:

A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

States parties adhering to the international law principles of international cooperation are required to behave extraterritorially consistent with the progressive realization of economic/social/cultural rights. For our purposes, this extends especially to the human right to adequate housing and land.

As a donor country, a State must ensure that the projects and programs it supports do not erode any of the entitlements contained in their right to adequate housing for inhabitants in beneficiary countries. That includes avoiding any action that leads to forced evictions, confiscation or demolition of housing. In the case of development assistance resulting in dislocation of inhabitants, all aspects of the undertaking are to be the subject of consultation with the affected persons, and the efforts should enhance legal security of tenure as a result within the covenanted human rights framework.

As a recipient country, structural adjustment, deregulated foreign investment, privatization and related measures typified by today's bilateral and multilateral arrangements assistance agreements and programs must be compatible with the human rights obligations of the

³⁶⁵ Ibid.

³⁶⁶ Article 22 reads: "The Economic and Social Council may bring to the attention of other organs of the United Nations, their subsidiary organs and specialized agencies concerned with furnishing technical assistance any matters arising out of the reports referred to in this part of the present Covenant which [sic] may assist such bodies in deciding, each within its field of competence, on the advisability of international measures likely to contribute to the effective progressive implementation of the present Covenant."

affected State. Measures that deny or reduce tenure security would be illegal and unaccepted as a condition of the assistance. States parties to the human rights instruments have a self-preserving opportunity and responsibility to uphold their prior treaty obligations as a form of (moral, legal and practical) resistance to negotiation pressures or conditionalities that may derogate the terms of legal security of tenure for inhabitants.

As all human rights implementation ultimately is a local matter, regional instruments can be a source a greater specificity in determining of State obligations and practical measures needed to uphold economic, social and cultural rights. For example, the African Charter on Human and Peoples' Rights (1981) provides a broad agreement on the term of international cooperation in its Article 21: 1, which establishes that:

All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it. 2. In case of spoliation, the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation. 3. The free disposal of wealth and natural resources shall be exercised without prejudice to *the obligation of promoting international economic cooperation based on mutual respect, equitable exchange and the principles of international law*. 4. State Parties to the present Charter shall individually and collectively exercise the right to free disposal of their wealth and natural resources with a view to strengthening African Unity and solidarity. 5. *State Parties to the present Charter shall undertake to eliminate all forms of foreign exploitation particularly that practised by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources.* [Emphasis added.]

States Parties are required to review multilateral agreements on investment, trade-related intellectual property arrangements, poverty-reduction strategy papers (PRSPs), bilateral and multilateral relations in the World Trade Organization context, World Bank lending and assistance terms, and the International Monetary Fund programs operating in, or otherwise affecting the State, in order to ensure consistency with covenanted obligations and avoid either retrogressivity or violations of its citizens' ESC rights. The State party is obliged to apply the Covenant *a priori* to ensure that any such conditionality would be subject to the ESC rights safeguards for its own inhabitants, and for those of another State party.

Privatization programs may lead to deprivation of the housing rights entitlement to tenure security. In the event of workers living in administrative housing who become laid off as part of a privatization or State-enterprise sell-off arrangement may lose their tenure altogether. Even in cases where local legislation is silent, international treaty obligations remain for the State party to defend the workers' human right to adequate housing by legal and enforceable protection for their secure tenure and all other housing rights entitlements.

As an extreme example of international cooperation conducted in explicit violation of ESC rights applying to adequate housing and secure tenure would be a scenario wherein a State engaged in, or condoning third parties to engage in acts or omissions that would contribute to population transfer or any of its related international crimes, such as mass deportations, ethnic cleansing, destruction of civilian or private property, implantation of settlers and settler colonies, or other forms of demographic manipulation of an internal or external self-determination unit. Duty prohibits States party from allowing public or private resources to accrue to settler colonies in an occupied territory, for example, or engage in any other acts or omissions that would facilitate another State party's violations of the Covenant or Convention in this way. There are numerous examples today in countries where these forms of violation

continues unaddressed with the accomplice and collaboration of other States. Impunity still characterizes the conduct of many of these crimes, as the perpetrators have not yet been prosecuted at any level, including at the International Criminal Court.

A State's participation in international economic sanctions or blockades that lead to violations of the ESC rights of persons other than the State Party's own residents, citizens and nationals may lead to conditions that undermine housing rights. CESCR has provided guidance to States parties of the Covenant on ESCRs affected by sanctions regimes and subject to protection measures to avoid regressivity and violation.³⁶⁷

Direct provision, or participation in multilateral programs of development and financial assistance actually may lead to violations of rights embodied in the Covenant (e.g., stagnation, deterioration or denial of work, education, health or housing rights, forced eviction, etc.) and constitute a breach of treaty obligations. Specifically, ICESCR and its enshrined rights should guide and govern a State's policies and conduct in any multilateral institution that imposes economic conditionalities on other States or their agents that bring about a negative consequences effect inhabitants housing rights conditions. The legacy of development banks' support for forced evictions of all possible scales and levels of deprivation has become notorious, and States that promote, finance or engage directly or indirectly in making decisions or executing these policies may be in breach of their human rights treaty obligations.

Applied to affordability of adequate housing

International development cooperation between and among States should enhance affordability of adequate housing, whether that be in the enhancement of administrative capacity, governance, service provision or technical cooperation, or financial or other material assistance. Any cross-border cooperation and investment in human settlements and/or in other sector should not affect negatively the affordability indicators.

✓ Other principles of application

The principles discussed above are those explicitly stated in the major international human rights treaties. At the same time, we can consider additional principles and concepts that also guide the application of the human right to adequate housing. These arise from the international jurisprudence of individual State party reviews by the treaty-monitoring bodies, as well as from their General Comments and General Recommendations. They also come to us from popular claims of people's movements, from the political resolutions of the multilateral organizations, from expert opinions found in the legal literature, and from the evolving experience at implementing human rights. Three such principles of application for us to consider are known as the "indivisibility of rights," "minimum core obligations" and "universality."

Indivisibility

The concept of all human rights as indivisible is as practical as it is theoretical. It arises from the realization that, when we unpack the contents of a right, we encounter aspects of the other rights as well.

³⁶⁷ See CESCR General Comment No. 8, "the relationship between economic sanctions and respect for ESC rights."

Take, for example, the “habitability” entitlement contained in the human right to adequate housing. The deterioration of the structural features of the home leaving the inhabitants exposed to the elements, or pollution in the immediate vicinity of the housing surely effect the enjoyment of the human right to “a standard of living adequate for the health and well-being of himself and of his family,” as recognized in Article 25 of the 1948 Universal Declaration of Human Rights (UDHR), and codified as the “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health” in Article 12 of the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR).

Likewise, homelessness is a status synonymous with the denial of voting rights in most States, where registration and voting require a *domicile fixe*. Thus, the human right to adequate housing is linked with everyone’s “right to take part in the government of his [sic] country, directly or through freely chosen representatives,” as promised in UDHR (Article 21), and codified in the Covenant on Civil and Political Rights (ICCPR), in 1966, as everyone’s “right to take part in public life, directly or through freely chosen representatives” (Article 25). Incorporating the experience of HIC members and others around the globe, it has become clear that our monitoring methodology calls our attention also to the “congruent” human right to participation and self-expression among the constituent entitlements of the human right to adequate housing.

Sorting, categorizing and distinguishing subjects of any kind can be a useful exercise that makes manageable order out of complexity and facilitates understanding. Human rights are no exception. However, in practice, we find that human rights are interdependent, and categorical separation can become artificial and actually impede understanding. One example is in the division of human rights found in the UDHR into the two, separate Covenants. The reason for adopting two basic Covenants, instead of one, is largely attributed to the divergent Cold War ideologies that dominated the General Assembly when it adopted the Covenants in 1966. Ideology is also the reason that one of the largest and wealthiest industrialized States has failed to ratify the ICESCR until today, and ideology also prevailed to exclude a “human right to own property” from that Covenant, although that right is included in the UDHR (Article 17). Despite the false impression left by the Covenants dividing human rights into two instruments camps, the ICCPR’s nonetheless recognizes, in its preamble, that:

... in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights.

Without appreciating the over-riding principle of indivisibility, other distortions can arise. With civil and political rights traditionally gaining from more attention and specificity than economic/social/cultural rights (consistent with some Western Bloc preferences), some authors have proposed that we consider “generations” of rights.^{368[1]} Presenting distinct rights

^{368[1]} French jurist Karel Vasak is attributed with first proposing the division of human rights into three generations, while at the International Institute of Human Rights (Strasbourg), in 1979. His division adapted the French Revolution’s slogan of *Liberté, Égalité, Fraternité* as ordinal categories. The three generations are subsequently reflected in some of the rubrics of the European Charter of Fundamental Rights.

First-generation human rights deal essentially with liberty. In Vasak’s view, these are seen as fundamentally civil and political in nature and serve to protect the individual from excesses of the State. First-generation rights include, *inter alia*, freedom of speech, the right to a fair trial, and freedom of religion, as enshrined in Articles 3–21 of UDHR and ICCPR.

Second-generation human rights would be those related to equality, and are supposedly the social, economic, and cultural rights. This theory sees these essentially as positive rights; that is, actions that the State is required to provide

in such a priority order perpetuates the historic neglect of economic/social/cultural rights and promotes a logic that may culminate in violations. Nominating civil and political rights in a hierarchical order as “first generation” rights classifies economic/social/cultural rights as secondary: the “second generation” of rights. Group rights, as distinct from individual rights, environmental rights and, in certain cases, self-determination thus become degraded as “third generation.” This view is kept alive by a simple misunderstanding of “progressive” realization, required in ICESCR, such that slow realization of economic/social/cultural rights is acceptable and that all aspects of economic/social/cultural rights, as such, are subject to gradual implementation. The indivisibility of human rights belies such gradualist or generational notions. Therefore, this toolkit cannot accommodate the divisive, generational approach to human rights not for ideological reasons, but for the fact that theories neatly segregating rights are not sustained in practice.

It is with this recognition of the indivisibility of rights that CESCR commented:

...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....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.^{369[2]}

Core obligations

Alone, the very general reference to the human rights in treaty texts does not provide the specific guidance needed for States parties around the world to know their precise obligations. ICESCR’s English-language version requires States to “take steps.” The French texts calls on States “to act” (*s’engage à agir*) and, in Spanish, the Covenant requires States “to adopt measures” (*a adoptar medidas*), but offers little about what those steps/actions/measures should be, except to say that these should be “appropriate,” “progressive” (nonregressive/ nonretrogressive), nondiscriminatory (nondiscrimination), involve international cooperation and include legislative measures (rule of law). Therefore, the treaty-monitoring bodies bear the task of issuing General Comments and General Recommendations to supply the needed specificity, based on international public law and the implementation experience of all States parties.

In its General Comment No. 3: “The nature of States parties’ obligations,”^{370[3]} CESCR addressed the principle of “minimum core obligations”:

to the people under its jurisdiction, as opposed to actions from which the State should refrain—e.g., forced eviction—in order to realize rights.

Third-generation human rights correspond with fraternity, or involving “solidarity.” They include group and collective rights, such as self-determination, economic and social development, sovereignty over natural resources, and the right to participate in the common heritage of mankind. Treated as third generation, the generational theory of rights presumes that these rights are not yet binding and dubiously judicial.

In an alternative explanation for the three-generational approach rests on the political divisions of the Cold War, where the West promoted allegedly first-generation (civil and political) rights, and the East promoted second-generation (economic, social and cultural) rights. The Third World (i.e., third priority in the putative hierarchy) promoted (third-generation), solidarity rights, as in the decolonization struggles of the 1970s, including decolonization processes delayed until today.

^{369[2]} General Comment No. 4: “the right to adequate housing” (1991), para. 9.

^{370[3]} Adopted by the CESCR in its fifth session (1990), E/1991/23.

...a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party. Thus, for example, a State party in which any significant number of individuals is deprived of ...basic shelter and housing...is, *prima facie*, failing to discharge its obligations under the Covenant. If the Covenant were to be read in such a way as not to establish such a minimum core obligation, it would be largely deprived of its *raison d'être*.^{371[4]}

The General Comment, like the Covenant, takes into consideration material limits of States. However, the Covenant's Article 2 (1) obligates each State party to take the necessary steps "to the maximum of its available resources," and the treaty body has determined that the nature of treaty obligations are such that a State bears a heavy burden of proof to demonstrate that "every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations."^{372[5]}

The "minimum core obligations" also include those appropriate steps to respect, defend, promote and fulfill the human right to adequate housing, like other economic/social/cultural rights, as a matter of immediate application. Among the appropriate measures, in addition to harmonizing domestic legislation with the covenanted rights, is to provide judicial remedies to victims within the national legal system. That would be among the most effective measures to ensure compliance with obligations to implement certain aspects of economic/social/cultural rights *immediately*, such as by ensuring nondiscrimination. The Committee has determined that it is "difficult to sustain" any suggestion that these immediate obligations are inherently non-self-executing. This legal authority is consistent also with the terms of the Vienna Convention on the Law of Treaties (1969), which provides that "A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty."^{373[6]} The treaty bodies have clarified further that neither political processes, domestic legislation, scarcity of resources, nor agreements with other parties could be invoked to justify nonimplementation of human rights treaty obligations.^{374[7]}

Nondiscrimination is perhaps the most obvious and urgent of the immediate principles in implementing the human right to adequate housing. CESCR has provided specific guidance such that, among other things, "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."^{375[8]}

^{371[4]} *Ibid.*, para. 10.

^{372[5]} *Ibid.*

^{373[6]} Vienna Convention on the Law of Treaties, signed at Vienna, 23 May 1969; entered into force, 27 January 1980, Article 27: "Internal law and observance of treaties." The Article also goes on to state that "this rule is without prejudice to Article 46." Article 46: "Provisions of internal law regarding competence to conclude treaties" states that "1. A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance. 2. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith."

^{374[7]} Letter of CESCR Chairperson Mme. Virginia Bonoan-Dandan to S.E. M. Yaakov Levy, Permanent Representative, Permanent Mission of Israel to the United Nations Office and Specialized Agencies at Geneva, 11 May 2001, annex to Letter by the Chairperson of the Committee on Economic, Social and Cultural Rights to the President of ECOSOC (11 May 2001).

^{375[8]} General Comment No. 3: "The nature of States parties' obligations,"^{375[8]} CESCR addressed the principle of "minimum core obligations," adopted by the CESCR in its fifth session (1990), E/1991/23, para. 11.

^{375[9]} The Vienna Convention sets forth, in Article 27, that "[A] party may not invoke the provisions of its internal law as justification to perform a treaty," and the customary law principle, arising from Article 8 of the Universal Declaration of Human Rights, states that "everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him [her] by the constitution or by law."

The measures needed for States parties to comply with obligations of immediate application include negative obligations. That is, many of the measures to realize the human right to adequate housing would require little more than the State and its agents to refrain from certain harmful practices, such as arbitrary house demolitions and forced eviction, or a meaningful commitment to enabling “self-help” or “social production of habitat” by affected groups. Such changes in State behavior would not require significant expenditure of public resources.

Universality

The principle of human rights’ “universality” is simply expressed in the UDHR’s recognition that “All human beings are born free and equal in dignity and rights” (Article 1). Everyone, without exception, is entitled to human rights by virtue of belonging to the human family. From a moral point of view, the universality of human rights is an essential principle if the human civilization is to advance for the better. In international law, the text of ICESCR also speaks consistently of right of “everyone,” which obliges States not to discriminate in adherence to minimum core obligations. In the field of housing, in particular, States are not permitted to interpret its minimum core obligations to apply selectively, that is, only to citizens, or only certain citizens, but also to ensure the human right to adequate housing is realized also for “everyone,” including residents, immigrants and migrant workers, etc. The only conditionality permitted in law is that the subjects of human rights qualify as members of the human family.

Before the Universal Declaration, the social movements, revolutions, antislavery struggles and intellectual contributions of the past have served as vehicles for the promotion of human rights that eventually have been incorporated into local and international law and practice. However, many of these famous accomplishments were limited in their substance or application, geographically or socially, or were subject to reversal. Social science and philosophy have contributed greatly to the recognition of human rights, but have not carried the force of law. The recognition of the universality of human rights overcomes the shortcomings left by these otherwise-significant accomplishments:

Limits in scope of application:

- The rights and ethics delivered through the world’s moral systems, especially those found in the religions, also are limited in scope by the fact that they apply to adherents to a particular faith group, not applying universally;
- The Magna Carta of 1215 imposed limits on royal impunity that equate as new rights for citizens, especially property-owning citizens. However, this historical achievement had only local application in the geographical realm of the English king.

Exclusion of social sectors and substantive rights:

- The “American Revolution,” in the English colonies that eventually became the original United States of America, realized the right to self-determination as a legal right and *raison d’état*. However, the right to self-determination, as inalienable as it is, applied in the American Revolution case as a right limited only to the white colonizers who identified themselves as a distinct people. The remaining indigenous peoples—whom the settlers mostly largely and replaced—have yet to achieve their self-determination to this day;

- The French Revolution, for all its achievements, realized rights for individuals. French farmers and workers sought recognition of their group rights in the context of the revolution; however, its leadership rejected those expansive notions of rights and insisted on *liberté, égalité and fraternité* with an individual focus;
- The results of the Bolshevik Revolution institutionalized recognition of group rights for workers, etc.; however, rejected a right to property ownership. However ethically grounded the rationale for that omission, the denial of property rights also has emerged as a common tool for depriving persons, communities and entire peoples of their means of subsistence, thereby demonstrating, by its violations, the importance of that neglected human right.

Retgression:

- The antislavery movement in Haiti at the end of the 18th Century resulted in a democratic regime and Constitution under the leadership of former slave and eventual General Toussaint Louverture. However, the same France that produced the world-changing Revolution only 12 years before saw the French General Napoleon I crush the new democracy in 1801 for reasons of imperial interest, reversing the accomplishments of Haitian antislavery democracy, with consequences extending to this day.

Despite their shortcomings, these episodes in the gradual achievement of rights through local struggle all have contributed to the accumulation of human rights recognition as universally applicable. Human rights law today embodies that cumulative recognition into an international and universal code that seeks to leave no human group, geographical region or human need without mutual protection in the multilateral legal regime.

Universality of human rights now means that it is impermissible to neglect certain rights as if they were intended selectively for certain cultures, as if and people of other cultures deserve an inferior standard. Universality also means that no State or government is exempt from its obligations, either for reasons of specificity of local law, as the Vienna Convention has addressed, or to uphold traditional practices that violate rights or their over-riding principles of application.

Interpreting rights consistent with one's own culture (as in the cultural adequacy of housing) means applying locally specific options and idiomatic expressions consistent with the human rights framework. However, practices that preserve or condone unequal rights to secure tenure, inheritance or other entitlements of the human right to adequate housing are not consistent with the present framework and likely to violate both the gender-equality provisions of the Covenant, as well as essential provisions of the Vienna Convention on the Law of Treaties (1969).^{376[9]}

While local experience of application and struggle continue to provide specificity on how to realize human rights, reveal a variety of possible strategies and define emerging rights (such as the rights to water, land and energy), cultural specificity does not mean allowance for the derogation of rights to something short of the over-riding principles and entitlements reflected in this toolkit. As affirmed by moral arguments and legal authority, adequate housing is the right of everyone, everywhere.

Conclusion

The over-riding principles featured in the monitoring steps of this toolkit are those explicitly mentioned in the major human rights treaties. The “Other principles of application” are implied in the human rights instruments or recognized in international jurisprudence, but are not less important to keep in mind.

The HLRN toolkit attempts to go further than merely encouraging the monitor to keep these additional principles in mind, however. The toolkit’s design actually incorporates all of these three principles, but without culling them out as additional steps in the monitoring process.

The indivisibility of rights is already present in the 12 entitlements; whereas, the first eight derive directly from the CESCR’s General Comment No. 4 specifically on the right to housing. The “Congruent rights” derive from rights whose sources and concepts arise from the ICCPR, Refugee Convention and other instruments. Therefore, the housing rights entitlements themselves embody the indivisibility concept in a practical form.

The core minimum obligations applying in the case of the human right to adequate housing also are consistent with those entitlements outlined in the General Comment No. 4, which are embedded in this methodology (human right to adequate housing entitlements A–H). Naturally, the local specificity as to the nature and level of effort required to realize the human right to adequate housing is precisely your contribution through your monitoring effort, your critical process and by posing your solutions to problems in the field.

The universality of the human right to adequate housing is also inherent to this toolkit, by design. That is manifest in the wide range of international and regional instruments guaranteeing the right and incorporated into the Step 2 presentation of both the Sources in international law and Popular sources.

The good news is that, with these principles integrated in the design of the toolkit, you are able to apply them as a matter of course. Therefore, it would be unnecessary and redundant to create corresponding, additional tasks. By applying the methodology in this Housing and Land Rights Monitoring Toolkit, you will be putting all of these inter-related and interdependent principles into living practice.

4.4. Guarantees

Guarantees of the Human Right to Adequate Housing

We will now determine the existing assets guaranteeing the entitlements of the human right to adequate housing in your country situation. We can begin by making our assessment at the general and international level, then proceeding to the more instrumental and local level. The “guarantees” do not mean only legal provisions, but also institutional, policy and other assets that function to ensure, or at least contribute to implementation of the various contents of our human right to adequate housing.

Therefore, one should assess first the State’s current obligations by its ratification of international (and then regional) treaties recognizing the human right to adequate housing, its over-riding principles and its specific entitlements. Then this method would have us determine any similar guarantees in the national constitution (or equivalent). At the more-specific level of legislation, the inquiry should have us identify which statutes, regulations and even municipal ordinances actually guarantee the right or any entitlement within the right. Presumably, public policies, programs, institutions and budgets in place should form the practical implementation counterparts to complement these legal criteria and the

respect, defense, promotion and fulfillment of the human right at the most-localized operational level.

Inquiry Begins Here

Following this logic, our line of inquiry on “guarantees” poses a number of questions for the monitor to provide the answer. Now your role will become more active. Accordingly, we will follow the method of assessing the guarantees in your country situation for implementation of the human right to adequate housing from general to specific, thus, focusing on:

- Ratifications and multilateral commitments:** Obligations arising from multilateral (international and regional) ratification of relevant treaties;
- Constitutional provisions** relevant to the human right to adequate housing and land;
- National legal system:** Legislation and other local law;
- Institutions:** both binding and bonding institutions, whether as a formal structure, or a more-customary, social character;
- Policies:** having nationwide application;
- Programs:** long-term, policy-based and systematic efforts;
- Projects:** having more temporary and localized application; and
- Budgets** of public institutions.



In that order, our line of inquiry will explore these guarantees for each of the twelve entitlements of the human right to adequate housing and land. You will likely find that you may already have the answers to many of these questions from the previous sections on “Sources” and “Over-riding Principles.” For instance, you have already learned about, and identified many multilateral treaty instruments guaranteeing the human right to adequate housing. Now, you will be able to fill in the rest of the guarantees to complete the picture of how these norms translate into legal and functional assurances locally for this and every entitlement of our human right that you choose to monitor and assess.

This method ensures that the monitor take into consideration also the guarantees of the over-riding human rights principles (as explained above in “Over-riding principles applied to legal security of tenure and freedom from dispossession” in Step 3 of this toolkit). These principles, found in the first Articles of all the major human rights treaties, are to be generally and universally applied in order to ensure a context for the realization of all rights, not least the human right to adequate housing and land. Since these principles over-ride, or sit on top of the human rights framework applied to housing and land, they appear first in the list of questions in our line of inquiry. These questions include a list of legal instruments and commitments by States to guarantee these over-riding principles. (Please note that these are illustrative lists; they are not exclusive lists. You may know of other such guarantees, and you may find that some listed do not apply to your country situation.)

In the same way that we proceed from the general to the specific, the inquiry about the guarantees of the over-riding principles is followed by the more precise, practical guarantees that ensure the human right to adequate housing and land is made real in practice. Therefore, the systematic questions here include a test of (1) the present (general and contextual) guarantees for applying the over-riding principles of international human rights law in the case of the entitlement legal security of tenure and freedom from dispossession

(i.e., self-determination, nondiscrimination, gender equality, rule of law, nonregressivity/nonretrogression and international cooperation), as well as (2) the (functional and specific) local guarantees of legal security of tenure and freedom from dispossession deriving from the guaranties listed above.

✓ Guarantees of the over-riding principles

Self-determination

Which international treaties has the State ratified, acceded to or succeeded to that guarantee that the principle of self-determination be applied, including in the housing context?

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention on the Elimination of All Forms of Racial Discrimination (1965)
- Convention on the Rights of the Child (1989)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- ILO No. 107 concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (1957)
- ILO Convention No. 169 concerning Indigenous Peoples in Independent Countries (1989)
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee that the principle of self-determination be applied, including in the housing context?

- Declaration on the Right to Development (1986)
- Declaration on Social Progress and Development (1969)
- Habitat II Agenda (1996)
- Istanbul Declaration (1996)
- Social Summit Declaration and Programme of Action (1995)
- Universal Declaration of Human Rights (1948)
- United Nations Commission on Human Rights resolutions
- UN General Assembly resolutions [various]
- Vienna Declaration and Programme of Action (1993)
- Durban Declaration and Programme of Action [of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] (2002)
- Johannesburg Declaration of the World Summit on Sustainable Development and Plan of Implementation (2001)

Which regional treaties has the State ratified, acceded to or succeeded to that guarantee that the principle of self-determination be applied, including in the housing context?

- African Charter on Human and Peoples Rights (1981)
- American Convention on Human Rights (1969)
- American Declaration of Human Rights (1948)
- Arab Charter on Human Rights (1994)

- (European) Convention for Protection of Human Rights and Fundamental Freedoms (1950)
- European Social Charter (1961)

Has the State participated in the adoption of multilateral agreements in the form of regional conferences, summits, or congresses, etc., or voted in favor of resolutions in regional organizations that guarantee that the principle of self-determination be applied, including in the housing context?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (2000)
- Rabat Declaration (1995)

Nondiscrimination

Which international treaties has the State ratified, acceded to or succeeded to that guarantee that the over-riding principle and human right to freedom from discrimination be applied, including also in the housing context?

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention on the Elimination of All Forms of Racial Discrimination (1965)
- Convention on the Rights of the Child (1989)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- International Labour Organisation Convention No. 107 concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (1957)
- International Labour Organisation Convention No. 117 *on Social Policy (Basic Aims and Standards)* (1962)
- ILO Convention No. 169 concerning Indigenous Peoples in Independent Countries (1989)
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)
- Refugee Convention (1951)
- Convention relating to the Status of Stateless Persons (1954)
- Convention on the Reduction of Statelessness (1961)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee that the over-riding principle and human right to freedom from discrimination be applied, including also in the housing context?

- Declaration on Asylum (1967)
- Declaration on the Right to Development (1986)
- Declaration on Social Progress and Development (1969)
- Declaration on the Elimination of Violence against Women (1993)

- Habitat II Agenda (1996)
- Declaration on Cities and Other Human Settlements in the New Millennium [Habitat II+5 UNGAR S-25/2] (2001)
- UN Guidelines on Internally Displaced Persons (1998) [vote in favor of adoption in UNHRCR E/CN.4/1998/53/Add.2, dated 11 February 1998]
- International Labour Organisation Recommendation No. 162 concerning Older Workers (1980)
- Istanbul Declaration (1996)
- Rio Declaration and Agenda 21 (1992)
- Social Summit Declaration and Programme of Action (1995)
- Universal Declaration of Human Rights (1948)
- UN General Assembly resolutions [various]
- United Nations Commission on Human Rights resolutions [various]
- Vancouver Declaration Human Settlements (1976)
- Vienna Declaration and Programme of Action (1993)
- Durban Declaration and Programme of Action [of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] (2002)
- Johannesburg Declaration of the World Summit on Sustainable Development Plan of Implementation (2001)

Which regional treaties has the State ratified, acceded to or succeeded to that guarantee that the over-riding principle and human right to freedom from discrimination be applied, including also in the housing context?

- African Charter on Human and Peoples Rights (1981)
- American Convention on Human Rights (1969)
- Arab Charter on Human Rights (1994)
- (European) Convention for Protection of Human Rights and Fundamental Freedoms (1950)
- European Social Charter (1961)

Has the State participated in the adoption of multilateral agreements in the form of regional-level conferences, summits, or congresses, etc., or voted in favor of resolutions in regional organizations that guarantee application of the over-riding principle and human right to freedom from discrimination, including also in the housing context?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (2000)
- Rabat Declaration (1995)

Gender equality

Which international treaties has the State ratified, acceded to or succeeded to that guarantee the application of the over-riding principle of gender equality be applied, including also in the housing context?

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention on the Rights of the Child (1989)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- International Labour Organisation Convention No. 117 *on Social Policy (Basic Aims and Standards)* (1962)
- International Labour Organisation Convention No. 131 Concerning Minimum Wage Fixing, with Special Reference to Developing Countries (1970)
- International Labour Organisation Convention Recommendation No. 115 concerning Workers' Housing (1961)
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee the application of the over-riding principle of gender equality be applied, including also in the housing context?

- Declaration on Asylum (1967)
- Declaration on the Right to Development (1986)
- Declaration on Social Progress and Development (1969)
- Habitat II Agenda (1996)
- Declaration on Cities and Other Human Settlements in the New Millennium [Habitat II+5 UNGAR S-25/2] (2001)
- International Labour Organisation Recommendation No. 162 concerning Older Workers (1980)
- Istanbul Declaration (1996)
- Rio Declaration and Agenda 21 (1992)
- Social Summit Declaration and Programme of Action (1995)
- Universal Declaration of Human Rights (1948)
- United Nations Commission on Human Rights resolutions
- Vienna Declaration and Programme of Action (1993)
- Durban Declaration and Programme of Action [of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] (2002)
- Johannesburg Declaration of the World Summit on Sustainable Development and Plan of Implementation (2001)

Which regional treaties has the State ratified, acceded to or succeeded to that guarantee the application of the over-riding principle of gender equality be applied, including also in the housing context?

- African Charter on Human and Peoples Rights (1981)
- American Convention on Human Rights (1969)
- American Declaration of Human Rights (1948)
- Arab Charter on Human Rights (1994)
- (European) Convention for Protection of Human Rights and Fundamental Freedoms (1950)
- European Social Charter (1961)

Has the State participated in the adoption of multilateral agreements in the form of regional conferences, summits, or congresses, etc., or voted in favor of resolutions in regional organizations that guarantee the application of the over-riding principle of gender equality be applied, including also in the housing context?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (2000)
- Rabat Declaration (1995)

Rule of law

Which international treaties has the State ratified, acceded to or succeeded to that guarantee the State's application of the over-riding principle of the rule of law, which also extends to the housing sphere?

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention on the Elimination of All Forms of Racial Discrimination (1965)
- Convention on the Rights of the Child (1989)
- Rome Statute on the Establishment of the International Criminal Court (1998)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- International Labour Organisation Convention No. 107 concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (1957)
- International Labour Organisation Convention No. 117 *on Social Policy (Basic Aims and Standards)* (1962)
- International Labour Organisation Convention No. 131 Concerning Minimum Wage Fixing, with Special Reference to Developing Countries (1970)
- ILO Convention No. 169 concerning Indigenous Peoples in Independent Countries (1989)
- International Labour Organisation Convention Recommendation No. 115 concerning Workers' Housing (1961)
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)
- Refugee Convention (1951)
- Convention relating to the Status of Stateless Persons (1954)
- Convention on the Reduction of Statelessness (1961)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee the State's application of the over-riding principle of the rule of law, which also extends to the housing sphere?

- Declaration on Asylum (1967)
- Declaration on the Right to Development (1986)
- Declaration on Social Progress and Development (1969)

- Habitat II Agenda (1996)
- Declaration on Cities and Other Human Settlements in the New Millennium [Habitat II+5 UNGAR S-25/2] (2001)
- International Labour Organisation Recommendation No. 162 concerning Older Workers (1980)
- Istanbul Declaration (1996)
- Rio Declaration and Agenda 21 (1992)
- Social Summit Declaration and Programme of Action (1995)
- Universal Declaration of Human Rights (1948)
- United Nations Commission on Human Rights resolutions
- Vancouver Declaration Human Settlements (1976)
- Vienna Declaration and Programme of Action (1993)
- Durban Declaration and Programme of Action [of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] (2002)
- Johannesburg Declaration of the World Summit on Sustainable Development and Plan of Implementation (2001)

Which regional treaties has the State ratified, acceded to or succeeded to that guarantee the State's application of the over-riding principle of the rule of law, which also extends to the housing sphere?

- African Charter on Human and Peoples Rights (1981)
- American Convention on Human Rights (1969)
- American Declaration of Human Rights (1948)
- Arab Charter on Human Rights (1994)
- (European) Convention for Protection of Human Rights and Fundamental Freedoms (1950)
- European Social Charter (1961)

Has the State participated in the adoption of multilateral agreements in the form of regional conferences, summits, or congresses, etc., or voted in favor of resolutions in regional organizations that guarantee the State's application of the over-riding principle of the rule of law, which also extends to the housing sphere?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (2000)
- Rabat Declaration (1995)

Nonregressivity/nonretrogression

Which international treaties has the State ratified, acceded to or succeeded to that guarantee the State's implementation of the principle of nonregressivity/nonretrogression in the respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human right to adequate housing and land?

- Convention on the Elimination of All Forms of Racial Discrimination (1965)
- Convention on the Rights of the Child (1989)

- International Covenant on Economic, Social and Cultural Rights (1966)
- International Labour Organisation Convention No. 117 *on Social Policy (Basic Aims and Standards)* (1962)
- International Labour Organisation Convention Recommendation No. 115 concerning Workers' Housing (1961)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee the State's implementation of the principle of nonregressivity/nonretrogression in the respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human right to adequate housing and land?

- Declaration on the Right to Development (1986)
- Declaration on Social Progress and Development (1969)
- Habitat II Agenda (1996)
- Declaration on Cities and Other Human Settlements in the New Millennium [Habitat II+5 UNGAR S-25/2] (2001)
- Istanbul Declaration (1996)
- Rio Declaration and Agenda 21 (1992)
- Social Summit Declaration and Programme of Action (1995)
- Universal Declaration of Human Rights (1948)
- United Nations Commission on Human Rights resolutions
- Vancouver Declaration Human Settlements (1976)
- Vienna Declaration and Programme of Action (1993)
- Durban Declaration and Programme of Action [of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] (2002)
- Johannesburg Declaration of the World Summit on Sustainable Development and Plan of Implementation (2001)

Which regional treaties has the State ratified, acceded to or succeeded to that guarantee the State's implementation of the principle of nonregressivity/nonretrogression in the respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human right to adequate housing and land?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (200)
- Rabat Declaration (1995)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee the State's implementation of the principle of nonregressivity/nonretrogression in the respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human right to adequate housing and land?

- American Declaration on the Rights and Duties of Man (1948)

- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (2000)
- Rabat Declaration (1995)

International Cooperation

Which international treaties has the State ratified, acceded to or succeeded to that guarantee the State's implementation of the principle of international cooperation to ensure respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human rights to adequate housing and land?

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention on the Elimination of All Forms of Racial Discrimination (1965)
- Convention on the Rights of the Child (1989)
- Rome Statute on the Establishment of the International Criminal Court (1998)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- International Labour Organisation Convention No. 107 concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (1957)
- International Labour Organisation Convention No. 117 *on Social Policy (Basic Aims and Standards)* (1962)
- International Labour Organisation Convention No. 131 Concerning Minimum Wage Fixing, with Special Reference to Developing Countries (1970)
- ILO Convention No. 169 concerning Indigenous Peoples in Independent Countries (1989)
- International Labour Organisation Convention Recommendation No. 115 concerning Workers' Housing (1961)
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)
- Refugee Convention (1951)
- Convention relating to the Status of Stateless Persons (1954)
- Convention on the Reduction of Statelessness (1961)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee the State's implementation of the principle of international cooperation to ensure respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human rights to adequate housing and land?

- Agenda 21 (1992)
- Declaration on Environment and Development (1992)
- Declaration on Asylum (1967)
- Declaration on the Right to Development (1986)
- Declaration on Social Progress and Development (1969)
- Habitat II Agenda (1996)

- Declaration on Cities and Other Human Settlements in the New Millennium [Habitat II+5 UNGAR S-25/2] (2001)
- International Labour Organisation Recommendation No. 162 concerning Older Workers (1980)
- Istanbul Declaration (1996)
- Rio Declaration and Agenda 21 (1992)
- Social Summit Declaration and Programme of Action (1995)
- Universal Declaration of Human Rights (1948)
- United Nations Commission on Human Rights resolutions
- Vancouver Declaration Human Settlements (1976)
- Vienna Declaration and Programme of Action (1993)
- Durban Declaration and Programme of Action [of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] (2002)
- Johannesburg Declaration of the World Summit on Sustainable Development and Plan of Implementation (2001)

Which regional treaties has the State ratified, acceded to or succeeded to that guarantee the State's implementation of the principle of international cooperation to ensure respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human rights to adequate housing and land?

- African Charter on Human and Peoples Rights (1981)
- American Convention on Human Rights (1969)
- American Declaration of Human Rights (1948)
- Arab Charter on Human Rights (1994)
- (European) Convention for Protection of Human Rights and Fundamental Freedoms (1950)
- European Social Charter (1961)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee the State's implementation of the principle of international cooperation to ensure respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human rights to adequate housing and land?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (2000)
- Rabat Declaration (1995)

What additional multilateral commitments has the State made to guarantee nondiscrimination in the respect, protection, promotion and fulfillment of the human right to adequate housing and, by extension, affordability?

Do not forget that the body of the binding international treaties that the State already has ratified contains binding human rights obligations that take precedence over nonbinding declarations of mere intent or political will. Monitoring these obligations is the covenanted

task of the treaty parties [ratifying States], which has been delegated to neutral treaty-monitoring bodies that are supported in their task by government and civil-society monitors. Keep in mind also that some multilateral declarations and many agreements with international financial and development institutions may contain standards less protective of human rights and freedoms than those of a binding nature under human rights treaties. Those agreements may even impede the enjoyment of economic/social/cultural rights. Such agreements are to be evaluated subject to prior human rights treaty obligations—not vice versa.

✓ Local guarantees

Ratifications and international commitments

Which international treaties has the State ratified (acceded or succeeded to) that guarantee the human right to adequate housing, in particular affordability?

Constitutional provisions

- Does the State have a Constitution, or equivalent, guaranteeing the right to human right to housing and land, including affordability?
- Does the State have a Constitution, or equivalent, guaranteeing the right to local self-determination?
- Does the State have a Constitution, or equivalent, guaranteeing the right to freedom from discrimination?
- Does the State have a Constitution, or equivalent, guaranteeing gender equality?
- Does the State have a Constitution, or equivalent, guaranteeing the rule of law, including access to justice and democratic participation and representation?
- Does the State have a Constitution, or equivalent, guaranteeing the right to the continuous improvement of living conditions?
- Does the State have a Constitution, or equivalent, providing that international relations be conducted within the framework and objectives of human rights, including economic, social and cultural rights?

National legal system

- Is the right to adequate housing, including affordability recognized as a distinct right in the country's legal system?
- Is national and local legislation consistent with the human rights right to housing and land, including affordability?
- Is national and local legislation consistent with the principle of local self-determination?
- Is national and local legislation consistent with the right to freedom from discrimination? What statutes has the State/government legislated, and are in force, to ensure

nondiscrimination in the respect, defense, promotion and implementation of the human right to adequate housing, in particular, affordability?

- Do the concerned persons or community have the sense that the terms of their entitlement to affordability of adequate housing are equal and consistent with others'?
- Does national and local law maintain the principle of gender equality, particular as it relates to housing, land and affordability of adequate housing?
- Do local and national laws and regulations uphold the rule of law, including access to justice and democratic participation and representation in matters related to housing, land and affordability of adequate housing?
- Does the State's legal system maintain the right to the continuous improvement of living conditions?
- Are the laws and regulations of the State consistent with the principle that international relations, including international entities operating locally, conduct themselves within the framework and objectives of human rights, including economic, social and cultural rights, in particular, the human right to adequate housing and land, including affordability?
- Does the performance of the law-enforcement services guarantee the practice and enforcement of the respect, defense, promotion and implementation of the human right to adequate housing, including affordability?
- Are judges and lawyers performing sufficiently and consistently to uphold the human right to adequate housing, including the entitlement of affordability? What are some examples?

Institutions

- Is there a sense in the community that the State and government institutions represent their aspirations to self-determination?
- What State and public institutions exist as a guarantee of nondiscrimination in the respect, defense, promotion and implementation of the human right to adequate housing, in particular, affordability?
- Do the concerned persons or community have the possibility to exercise an effective role in determining the terms and conditions of affordability of adequate housing?
- What State and public institutions exist as a guarantee of gender equality in the defense, promotion and implementation of the human right to adequate housing, in particular, affordability?
- What private and nongovernmental institutions exist as a guarantee of gender equality in the defense, promotion and implementation of the human right to adequate housing, in particular, affordability?

- What informal institutions (including social norms) function so as to help implement the human right to adequate housing and, in particular, affordability?³⁷⁷
- What social institutions and consistent social practices exist as a guarantee of gender equality in the defense, promotion and implementation of the human right to adequate housing, in particular, affordability?
- How have these institutions actually improved capacity to protect, or actual protection of affordability of adequate housing for those in need?

Policies

- What statewide policies are in place and implemented to guarantee of the human right to adequate housing and, in particular, affordability?

Keep in mind that the body of the binding international treaties that the State has ratified contain provisions that call for human rights to be implemented in the presence of the over-riding principles of self-determination, nondiscrimination, gender equality, the rule of law, international cooperation in the implementation of human rights, and progressive realization (nonregressivity/ nonretrogression) and the continuous improvement of living conditions.

- How have national policies enhanced local self-determination so as to ensure acceptable levels of affordability of adequate housing?
- How have national policies to ensure nondiscrimination positively affected affordability of adequate housing in the country?
- How have national gender policies led to improvements in the conditions of affordability in the housing sphere, especially for those in need?
- How have the State's policies on access to justice enhanced conditions of affordability of adequate housing, especially for those in need?
- How have national housing policies ensured the continuous improvement of living conditions, in particular the housing rights entitlement of affordability, especially for those in need?
- In what ways have national housing policies ensured that international relations and international entities operating within the country respect, defend, promote and fulfil the human right to housing, in particular the entitlement of affordability for those in need?
- To what extent have external parties positively influenced your country's official policies or practices in guaranteeing the entitlement to affordability of adequate housing?

Programs

³⁷⁷ The operative concept of institutions here encompasses both bonding and bridging institutions. "Institutions," in this sense, involve the rules of the game under which formal and informal activity is conducted, and include public institutions, private institutions, collective practices and norms, as well as changing norms (e.g., brought about through the youth, technology, economic or demographic shifts, and other emerging behaviours). According to Douglas C. North, 1993 Nobel economics laureate, institutions are "humanly devised constraints that shape human interaction."

- What progressive steps has the State made on a national scale in the past period (year[s], or since your last assessment) to improve housing rights, especially the entitlement of affordability? (These may include: law reforms, improved infrastructure, more effective implementation methods, population registry programs, programs to consider ratification of international covenants, and evaluations of housing rights implementation, etc.)

Keep in mind that the body of binding international treaties that the State has ratified contain provisions that call for human rights to be implemented in the presence of the over-riding principles of self-determination, nondiscrimination, gender equality, the rule of law, international cooperation in the implementation of human rights, and progressive realization (nonregressivity/ nonretrogression) and the continuous improvement of living conditions.

- What private-sector or NGO programs are in place and implemented to guarantee the human right to adequate housing and, in particular, affordability?
- How have these national programs enhanced local self-determination in a way that has improved the affordability of adequate housing?
- What national programs are completed, ongoing, or planned to ensure nondiscrimination positively affected affordability of adequate housing in the country?
- Are there any national gender programs completed, ongoing or planned with the purpose and effect of improving the conditions of affordability in the housing sphere, especially for those in need? Do they cover land rights and inheritance issues?
- What are have the State's recent, present or future programs to enhance access to justice that are intended to improve housing and living conditions, especially for those in need? How have those programs implemented to date succeeded in enhancing affordability of housing?
- How have national housing programs ensured the continuous improvement of living conditions, in particular the housing rights entitlement of affordability, especially for those in need?
- In what ways have national housing programs ensured that international relations and international entities operating within the country respect, defend, promote and fulfil the human right to housing, in particular the entitlement of affordability for those in need?
- Has the government in the concerned State cooperated with other State or non-State parties to find identify and adapt good practices locally to improve affordability of adequate housing for all those living there?

Projects

- What progressive actions has the State undertaken in the way of limited-scale or pilot projects in the past period (year[s], or since your last assessment) to improve housing rights, especially the entitlement of affordability?
- What private-sector or NGO projects are in place and implemented to guarantee the human right to adequate housing and, in particular, affordability?

- How have such local projects enhanced local self-determination in a way that has improved the conditions of affordability of adequate housing?
- What projects completed, ongoing, or planned to ensure nondiscrimination positively affected affordability of adequate housing in the country?
- Are there any gender-based projects completed, ongoing or planned with the purpose and effect of improving the conditions of affordability in the housing sphere, especially for those in need? Do they cover land rights and inheritance issues?
- What are have the State's recent, present or future projects to enhance access to justice that are intended to improve housing and living conditions, especially for those in need? How have those programs implemented to date succeeded in enhancing affordability of housing?
- How have these projects ensured the continuous improvement of living conditions, in particular the housing rights entitlement of affordability, especially for those in need?
- In what ways have public or private projects ensured that international relations and international entities operating within the country respect, defend, promote and fulfil the human right to housing, in particular the entitlement of affordability for those in need?
- Has the government in the concerned State cooperated with other State or non-State parties to find identify and adapt good practices locally through projects that actually improve affordability of adequate housing for all those living affected?
- Are there foreign State or foreign private interests operating projects affecting the housing and human settlements sector in the country and affecting the situation under review? Are their roles positively affecting the enjoyment of affordability of adequate housing?

Budgets

- What public budgets are in place to guarantee the human right to adequate housing and, in particular, affordability? How does the budget correspond to actual spending and implementation targets?
- Is the necessary public budget information available to conduct a multiyear assessment of the financial performance of policies, programs and projects affecting housing and living conditions of those vulnerable and needy inhabitants of the country?
- Does the public have access to the budgets of private companies and organizations operating in the housing sphere and having an effect on the housing rights entitlement of affordability?
- Does the reliable budget information support the public claims of those responsible for the budgets intended for improvement of living conditions of the needy, particularly in the housing rights entitlement of affordability?
- What international obligations and commitments affect the public budget with ramifications on the housing sector, including the entitlement of affordability?

- What national obligations and commitments affect the public budget with ramifications on the housing sector, including the entitlement of affordability?
- What financial policies affect the public budget with ramifications on the housing sector, including the entitlement of affordability?

4.5. Obstacles, impediments, barriers

At the present stage in the monitoring process, you have well identified the elements arising from the human right and legal concept of adequate housing. You have completed the necessary review of international minimum standards that codify the right, along with the corresponding obligations on the ratifying State. Your process has taken you through the moral arguments of social movements and others, who are the very source of human rights throughout history. Those sources fill legal gaps and provide specificity to local human rights priorities and application. In your context, you also have identified which of the binding instruments and other theoretical guarantees apply to the case at hand.

At this point, you are advancing beyond the theoretical dimensions of the human right to adequate housing, its constituent elements and its guarantees. As a housing-and-land-rights monitor, you will now enter the practical dimension and assess the most difficult challenge in the field of human rights: implementation. The following sample questions guide the monitor to prepare needed data and arguments by detailing the present obstacles, impediments, barriers, threats and constraints that have brought about, or threaten to bring about a violation or deprivation of the right and the element of affordability of adequate housing, which you are currently addressing.

When monitoring documenting any stage of this toolkit inquiry, or assessing the conditions affecting any right, it is essential to ensure the highest quality of information possible. It has been said often that information is power. In our case, this is especially true, but the degree of that power will depend largely on the following qualities of your information:

- Completeness
- Level of detail and specificity
- Date (freshness) of the information
- Integrity of the information (i.e., lack of contradictions)
- Effective (articulate, concise, understandable and correct) use of language
- Relevance: linkage to the question of housing and land rights implementation
- Credibility of source (reputation, effective presentation, link to issue and community)

In order to begin assessing the compatibility of the theoretical affirmations of the human right to housing and land with the local reality, you will determine now whether, and to what extent barriers, contradictions, obstacles, and impediments contribute to actual and/or potential violations of the entitlement to affordability of adequate housing. This process is aided with the following battery of questions:

✓ Obstacles to the over-riding principles

Self-determination

- Are the people dissatisfied with the terms of their affordability of adequate housing?

- Do the concerned persons or community lack the possibility to exercise an effective role in determining the terms of affordability of adequate housing?
- Does the community lack sufficient information or capacity sufficiently to enjoy the human right to adequate housing, in particular, the entitlement of affordability of adequate housing? [See the **“Information, education, capacity and capacity building”** entitlement in this toolkit.]
- Is illiteracy an impediment to the community’s access to sufficient information to enjoy the human right to adequate housing, in particular affordability of adequate housing? [See the **“Information, education, capacity and capacity building”** entitlement in this toolkit.]

Nondiscrimination

- To what extent is discrimination an issue in realizing the entitlement to affordability of adequate housing?
- Is there (does the affected community report) any type of discrimination practiced randomly, occasionally or on the social level, or institutionalized in some form, affecting affordability of adequate housing?
- What are the nature of the discrimination and its effects of the entitlement of affordability of adequate housing?

Gender equality

- Is there any gender-based discrimination applied in realizing the entitlement to affordability of adequate housing?
- Is the discrimination practiced randomly, occasionally or on the social level, or is it institutionalized in some form such that affects affordability of adequate housing?
- Does local law on inheritance, divorce or other specialization fail to provide equal rights to males and females of all ages? How?

Rule of law

- Has the State failed to ratify any of the relevant international or regional treaties guaranteeing the human right to adequate housing?
- Has the State issued any reservations, declarations or understandings to international or regional treaties that possibly limit the affect of human right to adequate housing guarantees, particularly so as to affect the entitlement of affordability of adequate housing?
- Has the State government failed to conduct a legal evaluation of housing rights implementation?



- Has the State government failed to present timely reports to the relevant treaty-monitoring bodies covering the human right to adequate housing?
- Has the State and its government failed to implement in good faith the Concluding Observations of the various treaty bodies concerning implementation of the human right to adequate housing?
- Do the three branches of government (judiciary, legislative and executive) operate with autonomous authority?
- Do the three branches of government coordinate to uphold and enforce a single system of law?
- Does the State lack a Constitution, or equivalent, guaranteeing gender equality?
- Does the State lack a Constitution, or equivalent, guaranteeing the rule of law, including access to justice and democratic participation and representation?
- Does the State lack a Constitution, or equivalent, guaranteeing the right to the continuous improvement of living conditions?
- Do legal or procedural shortcomings impede the admissibility of claims invoking international treaty obligations in the defense of human right to adequate housing, in particular, the entitlement to affordability of adequate housing?
- Has the State failed to ratify the Rome Statute on the International Criminal Court, limiting the options to seek justice and remedy for gross violations of the human right to adequate housing?
- Does the State lack a Constitution, or equivalent, providing that international relations be conducted within the framework and objectives of human rights, including economic, social and cultural rights?
- Does the country's legal system lack recognition of the human right to adequate housing, including affordability of adequate housing?
- Does the political system in the country lack coordination among branches of executive, legislative and judicial government?
- Does the State lack a Constitution, or equivalent, guaranteeing the rule of law, including access to justice and democratic participation and representation?
- Are there contradictions in the national law affecting affordability of adequate housing?
- Is there insufficient enforcement of laws and/or policies against arbitrary eviction enforced, including safeguards for vulnerable groups, such as: women, children, orphans, etc.?
- Do local authorities fail to recognize explicitly the application of the international human rights treaties that the State has signed and/or ratified and that guarantee the human right to adequate housing, including the entitlement of affordability of adequate housing?

- Is national and local legislation inconsistent with the human rights right to housing and land, including affordability of adequate housing?
- Has the legislature failed to harmonize national laws with international human rights treaty obligations in the formulation of policies affecting the human right to adequate housing, in particular, with affect on affordability of adequate housing?
- Is law enforcement inadequate to ensure enjoyment of the entitlement of affordability of adequate housing?
- Are law enforcement officers in need of training in, and information about the human right to adequate housing in order to uphold the entitlement of affordability of adequate housing?
- Do lawyers, prosecutors and/or judges lack awareness and training in the housing and land rights law in order to uphold and defend the entitlement of affordability of adequate housing?
- Has the national court system failed in any way to admit claims of housing and land rights victims, including those whose entitlement to affordability of adequate housing has been violated?
- Does the rule-of-law, regulations, or their enforcement fail to govern market forces effectively to ensure the respect, protection, promotion and fulfilment of the right to adequate housing (e.g., governing monopolies, procedures for legal redress)? How does fact affect the enjoyment of the housing rights entitlement to affordability of adequate housing?
- Does local law restrict civil society associations from advocating rights or providing services that would advance the respect, defense, promotion and fulfillment of the human right to housing, including affordability of adequate housing?

Nonregressivity / nonretrogression

- Has the State failed to take steps to improve housing rights, especially affecting affordability of adequate housing, in the past period (year[s], or since your last assessment)?
- Have new laws degraded protection of human right to adequate housing in the recent period, particularly affecting affordability of adequate housing?
- Have new policies degraded protection or enjoyment of human right to adequate housing in the recent period, particularly affecting affordability of adequate housing?
- Have national programs led to a decline in the enjoyment of human right to adequate housing in the recent period, particularly affecting affordability of adequate housing?
- Have infrastructure or physical features of the built or natural environment led to a decline in the enjoyment of human right to adequate housing, particularly affecting affordability of adequate housing?

- Have nationwide programs failed to improve, or led to a decline in, the enjoyment of human right to adequate housing, in particular the terms of affordability of adequate housing?
- Have local projects supported by State or local authorities failed to improve, or led to a decline in, the enjoyment of human right to adequate housing, in particular the terms of affordability of adequate housing?
- Have public budget allocations failed to improve, or led to a decline in, the enjoyment of human right to adequate housing, in particular the terms of affordability of adequate housing?
- To what extent has the State government's efforts fallen short in the improvement the terms of affordability of adequate housing, especially of the poor, vulnerable and minorities?

International cooperation

- Are foreign State or non-State interests operating in the housing and human settlements sector in the country and affecting the entitlement of affordability of adequate housing? Are their roles negatively affecting the enjoyment of affordability of adequate housing?
- To what extent have external parties (States, or international financial institutions) negatively influenced your country's official policies or practices in guaranteeing the right to affordability of adequate housing?
- Has the State neglected to take steps, "individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources" and capacities to ensure (especially poor and vulnerable) people's affordability of adequate housing?

✓ Local obstacles

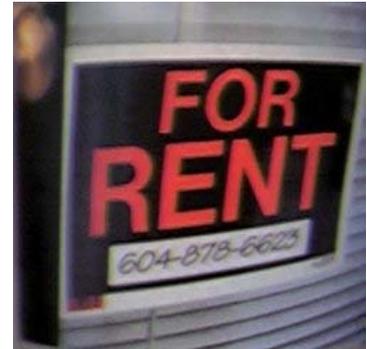
Institutions

- As far as human right to adequate housing and affordability of adequate housing are concerned, are there gaps or shortcomings in the State, government and other public institutions positioned to improve living conditions, including the housing-rights entitlement of affordability of adequate housing?
- What State and public institutions exist as a guarantee of gender equality in the defense, promotion and implementation of the human right to adequate housing, in particular, legal affordability of adequate housing?
- Has there been a recent decrease in the quantity or quality of civil society institutions upon which the community now relies.
- Do the concerned private and nongovernmental institutions fail to guarantee gender equality in the defense, promotion and implementation of the human right to adequate housing, in particular, affordability of adequate housing?

- What informal institutions (including social norms) function so as to impede the enjoyment of the human right to adequate housing and, in particular, affordability of adequate housing?³⁷⁸
- Do these institutions actually lack the will or capacity to protect legal affordability of adequate housing for those in need?
- Do these institutions actually lack the will, knowledge or capacity to use the relevant treaty body Concluding Observations in work of monitoring and lobbying officials

Policies

- Do the relevant ministries omit to incorporate international human rights treaty obligations in the formulation of policies affecting the human right to adequate housing, in particular, with affect on affordability of adequate housing?
- What statewide policies are still needed to guarantee of the human right to adequate housing and, in particular, affordability of adequate housing?
- Have the relevant national policies neglected to ensure acceptable levels of self-determination in determining the terms and conditions of affordability of adequate housing? How and why?
- Have national policies failed to reach their targets (even despite announcements of official intent) positively to affect affordability of adequate housing? How and why?
- Have national gender policies led to improvements in the conditions of legal affordability of adequate housing in the housing sphere, especially for those in need? How and why?
- Have the State's policies on access to justice failed to improve conditions of legal affordability of adequate housing, especially for those in need?
- Have national housing policies failed to ensure the continuous improvement of living conditions, in particular, by stagnating or degrading the housing rights entitlement of affordability of adequate housing, especially for those in need? How and why?
- Do national housing policies lack consideration of, and/or reference to the international human rights instruments relevant to the human right to adequate housing and affordability of adequate housing, and to which the State is bound?
- To what extent have external parties negatively influenced your country's official policies or practices in guaranteeing the affordability of adequate housing?
- Have State housing-policy implementing institutions omitted to seek international cooperation in the human right framework by conditioning international entities operating



³⁷⁸ The operative concept of institutions here encompasses both bonding and bridging institutions. "Institutions," in this sense, involve the rules of the game under which formal and informal activity is conducted, and include public institutions, private institutions, collective practices and norms, as well as changing norms (e.g., brought about through the youth, technology, economic or demographic shifts, and other emerging behaviours). According to Douglas C. North, 1993 Nobel economics laureate, institutions are "humanly devised constraints that shape human interaction."

within the country also to respect, defend, promote and fulfil the human right to housing, in particular the entitlement of affordability of adequate housing?

Programs

- What negative steps has the State taken on a national scale in the past period (year[s], or since your last assessment) to improve housing rights, especially the entitlement of affordability of adequate housing? These may include declining legal assistance laws, deteriorating infrastructure without repair, declining implementation efforts?
- What related private-sector or NGO programs have failed to enhance the enjoyment of the human right to adequate housing, in particular, affordability of adequate housing?
- Is there a lack of, and need for national gender programs completed, ongoing or planned with the purpose and effect of improving the conditions of legal affordability of adequate housing in the housing sphere, especially for those in need?
- Do existing programs omit to cover land and inheritance rights?
- Have the intergovernmental relations declined between your State and others leading to a decline on options for international cooperation in advancing the respect, defense, promotion and/or fulfilment of the human right to adequate housing, in particular affordability of adequate housing?
- Has the government in the concerned State declined to cooperate with other States, intergovernmental agencies, or foreign non-State parties to identify and adapt good practices locally to improve the entitlement to affordability of adequate housing?

Projects

- What relevant State actions or omissions have led to the failure of limited-scale or pilot projects in the past period (year[s], or since your last assessment) to improve housing rights, especially the entitlement of affordability of adequate housing?
- What private-sector or NGO projects have failed to seek, or fallen short of their intended goal to guarantee the human right to adequate housing and, in particular, affordability of adequate housing?
- Have such local projects undermined local self-determination with negative effect on the conditions of affordability of adequate housing? How and why?
- Are foreign State or foreign private interests operating projects negatively affecting the housing and human settlements sector in the country and affecting the entitlement of affordability of adequate housing? How and why?
- Have projects conducted by local or international entities in the country privatized the provision of housing or public services replaced the role and responsibility of the State and local authorities to fulfil the human right to adequate housing, in particular the entitlement of affordability of adequate housing for those in need?

Budgets

- Are there obstacles to obtaining adequate information about public expenditures in the housing sector, or in areas affecting the enjoyment of the human right to adequate housing, including affordability of adequate housing?
- Is there a lack of legal and actual protection of the right to information, including information and documentation on public budget expenditures in the housing sphere related to the entitlement of affordability of adequate housing?
- Are public budgets inadequate to guarantee the human right to adequate housing and, in particular, affordability of adequate housing?
- Is there underspending of the budget such that impedes the achievement of policy, program or project implementation targets, affecting affordability of adequate housing?
- Do public budget items and actual financial performance reflect a lack of sufficient priority given to implementing policies, programs and projects to improve housing and living conditions, affecting also affordability of adequate housing, of those vulnerable and needy inhabitants of the country?
- Does the public have access to the budgets and financial performance data of private companies and organizations operating in the housing sphere and having an effect on the housing rights entitlement of affordability of adequate housing?
- Does the reliable budget information contradict the public claims of officials and institutions responsible for the continuous improvement of living conditions of the needy, particularly in the housing rights entitlement of affordability of adequate housing?
- Do international obligations and commitments negatively affect the public budget with ramifications on the housing sector, including with negative affect on the entitlement of affordability of adequate housing?
- What national obligations and commitments affect the public budget with ramifications on the housing sector, including the entitlement of affordability of adequate housing?
- What financial policies constrain the public budget with negative consequences on the housing sector, including the entitlement of affordability of adequate housing?
- Is the achievement of affordability of adequate housing accompanied by an inordinate economic burden?
- Is the State failing to regulate effectively the terms and conditions of housing market, so as to avoid corruption, collusion, fraud, discrimination, nepotism and any arbitrary criteria? How is this affecting the entitlement of affordability of adequate housing?
- Is the State prohibiting or impeding individual and community initiatives toward obtaining affordability of adequate housing, individually as well as collectively?
- Are State authorities permitting other parties to interfere with community efforts toward obtaining affordability of adequate housing, individually as well as collectively?

- ❑ Are present government mechanisms and structures inefficient at assisting the needy population from gaining access to affordability of adequate housing?
- ❑ Does the State lack needed resources to ensure affordability of adequate housing, especially for the poor, vulnerable and needy?
- ❑ Does national political disharmony impede enjoyment of the human right to adequate housing and affordability of adequate housing?
- ❑ Is there armed conflict in the country impeding the private and/or public institutions from carrying out development and delivering services that safeguard and improve affordability of adequate housing conditions?
- ❑ Has a natural disaster inflicted parts of the country, creating conditions that negatively affect the human right to adequate housing, including the entitlement to affordability of adequate housing? Do these conditions impede relief or reconstruction assistance by public and private actors?

4.6. The victims and vulnerable persons: the actors

At this step in the housing and land rights monitoring process, you will have to provide relevant facts and figures concerning the people who already have been affected and those who remain vulnerable. You should also identify and describe precisely which part of the population is affected.

Those affected (victims or vulnerable) individuals and groups could be, for example, an indigenous community historically undergoing discriminatory treatment and land confiscation. It is essential to report the number of affected people, among them proportions of children, women and other groups having special needs, such as the elderly, who may be particularly affected.

In your inquiry into the identities of the victims and the vulnerable inhabitants, it is vital that you determine the place and time, as well as the characteristics of the affected persons in the case. The numbers and any demographic data of the composition of the affected population are critical to understanding the case and characterizing the type of violations. The violation or vulnerability may be multidimensional (or intersectional), involving more than one form of discrimination. Knowing the victims and vulnerable persons can help determine which combinations of housing rights elements are simultaneously affected. In describing the population, knowing the particular vulnerabilities and special needs of the affected persons or community (whether arising from historical factors, gender, age or other demographics) complete the picture that you eventually will present to your intended audience.

✓ Distinguishing between the victims and vulnerable

It is also important for the monitor to distinguish between those victims, whom already have been violated, and those who are vulnerable to future violation or deprivation. Of course, this distinction will be strategically important later in the process, when the housing and land rights monitors and defenders choose an action in response to the violation. You will have to determine then if your intervention is to be remedial or preventive. In any case, an eye to those who remain vulnerable even after the principal violation, as well as after a particular solution to a case, will maintain the monitors focus—as necessary—on the further interventions needed toward the ultimate realization of the human right to adequate housing

and land.

The following sample questions guide the monitor to prepare needed data and arguments, in the case of any present obstacles, but focusing on the human dimension in the case of a violation of the housing rights entitlement of affordability of adequate housing.

Victims

- Identify the type and form of violation of the entitlement to affordability of adequate housing:
 - Homelessness
 - Forced eviction
 - Arbitrary demolition
 - Denial of equal inheritance rights
 - Confiscation of property by public officials and bodies
 - Confiscation by private actors (criminal gang, settlers, armed groups)
- Who has been affected by the violation of the entitlement of affordability of adequate housing?
- How many people have been affected in the same way in the last year (any time period)? Does it demonstrate a pattern?
- Identify and provide demographic details of the victims:
 - Numbers and proportions of refugees
 - Numbers and proportions of migrant workers
 - Numbers and proportions of minority persons
 - Numbers and proportions of males and females
 - Numbers and proportions of indigenous and/or tribal and semitribal people
 - Numbers and proportions of elderly, disabled, medically challenged persons with special needs
 - Numbers and proportions of members of groups subject to (current and historic) discrimination
 - Numbers and proportions of impoverished inhabitants, including those subject to discrimination on the basis of their economic status or work (e.g., Dalits)
 - Numbers and proportions of any other relevant group identity of victims
- Where does the violation of this right mostly occur (i.e., rural, urban, slums)?
- When does this violation mostly occur? Day or night? Weekend? Certain times of the year? Why does the violator choose this timing?

Vulnerable individuals and groups

- Identify the type and form of vulnerability to future violation of the entitlement to affordability of adequate housing:
 - Homelessness
 - Forced eviction
 - Arbitrary demolition

- Denial of equal inheritance rights
 - Confiscation of property by public officials and bodies
 - Confiscation by private actors (criminal gang, settlers, armed groups)
- Who are the populations most likely to experience the violation of the right to affordability of adequate housing? Why are they vulnerable?
- Identify and provide demographic details of the concerned vulnerable persons or groups:
- Numbers and proportions of refugees
 - Numbers and proportions of migrant workers
 - Numbers and proportions of minority persons
 - Numbers and proportions of males and females
 - Numbers and proportions of indigenous and/or tribal and semitribal people
 - Numbers and proportions of elderly, disabled, medically challenged persons with special needs
 - Numbers and proportions of members of groups subject to (current and historic) discrimination
 - Numbers and proportions of impoverished inhabitants, including those subject to discrimination on the basis of their economic status or work (e.g., Dalits)
 - Numbers and proportions of any other relevant group identity of vulnerable persons
- Explain the insecurity of their situation and give details about the naturally vulnerable populations (women, children, indigenous, slum dwellers, refugees, workers/migrant workers, farmers, etc.).

Focus on multidimensional / intersectional affects

Your case will be enhanced when your information includes emphasis on the particular types of victimization or vulnerability by focusing on the social groups typically subject to multidimensional, or intersectional types of deprivation. The monitor should identify such multiple forms of deprivation for each of the groups already identified in this section (above). This step allows you to identify the nature and causes of the particular affects on certain groups who may be made vulnerable already in addition to, or in advance of the specific housing land rights violation, or anticipated violation. The following sample questions will lead you to clarify this point.

Women

- Are women in the given community or case subject to deprivation of their entitlement to affordability of adequate housing?
- What are the reasons for this condition? Is it by some custom, religion or other ideological motivation?
- Does the practice of domestic or social violence against women somehow impede women's enjoyment of their entitlement to affordability of adequate housing?
- Are the formal or informal terms of inheritance already biased against women in a way that negatively affects the enjoyment of the entitlement to affordability of adequate housing?

Children

- Do housing conditions impede acceptable access to public goods and services as an element of the RAH, so as to obviate violence and abuse, including psychological & sexual abuse, within the home or community?
- Are housing conditions, in particular, the rights element of affordability of adequate housing, suitable for children to carry out their studies?
- Are housing conditions, including affordability of adequate housing, conducive to achieving the highest attainable standard of physical and mental health?

Racial, ethnic or other groups

- Who are the victims or vulnerable persons or community subject to discrimination that includes denial of affordability of adequate housing?
- Have the affected persons or groups (either the vulnerable or the victims) been denied their right to suitable housing, and particularly to affordability of adequate housing, because they belong to a specific minority, ethnic or indigenous group?
- How has historic discrimination, if any, affected the current situation?

✓ Victims' case documentation form

4.7. Losses/consequences

✓ Quantification methodology

Quantifying violations to the right to adequate housing: a tool for evaluating the effects of demolitions, confiscations and forced evictions

The purpose of this tool is to help determine the value of costs and losses that victims incur as a consequence of the violation their housing rights. Using this tool will aid in the various necessary stages of proper monitoring of specific violations of the right to housing, including:

1. Documentation and recording
2. Monitoring and reporting
3. Quantifying/evaluating
4. Identifying and solving problems
5. Follow-up assessments
6. Fact-finding missions
7. Public information and campaigns
8. Social mobilization
9. Media work
10. Compensation efforts
11. Legal defense and prosecution
12. Monitoring international obligations

The quantification methodology and “Loss Matrix” are designed to aid human rights workers responsible for each stage in the monitoring process, including interventions that are both

preventive and remedial. These stages may involve the same individual human rights worker at each stage, or may involve a division of team labor. In either case, this tool also can serve as a vehicle for organizing tasks in a coordinated and complementary way, when more than one individual or organization is involved in the process. For instance, if different teams or organizations are specializing in respective geographical areas, applying this tool commonly aids the process to avoid duplication and the discrediting contradiction of facts.

Whether or not your monitoring objective is legal defense, policy analysis, compensation or public information, the quantification of the effects of the violation strengthen your argument and, consequently, help mobilize support for the movement to end, redress and compensate/obtain restitution for the violations. In particular, your findings will substantiate the assertion that many housing rights violations actually widen and deepen poverty, having a de-development effect on the community and country.

The material and otherwise-calculable costs resulting from the violation are determined for each unit (household) affected and then totaling them. Alternatively, in the case of multiple units affected, a representative sample should be obtained to determine the average values, which then are to be multiplied by actual numbers of units affected.

Other incalculable losses still have to be recorded and reported in narrative terms. Such narrative explanation and analysis will be useful as an accompaniment to this quantification table.

Both short-term and long-term values are to be assessed.(You can follow examples of traffic dispute jurisprudence, or the law pertaining to insurance or divorce cases in your country to come up with a methodology of determining personal injury and pain-and-suffering damages claims for compensation purposes.) Accurate and thorough quantification of costs and losses calls for both a great deal of cooperation between the monitor and the affected community, and a continuous relationship over time.In order to capture many of the values, sustained monitoring and calculation are required over time. It is, therefore, recommended that such monitoring effort be undertaken or coordinated by those who maintain a program and commitment to the affected community over the long term.

This tool seeks to quantify the costs of victims, as well as public, or social costs. For our purposes, the principal victim(s) would be those persons whose property and lives are directly affected by the act, be it a demolition, confiscation and/or eviction, etc.(This tool would be used for any and all categories of violation.) Ancillary or indirect victims would be those who undergo the cost or other harm as a result of an act intended or directed at others. The indirect victims' losses and damage should be included in the overall assessment of the violation's effects.

The middle column, entitled "Methodology," in the quantification table found at the "**Loss Matrix**" link contains commentary on the contents of the calculated costs/losses and provides guidance on how to calculate them. It is there where you will record in your applied version of the "Loss Matrix" the type of items or values totaled under the particular type of cost/loss. There, too, you could cite whether of not the values are losses/costs to the principal victims only, or include those of indirect victims, such as those enduring collateral damage from a house demolition. The "Methodology" description should be as complete but concise as possible, within a short line or two.

It is possible to modify "Loss Matrix" to the user's discretion. (However, we emphasize that any modifications be shared among the community of monitors to ensure compatibility of

findings.) For example, certain direct and indirect victims' losses may need to be separately calculated for some reason. In that case, an additional column can be added. In any case, however, it is important to arrive at a global cost figure for the violations under review. The column at the far right under each category of cost should be totaled using the imbedded Excel formula.

Follow the links to access the details of the quantification methodology and "**Loss Matrix.**"

- Victim's material losses
- Victim's nonmaterial losses
- Other than victim's material losses (public costs)
- Other than victim's nonmaterial losses (including social costs)

Contents and methodology for determining each category of loss/costs

Victims' Material Losses

The Structure

The fair market value of the house, shelter or other structure(s). This is probably greater than the cost, as indicated in official records of the most recent tax assessment, for example. That price may be a guide, but is likely to be out of date with the value that would be obtained if the property were to be sold on the market. The market value would also likely be less than the "speculative value," which is considered to be that value (price) that a speculator, investor or other interested party would anticipate after the demolition/eviction and after converting the structure—if partially retained—for eventual exchange or reassessment. The reference for determining the market value would be reliable real estate agents, banks, or other parties involved in the sale and exchange of such properties. The standard methodology would involve collecting three quotes/estimates and selecting the average, or taking the middle quote as the fair market value.

In the likely event that no such property market is actively issuing quotes on the value of the affected property. The remaining alternative method for determining market value would be the estimated cost of replacing the property at current market values.

Note that the victim incurring the loss in this case would be the owner(s) and or title holder(s), including those owning the property individually, or collectively, under formal title, or by traditional tenure systems.

Plot

The plot and the structure are considered separately in this methodology to accommodate systems where the two aspects of property value are determined separately, or by different methods. For example, a cooperative arrangement may provide for outright title to the structure, but a "share" of the land area under it. It also allows for disaggregating these values in the event of a dispute over one and not the other. In the event that the structure and the land are both held in title by the same owner and the values are customarily assessed in combination, the structure and plot values could be combined in the matrix.

The eviction and/or demolition may not involve the dispossession of land title or ownership of the plot on which the structure stands. In that case, the evaluator would proceed to the next categories and not enter a value for the plot. However, in some cases, such as in Israel, the land plot under a demolished structure may, perforce, be assumed by, or "revert to" the state

as “state land” or “national land.” The evaluator must be familiar with the local laws and regulations to determine if that is the case in the event of an eviction or demolition. That may determine whether or not a value is entered in this category of the matrix or not.

In the case of a housing plot being confiscated by the state, determining the value of that plot may be difficult if, again, no market value can be determined for the affected area. In that case, the methodology would involve determining the cost at current market value of a comparable site in another location.

Contents

Each affected party should cooperate with the field workers to provide an inventory of the actual contents lost and damaged in the demolition. The value of those contents for this quantification purpose is the **replacement value** of the items, not the market value. The contents (furniture, clothing, foodstuffs, electronics, housewares items, etc.) would be subject to depreciation and the resale or fair-exchange values would not be sufficient to cover the cost of replacement. The replacement value represents the actual cost of repurchasing items comparable in quality to those lost or damaged by the demolition. (For heirlooms and other items sentimental value, a replacement cost should be included in this category; however, the nonmaterial loss or irreplaceability should be expressed in the “Victims’ Nonmaterial Losses” section of the matrix, with a narrative either included in the matrix or attached to it.

Collateral damage

This section of the matrix allows for inclusion of the material losses to the indirect victims in particular, including neighbors’ and public property that are affected by the act. In cases of violent eviction or demolition, using bulldozer or explosives, for example, nearby property can be damaged in various degrees, or destroyed.

Infrastructure

This section refers to services and other infrastructure lost in the demolition/eviction/confiscation that would have to be replaced after the event. For example, electricity provided at the original site may have to be replaced by a generator or purchasing energy from an alternate source. Water, previously available from installed or nearby facilities may have to be replaced by purchasing water or hauling it from another source. The resulting added cost—including the relative cost of labor at the going rate of such work for hire, which is beyond the existing regular costs of obtaining same—is the value to be calculated here.

Business losses

If the demolition/eviction/confiscation results in the loss of a business, or a portion of business, that cost is to be included here. Those losses are the subject of subcategories to be detailed below.

Equipment/inventory

This includes the value of machinery and equipment, other installations, such as furnishings and built ins, as well as all stock and supplies. This should include also the property

belonging to others lost or damaged in the event. For example, a laundry or repair service would hold clients' property to be processed and returned. The values of those items are also to be included in this figure.

Prospective income

The loss resulting from inability to deliver goods and services, and the anticipate profit from existing stores, orders, contracts, etc. that would be unfulfilled due to the event. The short-term and long-term affects are to be calculated by different methods. This category of loss follows the method developed locally for determining "goodwill" as an asset, which would include the projected income from a pattern of business developed through the lifetime of the enterprise. [Refer to insurance law methods.]

Mortgage, other debts and penalties

The demolition/eviction/confiscation removes the owner's relationship with the land and/or structure, contents, livestock, inventory and other matters of material value, such as materials and work performed for physical improvement to the property. However, the event does not relieve the owner from responsibility to repay for those values obtained on a credit basis. Those values, including any penalties and increased interest resulting from the event, are to be included here for both the short-term and long-term. If a situation prevails, as in many legal systems, that a debtor relinquishes claims (as in a natural disaster, for example), then that cost should nonetheless be calculated and listed under the category of "Other than Victim's Losses."

Livestock

The value of livestock lost and the treatment of those injured by the event is calculated here. This would include also the labor costs for time spent in rounding up dispersed livestock at the rate of pay for such work for hire. The calculus for these values includes the loss of anticipated returns from normal sale of, and/or produce from the animals, including their normally anticipated progeny over the short-term and long-term. In the case of the animals' value as beasts of burden, the returns on their labor are to be included in the figures provided under lost revenue, increased transportation costs, returns from crop loss, or other appropriate category.

Land

The landed property not associated with the affected structure itself is to be calculated on the basis of fair market value, as with the structure and its plot entered above. This could be land adjacent to the dwelling or other affected structure, or land confiscated separately. This land could be lost entirely through confiscation, or its value could be reduced as a result of the eviction or demolition. In the case of eviction, land title might not be lost outright, but the conditions created by the eviction may prevent the owner(s) from returning to or reclaiming their land. In that case, the land in question would be calculated as an outright loss.

Trees/crops

The value of a lost or damaged nonfruit-bearing, or otherwise unharvestable tree or other vegetation would be determined by the cost of purchasing and replanting a comparable

replacement. The nonmaterial, aesthetic, or sentimental value of the tree or other vegetation would be included by narrative in the Victim's Nonmaterial Losses item under Environment or Heritage, as appropriate. The value of harvestable trees and crops would include the value of the replacement itself for fruit-bearing trees and crops, as well as the (short-term and long-term) value of the harvest. The loss of timber would be calculated accordingly also, with the value being the anticipated return from the harvesting or sale of the tree itself.

The ecological loss of vegetation, depending on the nature of the event—if by demolition were by fire or other destructive means—also carries a value. Ecological damage is calculated on the basis of the restoration costs entailed. Collateral damage to wildlife and other natural assets, owing to the damage and the time required to restore it, may be of both a calculable and incalculable loss. Where possible, such calculable values should be included here. Otherwise, those losses are to be recorded in the narrative section of both the Victim's and Nonvictim's Nonmaterial Losses, for those losses would be of a more public nature.

Lost/decreased wages/income

The loss of a home, including subsequent short-term or long-term resettlement, may involve the loss of livelihood, whether that livelihood is linked to the dwelling and/or land lost. In any event, wages would inevitably be lost (to victim or her/his employer) for nonproductive time attending to the event and its aftermath. Resettlement can lead to loss of a job or jobs altogether, or necessitate securing alternative employment, especially if temporary or long-term resettlement is far from the regular workplace. To calculate that value, one would subtract the short-term and long-term wages and other income of affected persons from the normal, anticipated wages and other income before the event. Since obtaining new employment and other income involves a loss of certain benefits, such as accumulated vacation leave, seniority and other benefits, the relative loss of those values should be included here if calculable. Job seniority may not be calculable value in monetary terms if it involves merely standing vis-à-vis colleagues. However, if that seniority arguably would have led to promotion with material effect in the short or long terms, that value is to be factored here as well.

Health care

The event itself or its aftermath may have negative health consequences. Social science has recorded the effects of eviction and resettlement upon the increased mortality and morbidity rates of the affected communities. While these notable consequences belong among the Victim's Nonmaterial Losses, the care for these consequences has clearly calculable values. The loss of life, limb and other health effects are the subject of the laws of states for the purposes of calculating victim compensation in insurance and other cases involving law suits. A sample of such methods taken from such statutes could form a composite methodology for calculating victims' health losses here.

The overcrowding, such as in interim or alternative housing arrangements, often leads to negative health consequences for those evicted, as well as for those providing the alternative shelter in their own quarters. The care and treatment of these health consequences (such as influenza, scabies, malnutrition, etc.) are an additional value added to these health care costs.

Interim housing

Eviction, confiscation and demolition victims often seek alternative housing with relatives or friends, either within the community or elsewhere. This housing has a value, which is to be calculated on the basis of fair rental rates for such shelter, whether rent is paid or not. It remains a cost and value that is subsidized in one form or another. It also can lead to an actual expanded definition of what constitutes the victim, for persons and groups offering assistance in various forms can be counted as second tier victims by virtue of the loss—voluntary or otherwise—incurred as a result of servicing the persons directly affected by the eviction, confiscation or demolition.

Bureaucratic and legal fees

While under threat of a violation, such as eviction, demolition and confiscation, the eventual victim would likely undergo costs related to both time spent and out-of-pocket costs in order to restrain or defend against the impending violation (if the threat is known in advance). Both the time and monetary costs incurred by both bureaucratic processes and legal advice and defense work should be quantified. Even if the legal advice given is free of charge to the affected person(s), those rendering the advice (NGO, CBO, other *pro bono* service) should put a value on that service for the purposes of this costing exercise. (The costs of bureaucratic efforts by public personnel is determined below under “Other than Victims’ Nonmaterial Costs.”)

Before the victim(s) can restore their proper housing, s/he conventionally undergoes a procedure and cost toward obtaining a license to rebuild or otherwise restore a dwelling. The costs incurred in this process, including fees, legal service, bribes and other out-of-pocket expenses should be included as a category in its own right.

Alternative/replacement housing

The cost of securing comparable housing on a permanent basis is represented here. (Temporary lodging costs are treated above under “Interim housing.”) The comparable housing is meant to include a dwelling with similar spatial dimensions, infrastructure, location and services as the home lost in the violation. This may involve calculation of the replaceable features of the original dwelling with some adjustments, depending on circumstances. For instance, a comparable dwelling space may be found near the source of livelihood, but may be in a differently priced market, and the adjusted figure would account for that. That dwelling may be comparable in most aspects, but lack services or infrastructure. In that case, the cost of obtaining the replacement services or infrastructure at the local rate would have to be added. Likewise, if the replacement housing is comparable to the original dwelling lost, but its location is less convenient for commuting to one’s source of livelihood or family and original community members, that additional transportation cost would be included in the “Transportation” item below.

Since this category of cost is of a more-or-less permanent nature, it should be cited in the “Long-term” cost column of the matrix. Typically, obtaining permanent replacement housing is a lengthy process; therefore, calculating this costs would be a subject for, and a further argument for follow up monitoring of violation cases.

Resettlement

The expenses of traveling and transport of goods to both interim and replacement housing sites form part of the resettlement cost. This, too, would likely involve the efforts and time on the part of several persons—with equivalent values—in order to locate and secure the short-term and long-term housing alternatives. All related costs should be calculated as much as possible.

Transportation costs

This category is the amount of difference between the amounts spent on transportation as a result of the eviction, demolition or confiscation and the amounts spent (if any) on transportation in the normal conduct of life at the original place of residence. Such values include expenses *and* time spent commuting to and from the source of livelihood, visiting family and community members, going to market, carrying out cultural and religious activities, visiting grave sites, conducting other official or private business, etc.

Victims' nonmaterial losses

Health

In addition to the cost of medical treatment, the loss of health has a value seldom calculated in monetary terms. Methods for calculating the values of losses of life and limb can be found in local legal practice concerning divorce, traffic and insurance. This loss will have to be described in some detail in order to make your case.

Living space

A reduction in living space can have negative physical and emotional effects, as when an evicted family takes refuge with friends and relatives in small, temporary quarters. Consequences may include nervousness, loss of sleep or skin ailments. Be sure to describe this situation as part of the victim's experience.

Reconstruction licensing

Long waiting and frustration may result from the search for a license to rebuild after demolition, eviction or confiscation. This loss can be measured in time and stress, and should be included here.

Psychological harm

The victims may suffer mental stress and psychological harm, especially in the context of violence during eviction, or the trauma that accompanies homelessness after the violation. Children are particularly susceptible. Their story needs to be told. You may find criteria for quantifying the value of pain and suffering from the specialized practice of local law on traffic and insurance.

Disintegration of family

Displacement and other violations of adequate housing could lead to separation of family members and the deterioration of family relationships. With the psychological depression

arising from housing and land loss, some victims may engage in antisocial behavior, such as violence or substance abuse that harms family relations.

Loss of community

Eviction, resettlement or land loss can fragment communities and reduce social capital built up over time. It can separate people from support systems (including child-care arrangements, domestic division of labor, etc.) upon which they depend for livelihood and social activities, while women bear an extra burden of maintaining an uprooted home.

Investment in infrastructure

Even—and especially—the most-impoverished communities have to invest in local infrastructure (e.g., electricity, water, transport, roads), particularly if the municipal institutions exclude them. Separation from these facilities by forced eviction, confiscation or demolition means a total loss of that investment, which may not be quantified, partly because they are the product of volunteer labor.

Investment in sanitation and waste-management systems

A community may provide its own waste-management solutions, however simple it may be, especially in the absence of public services. The vital functions of waste management may no longer be possible because of the separation, causing a loss of labor divisions or disposal options and spell a deterioration in the quality of life, including entitlements to environmental health as a result of the violation.

Investment in security protection systems

Informal communities are typically forced to seek their own security arrangements, since civil police may fail to serve them, or deteriorating living conditions may coincide with increased social violence.

Investment in educational infrastructure

Local communities' arrangements for popular education may be curtailed with eviction, leading also to the disruption of formal education (e.g., lost school days). Each home also is a locus of educational infrastructure, especially where children carry out their homework.

Heritage

For heirlooms and other items of sentimental value, as for land-based identity and culture, a replacement cost should be included in this category. However, the incalculable nonmaterial dimension, or irreplaceability should be expressed in the "Victims' Nonmaterial Losses" section of the matrix, with a narrative either included in the matrix or attached to it.

Victims' nonmaterial costs

Environment/ecology

Various forms of housing rights violation can spell the loss of environmental safety, health and recreation. Displacement and eviction sever the relationship between the inhabitants and their habitat. It may also force them to live in precarious or unsafe environments as a consequence.

Standing/seniority

A home owner who loses her/his housing also loses the status that comes with the property and securely tenured lifestyle. The formerly real or perceived capacity of the victims to advise and support others dissipates with the violation of their right to adequate housing, especially through land loss.

Relocating long-standing communities to new areas makes them low-status newcomers in competition with new, indigenous neighbors. Environmental degradation or rezoning may affect the status of a community negatively, leading to intangible—but sometimes also quantifiable—losses.

Political marginalization

Homeless people in many States are denied the right to vote for lack of a fixed address. Resettlement renders inhabitants politically weak vis-à-vis new neighbors, especially without the benefit of local connections and established relationships.

Social marginalization

Losing one's home and place to live often means losing also the social integration once enjoyed in the former residence. Spatial marginalization to the outskirts of the city may be synonymous with exclusion from social services and infrastructure.

Further vulnerabilities

The loss of home, land and social capital (i.e., productive relations within the community) can leave the victim(s) without protection from the natural elements, and/or without livelihood and sources of income. The homeless woman becomes further vulnerable to threats against her personal security and integrity long after the housing-rights violation.

Other-than-victims' material costs (public costs)

Police

The law enforcement officials engaged in either committing or remedying a housing and land rights violation, for example, represent a cost to the public purse. You can calculate their number, multiplied by the hours/days engaged and by corresponding wages and benefits to derive an estimate of the public costs incurred.

Bulldozers

In some cases (e.g., in Israel), courts issue orders to targeted inhabitants and communities to demolish their own homes. If they do not comply, the State carries out the deed and charges the victim for the service. In other cases, the housing rights monitor would have to

calculate the cost of using the equipment and the wages of the operator to determine the public expenditure in carrying out that part of the violation.

Legal practitioners

Lawyers, either arguing against or defending housing and land rights, as well as judges, prosecutors and court staff dedicate time and materials that are covered from public budgets. Their level of effort and cost per unit of time (hours or days) could form a method of calculating these public costs.

Army

Military personnel and equipment used in the violation (or defense against a violation) also represent a cost. Quantifying these costs may be a more-elusive exercise, but it may be useful to pose estimates for your public's consideration.

Other forces

The public bodies may subcontract tasks and functions to private parties; however, those expenditures related to the case at hand would factor among the nonvictim's material costs.

Bureaucratic and personnel costs

The inspection, administrative processing, clerical and other desk work in public institutions may be carried out in connection with your case and paid by the tax payer. Your educated estimate of these values forms part of the public cost scenario.

Other-than-victims' nonmaterial costs

Social costs

Housing rights violations can be a cause or consequence of social unrest in a country. Depressed living conditions within a community often coincide with increased social violence, and dislocation often generates new adversary relations among inhabitants competing over territory and property, either at the original site, or in resettlement. Squalid living conditions also could give rise to practices and pathogens that bear a social cost in the form of declining public health.

Civic order

Linked to adequate housing and other economic and social rights, civic order typically deteriorates commensurate with the deprivation of living conditions. Resistance to eviction and forced relocation, demolitions and dispossession by any party is the natural response to a breakdown in civic order, including that characterized by the State omitting to implement its obligation to respect, defend, promote and fulfill the human right to adequate housing and land.

Political legitimacy

Depending on the facts and scale of a particular situation, a housing and land rights violation could undermine the legitimacy of the political party, government or even State in whose name the violation is committed. Alternatively, resolving and remedying a violation could have the opposite effect of recovering the loss of official credibility and legitimacy.

✓ **Loss matrix**

✓ **Housing contents inventory**

4.8. Duty holders

The professional monitor of the human right to adequate housing should provide a list as complete as possible of the duty holders both legally and morally responsible. This legal duty holder (i.e., the State and its agents) may be operating in conjunction with others in either the violation or the potential solution. The audience of your eventual action, whether they are the general public, journalists, or a prosecutor or judge, will need a clear and complete picture of the legal personalities, those who are responsible for their acts of commission and/or acts of omission, and who does what to whom, from the beginning to the present.

As borne out in the foregoing sections on sources of law and guarantees, the concerned State is always the principal duty holder. The State is the legal personality that is treaty bound by the obligation to respect, protect, promote and fulfil human rights, but also to aid those who have been deprived of them. The State's duties are threefold:

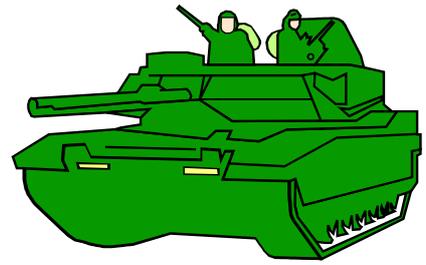
- To avoid deprivation,
- To protect and defend those facing deprivation,
- To provide remedy in the forms of assistance and justice to those deprived.

You may find that the State, as duty holder, has committed acts that cause deprivation, or omitted to protect or remedy a deprivation through the obstacles identified above. One might also find that the duty holder is constrained by other actors or factors, such as natural disaster, or global economic recession.

Identifiable institutions and man-made forces, either internal or external, may be known to contribute to a violation. These may include actors such as the International Monetary Fund (IMF), the World Bank, a multinational corporation or national planners. You may find that these parties are either directly or indirectly responsible for the deprivation, or conditions leading up to it. So, too, are factors such as debt or traditional social practices. Especially when the role of the State is passive (i.e., by denial or failure to protect and ensure remedy to the victims), other actors may come to the fore. Private companies, including multinational corporations, for instance, regularly acquire assets and carry out projects that involve forced evictions and land confiscation. In some cases, the regional and international development banks have their well-articulated policies on compensation/relocation. However, these companies may be the right hand of State policies, or implementers of international public projects. That is why it can be crucial to record the relations between the different actors forming a whole chain of duty holders.

One must not overlook the possibility that duty holders, particularly as violators owing remedy and restitution to victims, might also be members of the community, or even family members of the victim(s). Where does the State duty lie in such a situation?

As the legal personality obliged to respect, defend, promote and fulfil the human right to adequate housing, the State's duty lies squarely in the execution of its human rights obligations to regulate behavior of legal persons within its jurisdiction (and areas where it exercises effective control) in order to uphold rights. The human rights treaties and other instruments provide the guidance on how States—and statecraft—should address human rights violations by third parties not only as matters of civil or criminal law, but also as means to ensure the legitimacy of the concerned government, or even State itself.



To have a full outline of questions for identifying the duty holders and the applicable legal obligations, you can use this "Toolkit" very effectively, since each element of the right to adequate housing that you have identified as relevant to your case has corresponding duty holders.

Primary duty holders: State authorities

- Has the State failed to take to prevent the violation of housing rights, especially affordability of adequate housing? What are those neglected steps?
- Has the State protected the impoverished and vulnerable inhabitants and aided the victims (e.g., by prosecution, return, compensation, etc.) in the violation of housing rights, especially affordability of adequate housing? Which are the particular bodies responsible for these preventive and remedial steps?
- Has the State taken sufficient measures to promote the entitlement of affordability of adequate housing (e.g., human rights education, campaigns, public-service announcements, awareness-raising publications, etc)? Which are the specific bodies responsible for those measures?
- What is the State's relationship with other duties holders regarding the assessed violations? Explain the nature of that relationship. Is it a contract, foreign aid package, nepotism, political patronage, etc.?

Secondary: Have other actors affected the denial of the entitlement to affordable, adequate housing?

- Are other local, non-State actors somehow engaged in the denial of affordability of adequate housing? Who are they and what is their role?
- What role do international financial institutions (IFIs) such as the World Bank, IMF, a regional development bank, or the World Trade Organisation have in determining the policies or conditions affecting affordability of adequate housing in the affected community/country?
- What role and influence do multinational corporations or international development agencies have in determining the policies or conditions of affordability of adequate housing in the affected community/country?

- How are these secondary duty holders responsible for the violation of the right to affordability of adequate housing? To what extent do they influence State policies, programs, and laws having an effect on the violation?
- Do the secondary duty holders have internal policies/codes of conduct regarding housing rights, especially affecting the entitlement to affordability of adequate housing? If so, are they publicly accessible?
- What are the relevant details of those policies or codes? How do they protect the human right to adequate housing and the entitlement of affordability of adequate housing?
- Are these conditions part of an implementation contract or other cooperative agreement with State bodies or other partners?
- Before implementation, do they study the impact the projects will have or consider the possible unintended consequences?
- If there are several secondary duty holders, what is their relationship to each other, and how do they share responsibility for the assessed violation of the entitlement to affordability of adequate housing? What is the relationship between each of them and the State?
- Do local authorities lack sufficient autonomy in housing and community development to apply locally relevant options to ensure the human right to adequate housing, especially the affordability of adequate housing?
- Do local authorities use their autonomy to protect and influence the central authorities of the State in a positive way, or do they participate in the violation and denial of the State's obligations and national policies?

Assessment

- To what extent is the State responsible for the vulnerability or violation of the housing rights entitlement to affordability of adequate housing?
- To what extent are non-State actors responsible for the vulnerability or violation of the housing rights entitlement to affordability of adequate housing?

4.9. Actions

The following table of actions (comprised of both preparation and implementation tasks) arranges a variety of possible problem-solving options for you by categorizing them for organizational and selective decision-making purposes. It is not an exhaustive set of options, but merely part of an array of possibilities for you to undertake with the affected community, depending on the present strengths (assets), weaknesses (liabilities), opportunities and threats.

Before selecting your actions, you should conduct a strategic planning exercise. For guidance click [here](#).

Footnotes shown here refer to relevant manuals, training materials, expertise, trainers, recorded experiences and/or methodologies already available to guide your chosen action toward a desired goal/result/solution. Toolkit users are encouraged to consult the HIC-HLRN website regularly for updates and further reference (www.hlrn.org) on constantly evolving updates, including strategies and practices arising from experiences throughout the global HIC and HIC-HLRN community.

Action		Solution
Preparation	Implementation	
Alternative tenure options		
Gather information for community to consider tenure options	Develop "limited equity cooperatives" ³⁷⁹	Legal secure tenure in adequate housing and sustainable land
	Inform and train community in pursuing land-tenure options ³⁸⁰	
Community capacity building		
Conduct training for community on their human right to adequate housing ³⁸¹	Mobilize community in local and national human rights campaigns	Greater community participation in projects, programs and policy formulation with well-defined human rights orientations
Legal service organizations and centers provide legal advice and representation to disadvantaged individuals and communities ³⁸²	Organize popular resistance to HRAH violations (demonstrations, petitions, sit-ins, street theater, etc.) ³⁸³	Community blocks housing rights violations by State and non-State entities
<i>Pro bono</i> (volunteer) lawyers provide legal	Organize national campaign on RAH ³⁸⁴	Coordinated community action and reaction to influence State authorities on

³⁷⁹ The limited-equity cooperative is a form of housing tenure in which shareholder residents manage their buildings, within limits imposed by a charter, and have the right to get back what they have paid for their shares plus an allowance for improvements, if and when they decide to leave. See Duncan Kennedy, "The Limited Equity Coop as a Vehicle for Affordable Housing in a Race and Class Divided Society," 46 *Howard Law Journal* 85–125, 85 (Fall 2002).

³⁸⁰ Luanne Warnock, *Sharing the Cost of Land Tenure and Stewardship* (Davis CA: Sustainable Agriculture Research and Education Program, University of California, 1996).

³⁸¹ See Circle of Rights (Washington: 2000); Jules N. Pretty, Irene Guijt, John Thompson and Ian Scoones, *Participatory Learning and Action, A Trainer's Guide* (London: International Institute for Environment and Development, 1995), available from Earthprint at www.earthprint.com; also materials of Peoples' Movement for Human Rights Education, <http://www.pdhre.org>.

³⁸² Gridley Hall and Burton Fretz, "Legal Services in the Third World," *Clearinghouse Review* (December 1990); Jose Diokno, *Developmental Legal Aid in Rural Asean: Problems and Prospects* (Washington: 1981); Richard J. Wilson and Jennifer Rasmussen, *Promoting Justice: A Practical Guide to Strategic Human Rights Lawyering* (Washington: Human Rights Law Group: 2001).

³⁸³ Morjane Baba, *Guérilla Kit* (Paris: La Découverte, 2003); Mike Prokosh and Laura Raymond, *The Global Activist's Manual: Local Ways to Change the World* (New York: Nation Books, 2002).

³⁸⁴ "Global Struggle and National Focus Note" (Geneva: HIC, 1996).

advice and representation to disadvantaged individuals and communities		housing policies
Build capacity of community-based and other civil society organizations to manage projects and campaigns ³⁸⁵		CBOs and NGOs more capable to support the affected people in responding rapidly and effectively to crises/violations
Train communities (in HRAH, strategic planning, technical skills, etc.) ³⁸⁶	Public agencies provide adequate technical, marketing and research assistance to disadvantaged community on an affirmative-action basis	Community better able to mount specific alternatives to official plans
Raise public awareness toward social mobilization through public education ³⁸⁷	Mobilize peaceful public protests to housing rights violations	Prevent forced evictions
Enhance monitoring-and-documentation skills and methods (e.g., archiving, statistics, multimedia, etc.) to build strong argumentation ³⁸⁸	Urgent Action appeals (organize regional and/or international mobilization) ³⁸⁹	Convince public of violations and need for resolution
	Public-information campaigns ³⁹⁰	
Design and implement alternative planning (community generated techniques in the people's initiative to design their own living environment) ³⁹¹		Participatory alternative housing projects adapted to the community's needs

³⁸⁵ Kaplan, Allan, *The Development of Capacity* (Geneva: UN Nongovernmental Liaison Service, 1999); Goggey, Shirley, *Rural Community Resource Centers: A Guide for Developing Countries* (London and Basingstoke: MacMillan, 1988).

³⁸⁶ Barrameda, Teresita V. and Lea I. Espallardo, *Learning, Reflecting and Acting for a Human Rights Future: A Training Manual for the Education of the Human Right to Housing in Urban Communities* (Quezon City: Process, Inc. and New York: PDHRE, 2000).

³⁸⁷ *Writing for change: An interactive guide to effective writing, writing for science, writing for advocacy* [CD and user's guide] (Oxford: fahamu and IDRC, 2000); International Human Rights Internship Program, *Ripple in Still Water: Reflections by Activists on Local- and National- Level Work on Economic, Social and Cultural Rights* (Washington: University of Minnesota Human Rights Resource Center, 1997), Chapter 6, online at <http://www1.umn.edu/humanrts/edumat/IHRIP/ripple/toc.html>; Allan McChesney, *Promoting and Defending Economic, Social and Cultural Rights: A Handbook* (Washington: AAAS and HURIDOCS, 2000) Chapter 7 online at: <http://shr.aaas.org/escr/handbook/>.

³⁸⁸ For guidance and methodology in documenting housing rights cases, see HLRN, *Urgent Action! HLRN Guide to Practical Solidarity for Defending the Human Right to Adequate Housing* [Arabic, English, French and Spanish versions] (Cairo: HLRN, 2003); and HIC Housing and Land Rights Network website: www.hlrn.org.

³⁸⁹ For guidance and methodology in building housing rights cases argumentation and mobilise solidarity, see HLRN, *Urgent Action! HLRN Guide to Practical Solidarity for Defending the Human Right to Adequate Housing* [Arabic, English, French and Spanish versions] (Cairo: HLRN, 2003); and HIC Housing and Land Rights Network website: www.hlrn.org.

³⁹⁰ *Strategic Campaigning* (London: Amnesty International, 2003).

³⁹¹ Youth in Unity for Voluntary Action--YUVA and University of Tasmania, "Settlement Upgrading Manual" [Sakkardara alterantive plan] (October 2000); UNCHS, *Human Settlements Development through Community Participation* (Nairobi, UNCHS, 1991); Nick Waters, *The Community Planning Handbook: How People Can Shape Their Cities, Towns and Villages in Any Part of the World* (London: Earthscan, 2001).

Conduct an inventory (enumeration) of community human resources and social capital ³⁹²	Organize and divide volunteer labor of affected communities; and to areas to develop alternative plans	Community housing and built environment upgraded on-site as alternative to relocation.
	Community representatives lobby officials and legislators to cooperate with/approve community-proposed alternatives	Obtain adequate relocation site with suitable location, environmental conditions and livelihood options
Community organizing		
Consult with community representatives and conduct an inventory (enumeration) of community human resources and social capital	Establish a tenants union ³⁹³	Community presents a common position in defense of its rights and interests
Identify and locate absentee landlord ³⁹⁴		
Cooperate and negotiate³⁹⁵		
Learn/use conflict resolution techniques and, including alternative dispute resolution ³⁹⁶	Decriminalize actions taken to obtain elements of HRAH	Administrative recognition of tenure and the human right to adequate housing of people without economic access

³⁹² Ibid.

³⁹³ "Tenant organizing resources" on the National Alliance of HUD Tenants website: <http://www.saveourhomes.org/>. Practical steps for forming a tenants union can be found on http://www.radio4all.org/aia/pro_tenant.html.

³⁹⁴ "Who is my landlord anyway?" (Seattle: The Tenants Union, 2004), go to <http://www.tenantsunion.org/research.html>.

³⁹⁵ For a collection of popular experiences in government-nongovernment cooperation in the field of human settlements, see Habitat International Coalition, Building the City with the People: New Trends in Community Initiatives with Local Governments (Mexico City: Habitat International Coalition, 1997), contents also available on line at HIC General Secretariat website, at <http://www.hic-net.org/library.asp>.

³⁹⁶ American Arbitration Association (AAA), Grievance Mediation Procedures (New York: AAA, 1992); AAA, Resolving Your Disputes (New York: AAA, 1993); American Bar Association, Alternative Dispute Resolution: An ADR Primer (Washington: Standing Committee on Dispute Resolution, 1989); Carpenter, Susan L. and W.J.D. Kennedy, Managing Public Disputes: A Practical Guide to Handling and Reaching Agreements (San Francisco: Jossey-Bass Publisher, 1988); Cochrane, Michael G. ed., Attorneys General and New Methods of Dispute Resolution (Washington: American Bar Association, 1990); Costantino, Cathy, A. and Merchant, Christina, S. Designing Conflict Management Systems (San Francisco: Jossey-Bass Publisher, 1996); Edelman, Lester, Frank Carr, and James L. Creighton, The MiniTrial (Ft. Belvoir VA: U.S. Army Corps of Engineers Institute for Water Resources, 1989); Edelman, Lester, Frank Carr, Charles Lancaster, and James L. Creighton, Non-Binding Arbitration (Ft. Belvoir VA: U.S. Army Corps of Engineers Institute for Water Resources, 1990); Fine, Erika S. and Elizabeth S. Plapinger, eds. for the CPR legal Program, Containing Legal Costs: ADR Strategies for Corporation, Law Firms, and Government (Butterworth Legal Publishers, 1988); ; Folberg, Jay and Alison Taylor, Mediation: A Comprehensive Guide to Resolving Conflicts without Litigation (San Francisco: Jossey-Bass Publishers, 1984). For a bibliography and resources guide on alternative dispute resolution, see Office of Personnel Management website: <http://www.opm.gov/er/adrguide/Section7.asp>.

Mobilize inhabitants	Organize squatter actions and squatter-empowerment interventions ³⁹⁷	
Cooperate with National Human Rights Institutions ³⁹⁸	Propose and lobby for the implementation of National Plans of Action for Human Rights ³⁹⁹	National housing shortage, upgrading needs and land conflicts addressed in a National Plan of Action with provision for law and policy reform
Negotiate with municipal authorities to include the community/civil society as a partner ⁴⁰⁰	Increase community participation in design, planning, implementation and maintenance of housing ⁴⁰¹	Maintained and upgraded social housing
Train in negotiation and mediation skills ⁴⁰²	Negotiation toward reconciling evictions/removals and land grabbing ⁴⁰³	Indigenous peoples regain historic land claims
Develop community/local government cooperation	Monitor transparency in decision-making processes	Obtain social housing (provided by government), based on need, with amortization based on minimum wage level (affordability)
	Design infrastructure projects	
	Reform public policy toward providing affordable housing	
	Propose and implement National Shelter Strategy ⁴⁰⁴	

³⁹⁷ Diana Mitlin and David Satterthwaite eds., Empowering Squatter Citizen: Local Government, Civil Society and Urban Poverty Reduction (London: International Institute for Environment and Development, 2004), available from Earthprint at www.earthprint.com.

³⁹⁸ OHCHR, National Institutions for the Promotion and Protection of Human Rights [Human Rights Series No. 19] (Geneva: OHCHR, undated), at <http://www.unhcr.ch/html/menu6/2/fs19.htm>.

³⁹⁹ Office of the High Commissioner for Human Rights, Handbook on National Human Rights Plans of Action [Professional Training Series No. 10] (Geneva and New York: OHCHR, 2002), at: <http://www.ohchr.org/english/about/publications/docs/nhrap.pdf>.

⁴⁰⁰ Janelle Plummer, Municipalities and Community Participation: A Sourcebook for Capacity Building (London: Earthscan, 2001); Janelle Plummer, ed., Focusing Partnership: A Sourcebook for Municipal Capacity Building in Public-Private Partnerships (London: Earthscan, 2002); Diane Warburton, ed., Community and Sustainable Development: Participation in the Future (London: Earthscan, 200X).

⁴⁰¹ UNCHS, Human Settlements Development through Community Participation (Nairobi, UNCHS, 1991).

⁴⁰² Scott Beattie, "Is Mediation a Real Alternative to Law? Pitfalls for Aboriginal Participants," Australian Dispute Resolution Journal 8 (1997) 57; Larissa Behrendt, Aboriginal Dispute Resolution: A Step towards Self-Determination and Community Autonomy. (Sydney: Federation Press, 1995).

⁴⁰³ Michael Asch and Norman Zlotkin, "Affirming Aboriginal Title: A New Basis for Comprehensive Claims Negotiations," in Michael Asch, ed., Aboriginal and Treaty Rights in Canada: Essays on Law, Equality, and Respect for Difference (Vancouver: University of British Columbia Press, 1997).

⁴⁰⁴ UNCHS, Developing a National Shelter Strategy: Lessons from Four Countries (Nairobi: UNCHS, 1990); OHCHR, Handbook on National Human Rights Plans of Action (Geneva: OHCHR, 2001)

	Design national (comprehensive) development plans	
Develop the cooperative sector	Promote cooperative sector initiatives to provide affordable housing	
Use/lobby/cooperate with the international human rights system (interventions with factual, legal and political mechanisms of the UN and regional human rights systems) ⁴⁰⁵	Undertake negotiations at international/ multilateral level (whereby negotiators representing the State assert their prior obligations under international human rights treaty law against IFI [Word Bank, regional development bank, IMF, etc.] and WTO conditionalities leading to housing rights regressive / retrogressive violations) ⁴⁰⁶	Obtain/ensure continuous regulation of housing market practices (e.g., to ensure tenure security, accessibility of housing, building materials, direct investment, etc.)
		End to practices of land confiscation through foreclosure, adverse possession and eminent domain without adequate, consensual alternatives
Develop / reform / enforce law⁴⁰⁷		
Initiate/reform legislation and regulatory processes in compliance with the human-right-to-adequate - housing framework	Undertake class action suits (with minimum of [e.g., at least 15] physical or legal persons undertaking a litigation action, generally in the name of a whole group of the population), or public-	Law and policy enforced to respect, defend, promote and fulfill housing rights
		Law enforcement officers protect population from and implied protection

⁴⁰⁵ See "NGO participation in the activities of the Committee on Economic, Social and Cultural Rights," UN doc. E/C.12/2000/6, 7 July 2000, website: <http://www.hchr.un.ch>; and "Revised general guidelines regarding the form and contents of reports to be submitted by states parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights," UN doc. E/C.12/1991/1, 17 June 1991.

⁴⁰⁶ INCHRITI, Trade, Investment, Finance and Human Rights: Essential Documents (Geneva: INCHRITI, 2001).

⁴⁰⁷ Mario Rosário, "[Action "Tsimá Ga Ku Aka" to build together](#)" (1996); Janeth López, "[Asesoría en vivienda para el proceso de reinserción en Colombia](#)" (1996); K.A. Jayaratne, "[Collaborative Partnership to Improve the Low Income Neighbourhoods](#)," (1996); Michael Shapcott, "[Rupert Pilot Project. A self-Help and Community Rehabilitation Project in Canada](#)" (1996); Leopold Mutembei, "[Struggles of the urban poor to improve their living conditions](#)" (1996); Leonard Chileshe Mulenga, "[The case of Bauleni Upgrading](#)" (1995); Johan Silas, "[The Improvement of Low Cost Housing and Environment](#)" (1996); in Habitat International Coalition, Building the City with the People: New Trends in Community Initiatives with Local Governments (Mexico City: Habitat International Coalition, 1997), contents also available on line at HIC General Secretariat website, at <http://www.hic-net.org/library.asp>.

⁴⁰⁸ "Public interest litigation" (PIL) is a form of litigation filed in a court of law, for the protection of "public interest." Most prominently used in the Indian context, it is not defined in any statute or act. It has been interpreted by judges to consider the intent of public at large. Although, the main and only focus of such litigation is public interest, PIL can be filed in cases involving, e.g., such issues as pollution, "terrorism," road safety, constructional hazards, violated human rights of the poor, the content or conduct of government policy, to compel municipal authorities to perform a public duty, etc. See, for example: Upendra Baxi, "Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India" [revised], in Upendra Baxi, ed., Law and Poverty: Critical Essays (Bombay: Tripathi 1988); Mario Gomez, In the Public Interest: Essays on Public Interest Litigation and Participatory Justice (Colombo: Legal Aid Centre, University of Colombo, 1993); Sampat Jain, Public Interest Legislation (New Delhi, Deep & Deep, 2002); Shri. V.S.Vadivel, "Public Interest Litigation (PIL) A Boon or Bane?" (Legal Services India, 2004),

Collect sufficient data to determine material and nonmaterial losses to victims of housing and land rights violations	interest litigation (e.g., India) ⁴⁰⁸	Violators prosecuted and punished
		Victims receive restitution and full compensation for violation and material and nonmaterial losses
Conduct national housing and land rights assessment ⁴⁰⁹	Lobby parliament	Law promotes housing and land acquisition and retention in disadvantaged communities consistent with international commitments to promote just patterns of land distribution
	Raise test cases, constitutional challenges through court system	
	Develop laws on properties left without will and testate in order to narrow the class of heirs and prevent fractionation of the ownership	
	Nationwide constitutional review campaign	Constitutional reform ⁴¹⁰
Institutional reform		
Establish and maintain an effective Land Trust to support communities subject to discrimination and dispossession		Land ownership expanded for disadvantaged communities on an affirmative-action basis
Monitor and survey practices of public and private lending institutions for discrimination practices and patterns	Lobby for disciplinary action and rehabilitation of institutions to end discriminatory practices	Institutions apply uniform criteria in housing and community development programs, policies and transactions
International human rights system interventions		
Prepare and present collective parallel report to human rights treaty bodies (or submit cases under individual complaints procedures under Optional Protocols)		UN treaty body Concluding Observations coincide with community's evaluation of housing rights conditions and proposals for solutions

<http://www.legalserviceindia.com/articles/pil.htm>; see also Help Line Law website:

<http://www.helpline.law.com/docs/main.php3?id=PIL11>.

⁴⁰⁹ Apply this HIC-HLRN Housing and Land Rights Monitoring Toolkit on a national scale to all elements of the human right to adequate housing.

⁴¹⁰ See, for example, "The history of constitutional reform in Kenya," World History Archives (2004), <http://www.hartford-hwp.com/archives/36/index-bbh.html>.

Raise cases and submit briefs before regional human rights courts and commissions ⁴¹¹		State compelled to implement its treaty obligations to respect, defend, promote and fulfill the human right to adequate housing and land
Use Concluding Observations in public information and media campaigns, litigation		
Submit cases to UN Commission on Human Rights 1503 Procedure		States intervene to resolve impasse in housing rights violation case
Submit question/case to UNESCO complaints procedure		States intervene to resolve impasse in housing rights violation case
Legal defense		
Develop and deliver legal literacy and litigation strategy training ⁴¹²	Provide legal-aid services to defend individual and community housing and land rights	Judicial rulings include legal precedents for future litigation and law reform to ensure individual and group rights to adequate housing and land
Collect detailed data on violations, perpetrators, values of losses and other consequences ⁴¹³	Present admissible evidence in litigation on behalf of victims ⁴¹⁴	
		Judicial remedies, including legal precedents for future litigation and law reform to ensure gender equality
Develop gender-awareness and gender-justice training for communities, police,	Provide legal-aid services to defend equal rights to housing and land for	Victims receive restitution and full compensation for violation and material and nonmaterial

⁴¹¹ Litigating Economic, Social and Cultural Rights: Achievements, Challenges and Strategies (Geneva: COHRE, 2004), available at <http://www.cohre.org/library/Litigating%20ESCR%20Report.pdf>; Amicus Curiae in Grupo Interdisciplinario por los Derechos Humanos v. Colombia [submitted by COHRE to Inter-American Commission on Human Rights on case of housing destruction by paramilitary groups in Ituango and El Aro, Colombia], on line at <http://www.cohre.org/downloads/amicuscolombia1.doc>; Amicus Curiae in Justiça Global, et al. v. Government of Brazil, Inter-American Commission on Human Rights [submitted by COHRE on actual and threatened violations of housing rights, including forced evictions, with the planned Alcântara Spaceport expansion, in Brazil] available at <http://www.cohre.org/downloads/amicusbrazil1.doc>; Amicus Curiae in CELS & CEJIL v Argentina, Inter-American Commission on Human Rights [submitted by COHRE to Inter-American Commission on Human Rights on case local authorities conducting forced evictions in Barrio Ejército de los Andes, Provincia de Buenos Aires, Argentina], available at <http://www.cohre.org/downloads/amicusargentina1.doc>. See also COHRE Case Law Database on line at <http://www.cohre.org/tframe.htm>; Case law database for economic, social and cultural rights available on the ESCR-Net website at <http://www.escr-net.org/>; found in “Case Law” at http://www.escr-net.org/EngGeneral/Case_law.asp, or “Jurisprudencia” at http://www.escr-net.org/EspGeneral/Case_law.asp.

⁴¹² Margaret Schuler and Sakuntala Kadirgamar-Rajasingham, Legal Literacy: A Tool for Women’s Empowerment (Washington: Women, Law and Development, OEF International, 1992).

⁴¹³ See “Housing and Land Rights Violation Case Documentation Form” in this toolkit.

⁴¹⁴ Domestic Implementation of International Human Rights: Litigating Economic, Social and Cultural Rights, on Human Rights Internet website at http://www.hri.ca/fortherecordCanada/vol1/guide-part_11.htm; Case Law Database for Economic, Social and Cultural Rights available on the ESCR-Net website at <http://www.escr-net.org/>; found in “Case Law” at http://www.escr-net.org/EngGeneral/Case_law.asp, or “Jurisprudencia” at http://www.escr-net.org/EspGeneral/Case_law.asp.

lawyers, prosecutors and judges ⁴¹⁵	women and gender-discrimination victims	losses ⁴¹⁶
Develop judicial procedures and expertise to provide for land-consolidation courts	Consolidate and reduce unstable “in-common” tenancy to maintain family and community land retention, especially to uphold land base for minority groups and indigenous peoples	Communities restore and retain their land base
Media cooperation and campaigns		
Conduct training for media professional in the human right to adequate, corresponding obligations, interviewing victims, quantifying victims’ losses and community follow-up ⁴¹⁷	Meet journalists and media professionals to follow-up on training and present new documentation and information on developments	Informed public supports community alternative-development and/or anti-eviction proposals
Provide media outlets with economic analyses of various possible alternatives (on-site upgrading v. relocation)		
Provide media outlets with alternative plans and community proposals for their development		
Policy reform		
Reverse and prosecute discriminatory practices toward disadvantages individuals and communities by both public and private lending institutions		Fairness-in-lending policy formulated and enforced for housing and land purchase, rehabilitation and sustainability
Expand public-private initiatives to stimulate investment and multipurpose development communities		Integrated development with low-cost housing on public and donated lands
Provide housing and relief		
Exchange expertise in temporary housing and	Organize emergency relief (immediate provision of	Eviction and displacement victims receive emergency

⁴¹⁵ Shelter Rights Initiative, Gender Specific Rights Litigation and Protection Strategies (Lagos: SRI, 1998); SRI, Manual on Judicial Protection of Economic, Social and Cultural Rights (Lagos: SRI, 2000).

⁴¹⁶ “Seminar on the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms,” Netherlands Quarterly on Human Rights Special Issue (1993); S. Nadasen, “Restitution, Reconstruction, Reconciliation and Restribution: Land Reform—Balancing the Interests of the Dispossessed, the Homeless and Development,” Stellenbosch Law Review (1997), 360–77. For a bibliography of global restitution and compensation experience, go to: <http://userpage.fu-berlin.de/~theissen/biblio/>.

⁴¹⁷ HIC-HLRN training module on “Housing and Land Rights for Media Professionals.”

relief provision	housing and/or housing resources at no cost to those denied: water, medical services, economic relief, housing resources and building materials, etc.)	(temporary) housing
Resource mobilization		
Conduct an inventory (accounting) of community (human and material) resources	Design, adapt and implement alternative-finance schemes; (e.g., small savings toward common projects) and self-financing for needy inhabitants (with freehold tenure options) ⁴¹⁸	Upgrading and generally improved living conditions on site, as alternative to relocation
	Establish and operate nonbank institutions as lenders and builder of adequate, low-income housing ⁴¹⁹	
	Organize self-help cooperation through rotating community credit (building & upgrading infrastructure, social production of housing ⁴²⁰)	

⁴¹⁸ Alternative Financing Models: Hybrids of Homeownership Mutual Housing (The Enterprise Foundation, 2003); "Capitalizing on Collaboratives: New Partners for Comm. Dev. Finance" (Washington: Center for Policy Alternatives, July 1996); Enrique Ortiz, FONHAPO: The Experience of the National Fund for Low Income Housing in Mexico (London: International Institute for Environment and Development, 1998), available from Earthprint at www.earthprint.com.

⁴¹⁹ Jeffrey Carmichael and Michael Pomerleano, The Development and Regulation of Non-Bank Financial Institutions (Washington: World Bank, 2002); Indonesia: Housing Finance for the Urban Poor (Manila: Asia Development Bank, 2001); Peer Smet, "Indian Housing Finance Alliances and the Urban Poor," Global Built Environment Review Vol. 2, No. 1, 58–66, <http://www.edgehill.ac.uk/gber/pdf/vol2/issue1/Eight.pdf>.

⁴²⁰ Joseph Schechla, ed., *Anatomies of a Social Movement* (Cairo: HIC-HLRN, 2004); Habitat International Coalition, *Building the City With the People. New Trends in Community Initiatives in Cooperation with Local Governments* (Mexico City: Habitat International Coalition, 1997); Prem Pangora, *Citizen's Initiatives for environmental improvements: The case of River Sabarmati, Ahmedabad, India* (Mexico City: Habitat International Coalition, 1997); Joël Audefroy, *Construyendo la Ciudad con la Gente. Nuevas tendencias en la colaboración entre las iniciativas comunitarias y los gobiernos locales* (Mexico City: Coalición Internacional para el Habitat, 1998); Gustavo Romero, La producción social del hábitat: reflexiones sobre su historia, concepciones y propuestas (2000), available on line at http://www.hic-net.org/online/Romero_PSH-intro.pdf; Eike Jacob, *Social Production of Habitat in Latin America* (2003); Habitat International Coalition-América Latina, "Social Production of Habitat. Conceptual framework" (2003); Enrique Ortiz, Social Production of Habitat: Marginal option or reality-transforming strategy? (2003), available on line at http://www.hic-net.org/online/Ortiz_SPH.pdf; Enrique Ortiz, *Vivitos y Coleando. 40 años trabajando por el hábitat popular en América Latina* (2002).

	<p>Immediate, diligent and effective increase in advice-and-lending services, on an affirmative-action basis within public lending institutions</p>	
	<p>Develop microcredit schemes (for upgrading and construction, but with social and legal components providing HRAH content)⁴²¹</p>	
<p>Analyze economic costs of the various possible alternatives (on-site upgrading v. relocation)</p>		
<p>Raise material support (raise funds) from private, public and intergovernmental donors), including microcredit⁴²²</p>		
<p>Plan/undertake reconstruction,⁴²³ upgrading and general improvement of living conditions (with multiple parties cooperating)</p>		
<p>Restoration and increase housing subsidy programs for low-income people, including by tax reform (e.g., reversal of tax cuts for the wealthiest tax payers)</p>		<p>Low-income people pay no more than 30% of monthly incomes for adequate housing</p>
<p>Conduct an inventory of community financial and material resources</p>	<p>Develop community savings schemes</p>	<p>Social production of habitat: Community/self-financed upgrading of housing and improvement of living conditions</p>

⁴²¹ Nazrul Islam, [Grameen Bank Bangladesh. A credit institution for housing](#) (1996); Jaffer Murtaza, [The Tanzania-Bondeni Community Lands Trust](#) (1996).

⁴²² Nazrul Islam, [Grameen Bank Bangladesh. A credit institution for housing](#) (1996); Jaffer Murtaza, [The Tanzania-Bondeni Community Lands Trust](#) (1996).

⁴²³ See York University Postwar Reconstruction and Development Unit, website: <http://www.york.ac.uk/depts/poli/prdu>.

Conduct public budget analysis from the housing rights perspective ⁴²⁴	Develop participatory budgeting ⁴²⁵ (ensuring that necessary programs and projects are budgeting according to housing rights obligations)	Public budgets comply with State's housing rights obligations to ensure "progressive realization" with "maximum of available resources"
Training other actors (outside community)		
Train civil servants in HRAH (including international treaty obligations upon the State and local authorities)	Reform urban/land planning criteria, procedures and objectives to harmonize with local community needs and criteria ⁴²⁶	Physical planning integrates human rights obligations, language and priorities directed to needy and vulnerable communities
Train lawyers in HRAH, (including international treaty obligations upon the State, as well as litigation strategies) ⁴²⁷	Legal argument, litigation and judicial decisions invoke international norms and treaty obligations	Legal recognition of traditional legal and tenure systems and provision of secure title ⁴²⁸
		Legal recognition of tenure and the human right to adequate housing of people without economic access

⁴²⁴ Ravikant Joshi, *A Case for Reform: how municipal budgets can change our cities* (Mumbai: YUVA Books, 2001); Maria Socorro I. Diokno, "A Rights-based Approach towards Budget Analysis" (Washington: International Human Rights Internship Program, 1999); Institute for Development Policy Analysis and Advocacy—IDPAA (Atiur Rahman et al.), *Alternative Budget Analysis: A Series of Studies on the National Budget for the Perspective of Poverty Eradication* [three volumes: Budget and the Poor, The Budget-making Process, People's Budget: An Alternative Exercise Using Participatory Tools] (Dhaka: University Press Ltd., 2002).

⁴²⁵ Rebecca Abers, 1998, "From clientelism to cooperation: Local government, participatory policy, and civic organizing in Porto Alegre, Brazil"; *Politics and Society*. 26(4)c 511–37; Rebecca Abers, *Inventing Local Democracy: Grassroots Politics in Brazil* (Boulder: Lynne Rynner, 2000); Baierle, Sergio, 1998, "The Explosion of Citizenship: The Emergence of a New Ethical-Political Principal in Popular Movement in Porto Alegre, Brazil," in Sonia E. Alvarez, Evelina Dagnino and Arturo Escobar, *Cultures of Politics/Politics of Cultures: Revisioning Latin America Social Movements* (Boulder: Westview Press, 1998); Sousa Boaventura de Santos, "Participatory Budgeting in Porto Alegre: Toward a Redistributive Democracy." *Politics and Society* 26(4) (1998), 461-509; *Quem é o público do Orçamento Participativo: se perfil, porque participa, e o que pensa do processo* (Porto Alegre: Cidade de Porto Alegre, 1999); Luciano Fedozzi, *Orçamento Participativo: Reflexões sobre a experiência de Porto Alegre* (Porto Alegre: Tomo Editorial, 1998); Pedro Jacobi and Macro Antonio Carvalho Teixeira, "Orçamento Participativo: co-responsabilidade na gestão das cidades," *São Paulo em Perspectiva*, 10 (3) (1996) 119–28; Brain Wampler, "Orçamento Participativo: Os paradoxos da participação e governo no Recife," *Cadernos de Estudos Sociais*, 15(2) (1999), 343–73; Brian Wampler, *A Guide to Participatory Budgeting* (October 2000). Internet sources: Participatory budget: The Case of Porto Alegre (Brazil) at:

<http://www.goethe.de/br/poa/buerg/en/framebag.htm> (2004);

World Bank: http://www.worldbank.org/html/fpd/urban/urb_age/porto.htm,

<http://www.worldbank.org/wbiep/decentralization/Topics13.7.htm>, <http://www.worldbank.org/participation/>; Inter-American Development Bank: <http://www.iadb.org/exr/IDB/stories/2000/eng/JAN00E/c200c1.htm>,

<http://www.iadb.org/exr/idb/sidebars/2000/eng/c200c4.htm>; Conference Proceedings on Participatory Budgeting:

<http://www.idre.ca/lacro/docs/conferencias/stren.html>, <http://www.ssc.wisc.edu/~wright/deliberative.html>,

<http://www.pqualc.org>.

⁴²⁶ UNCHS, *Developing a National Shelter Strategy: Lessons from Four Countries* (Nairobi: UNCHS, 1990); OHCHR, *Handbook on National Human Rights Plans of Action* (Geneva: OHCHR, revised draft May 2001).

⁴²⁷ Shelter Rights Initiative, *Gender Specific Rights Litigation and Protection Strategies* (Lagos: SRI, 1998); SRI, *Manual on Judicial Protection of Economic, Social and Cultural Rights* (Lagos: SRI, 2000).

⁴²⁸ Peter R. Grose, "An Indigenous Imperative: The Rationale for the Recognition of Aboriginal Dispute Resolution Mechanisms." *Mediation Quarterly* 12 (4) (summer 1995), 327–38.

		Judge issues restraining orders halting forced evictions and removals, land confiscation, property destruction and other housing and land rights
Train judges in HRAH (including international treaty obligations upon the State) ⁴²⁹		Judicial decision orders return, restitution and compensation for evictees, IDPs, refugees ⁴³⁰
Train law enforcement officials in the human right to adequate housing (including international treaty obligations upon the State)	Quantify losses/costs of housing rights violations	Victims compensated for losses ⁴³¹
Transitional justice (post conflict) ⁴³²		
Document details on violations, perpetrators, values of losses and other consequences ⁴³³	Present evidence to truth (and reconciliation) commission ⁴³⁴	Public aware of population transfer, mass dispossessions and other crimes committed during conflict

⁴²⁹ Shelter Rights Initiative, Manual on Housing Rights Protection Strategies for Lower Court Judges (Lagos: SRI, 2000).

⁴³⁰ UNCHS, Housing and Property Rights in Kosovo (Pristina: UNCHS, March 2000).

⁴³¹ For elaboration of the principles of compensation to victims of human rights violations, see Theo Van Boven, "Basic Principles and Guidelines on the Right to Reparation for Victims of Gross Violations of Human Rights and Humanitarian Law, Appendix 8 ("The van Boven Principles"), Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, E/CN.4/Sub.2/1996/17; also E/CN.4/1997/104, annex and subsequently revised as "Basic principles and guidelines on the right to a remedy and reparation for victims of violations of international human rights and humanitarian law," by Cherif Bassiouni, independent expert, Commission on Human Rights (E/CN.4/2000/62, annex). John Dugard, "Is the Truth and Reconciliation Process Compatible with International Law? An Unanswered Question," South African Journal on Human Rights Vol. 13, 258–68. For quantification methodology, see HIC-HLRN Loss Matrix in this Housing and Land Rights Monitoring Toolkit, or go to www.hlrn.org; for implementation, see to UNCHS, Housing and Property Rights in Kosovo (Pristina: UNCHS, 2000).

⁴³² For a general bibliography on transitional justice, go to <http://www.peacemakers.ca/bibliography/bib26reconciliation.html> or <http://userpage.fu-berlin.de/~theissen/biblio/> (on experiences of Germany and South Africa).

⁴³³ Use "Housing and Land Rights Violation Case Documentation Form" in this toolkit.

⁴³⁴ Kerry Able, and Jean Friesen, eds., Aboriginal Resource Use in Canada: Historical and Legal Aspects (Winnipeg: University of Manitoba Press, 1991); Alfred, Gerald R., and Franke Wilmer. "Indigenous Peoples, States and Conflict," in D. Carment and P. James, eds., Wars in the Midst of Peace: The International Politics of Ethnic Conflict (Pittsburg: University of Pittsburgh Press, 1997); Michael Coyle, "Claims Resolution: A Healing Process?" in J. Oakes, R. Riewe, K. Kinew and E. Maloney, eds., Sacred Lands: Aboriginal World Views, Claims and Conflicts (Calgary: Canadian Circumpolar Institute, 1998); Robert Rotberg and Dennis Thompson, eds., Truth v. Justice: The Morality of Truth Commissions (Princeton: Princeton University Press, 2000); Truth and Reconciliation Commission of South Africa Report, Vols. 1–5 (Cape Town: Juta, 1998); Theo van Boven, "Study Concerning the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms" [final report of Special Rapporteur] (Geneva: Commission on Human Rights, Subcommission on Prevention of Discrimination and Protection of Minorities) E/CN.4/Sub.2/1993/8. For an extensive bibliography of sources, go to: <http://userpage.fu-berlin.de/~theissen/biblio/>.

	Issue amnesty for past crimes and perpetrators of forced evictions/removals ⁴³⁵	Social reconciliation
	Present evidence to Truth and Justice Commission	Social reconciliation
		Crimes and perpetrators prosecuted and punished
Present evidence to “mixed courts”	Return, restitution and compensation for evictees, IDPs, refugees ⁴³⁶	

Of course, an illustrative list of potential interventions does not sufficiently convey the wealth of local governmental and nongovernmental experience available for review and exchange. Moreover, it is, as always, at the local level of implementation where human rights, including the human right to adequate housing, are transformed from moral suasion and legal theory to implementable reality. Therefore, both the practical, case-based perspective and the theoretical-and-comparative perspective become mutually dependent, mutually reinforcing and, hence, equally needed.

4.10. Evaluation & follow-up

Evaluation of any action you choose should be an ongoing function parallel to the events and development as they happen. This note offers some simple guidance on the specific evaluation tasks you will face. They are described in stages, with particular emphasis on the final stages and the vision for the future.

For our purposes, evaluation and follow-up imply two levels of assessment: (1) evaluation the action and (2) following the situation after the action concludes. The former is internal in nature and helps your organization, community or network become a learning institution by building on the lessons (successes, near-successes, failures and unanticipated results) of your efforts. The latter enables you, your organization, community or network to test the outcome to ascertain whether or not it has tangible benefits for those persons, communities, populations and peoples affected and targeted in your action. Ultimately, the follow-up process should lead you to the necessary conclusion as to what, if anything, to do next.

✓ Evaluating the action

⁴³⁵ John Dugard, *Dealing with Crimes of a Past Regime: Is Amnesty Still an Option?* [The Third Manfred Lachs Memorial Lecture] (1999); Carla Edelenbosch, “Human Rights Violations - A Duty to Prosecute?” *Leiden Journal of International Law* Vol. 7, No. 2 (1994), 5–22; Dianne F. Orentlicher, “Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime,” *The Yale Law Journal* Vol. 100, No. 8 (1991) 2537–615.

⁴³⁶ Uma Dhupelia Mesthrie, *The Truth and Reconciliation Commission and the Commission on Restitution of Land Rights: Some Comparative Thoughts* [“The TRC: Commissioning the Past” conference] (Johannesburg: University of the Witwatersrand, 1999); S. Nadasen, “Restitution, Reconstruction, Reconciliation and Redistribution: Land Reform: Balancing the Interests of the Dispossessed, the Homeless and Development,” *Stellenbosch Law Review* (1997) 360–77; David B. Southern, “Restitution or Compensation: The Land Question in East Germany,” *International and Comparative Law Quarterly* Vol. 42, No. 3 (1993), 690–97; David B. Southern, “Restitution or Compensation: The Open Property Question,” *German Politics* Vol. 2, No. 3, 436–49. For a bibliography of global restitution and compensation experience, go to: <http://userpage.fu-berlin.de/~theissen/biblio/>.

Evaluation your action includes three integrated but conceptually distinct processes: (1) monitoring progress, (2) formative evaluation and (3) measuring the development impact.

1. Monitoring implementation progress

Monitoring the implementation of your action is the most frequent—indeed constant—aspect of the learning process. This should involve periodic reports on production of outcomes, financial accounting and levels and nature of inputs (e.g., technical assistance, training, social production of habitat). The periodicity of the reporting could be quarterly, if the action is expected to proceed for a year or more. Alternatively, reporting could be more frequent, especially if it is a short-term action, or if it takes place in a fast-paced environment such as a threatened eviction or natural disaster situation, and particularly if extreme deprivation of human well-being is at stake.

The responsibility for monitoring is to be shared by a group of actors. Remembering that, like in the “Toolkit” guide for strategic planning, the more participation, the more-favorable the result (“more participation = more dignity”).

Reporting on the action, based on the monitoring of implementation progress, should be specifically assigned, most probably to the coordinator of the action or the chief executive officer of the principal body organizing the action. The audience of the reports should be both internal, for the benefit of those engaged, and external, depending on the obligations you have to supporters, members and/or funders. The assignment of duties, division of labor and timing of evaluation events should be completed also in the planning stage of your activity (see [“Strategic planning”](#) link above).

2. Formative Evaluation Indicators of Accomplishments

Midway in the process of your action, you should conduct an assessment of the *quality and adequacy* of the tasks undertaken by assessing the actual outcomes against the standard of expected results you already have set out for yourselves.

You should develop an evaluation plan and data collection instruments as part of the project implementation. That means, you should plan ahead to collect information that will verify your intended results, whether that be in the form of documents, press reports, opinion surveys, affidavits, water-quality test results, etc. The formative evaluation activities probably will require site visits, rapid assessment and low-cost data collection techniques such as focus groups, interviews, training evaluation forms, and simple targeted studies to identify key issues for action management.

3. Development-impact Assessment and Indicators

Development-impact assessments that you and your organization/community undertake less frequently, perhaps on an annual basis, will track changes in the outcomes, in order to determine the degree to which the larger environment of the human right to adequate housing is improving—or deteriorating, as the case may be.

Your action could—and should—produce an initial baseline report at the initial stage that coincides with your first inventory, site visits and/or assessment arising from your first use of this “Toolkit.” That report should record what you consider to be the key assumptions going into the activity, and will serve you in the subsequent stages of your action, especially at the

final stages, to test those assumptions and adjust strategies to incorporate the knowledge you have created.

For the purpose of your organization's integrity and the tactical responses you may require in the future, your action should be seen critically in the light of the purposes and goals you set out in your planning process (see "**Strategic planning**" link above). Some sample questions to include in your evaluation include the following:

- How does the action relate to your purpose statement of your organization/ community?
- How does the action relate to the goals(s) of your organization/community?
- Was the action planned or spontaneous?
- What was the expected result?
- Was that result achieved? If not, why?
- Were unintended results achieved?
- What were the lessons learned from this activity?
- How did this activity build/strengthen/develop your organization? What gains did you and others realize?
- How did your organization/community record and report the experience?
- How did your organization/community share and exchange the experience and lessons learned with others? Who? When? Where? What was the result?
- Has there been follow-up? Why? What? Who? When? Where?
- Click on "Following up the situation" for guidance on the last point.

✓ **Following up the situation**

Each successful or unsuccessful action needs to be tested further for at least two reasons: (1) in order to determine if the achievement is real or merely theoretical and (2) to determine what your next move is going to be.

The now famous *Irene Grootboom and Others v. Oostenberg Municipality*⁴³⁷ case before the South African Constitutional Court (1999) found in favor of the plaintiffs by applying the principles of international law on the human right to adequate housing and the legal strictures on the practice of forced eviction. The Court ordered the Western Cape Provincial Government and the Oostenberg Municipality to grant housing and utilities to the 390 adults and 510 children wrongfully evicted community at Wallacedene their right to return and remain and to benefit from public services corresponding to that right. Until today, that decision has not been fully implemented.

Likewise, the landmark case of *Qa'dan v. Katzir*,⁴³⁸ in Israel, resulted in the 2000 High Court ruling that Katzir (a settlement built on Palestinian land, directed and funded in large part by the Jewish Agency) acted unlawfully when discriminating on the basis of "nationality" by excluding a non-Jewish from obtaining housing there. Until this day, that decision has not been honored, the indigenous Adil and Iman Qa'dan family of Arab citizens of Israel do not have their home in Katzir, and the Jewish Agency continues to provide land and housing benefits only to those holding "Jewish nationality," and to the exclusion of others.

⁴³⁷ Irene Grootboom and Others versus Oostenberg Municipality, Cape Metropolitan Council, the Premier of the Province of the Western Cape, National Housing Board, and Government of the Republic of South Africa, Constitutional Court of South Africa Case No: 6826/99..

⁴³⁸ Qa'adan versus Israel Lands Administration (ILA), Ministry of Construction and Housing, Tal-Iron Local Municipal Council, Jewish Agency for the Land of Israel (JA), KATZIR: Cooperative Association for Community Settlement in Samaria Ltd., and the Farmers Association; Case No. 6698/95 of the Israeli Supreme Court, sitting as the High Court of Justice.

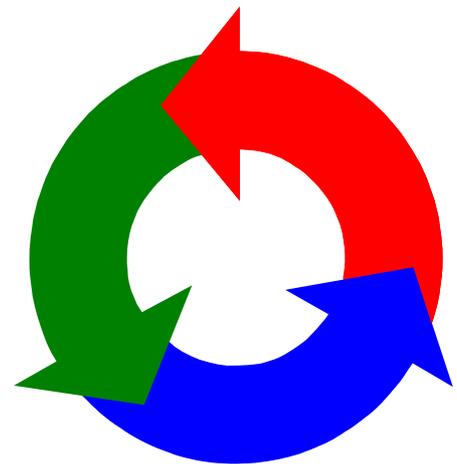
There are numerous examples of slum clearance and resettlement that result in the promised secure tenure of housing, but fail to comply with other elements of the human right in their implementation. [Note: HLRN and this “Toolkit” do not advocate slum clearance or resettlement.] Inhabitants in resettlement often lack access to public goods and services, suitable location, are denied compensation for losses and are subject to a process inconsistent with the over-riding principle of self-determination.⁴³⁹

All such gaps and shortcomings in the outcome of any housing rights defense effort remain to be addressed, even though some advocates and service-providing NGOs may consider these developments to be victorious at some level. The true test remains, however, to determine the tangibility of the results within the framework of the human right to adequate housing, and over the long term.

With all of its emphasis on the law, this “Toolkit” is intended to assist in the realization of the human right to adequate housing as a complement to the theoretical elaboration of the right in law. Implementation is the ultimate objective of human rights, as well as this “Toolkit.” Therefore, the tools provided here should serve also as the final evaluation criteria to examine whether or not the composite dimensions of the human rights are implemented and present or not.

You should use the elements (entitlements) of the human right to adequate housing here as your guide; these are also the binding criteria for all State parties and their representatives to apply as well. If you and your organization/community determine that certain criteria have been breached or neglected, then, alas, further remedial action will be required.

The bad news, perhaps, is that there may yet be more work to be done. However, even if one has to go back to the drawing board, at least the needed tools are available to the cyclical task. So, now, you can just do it.



5. Habitability

5.1. Concept and meaning

Adequate housing must provide needed space to live in dignity and peace. It must also provide protection from natural elements, structural hazards and disease vectors that are threats to physical well-being. The physical conditions of the home can affect the realisation of other rights, including the highest attainable standard of mental and physical health, as well as education, whereas the lack of conditions are not conducive to learning (especially for children).

5.2. Sources

In this section, your **Step 2**, the HLRN “Toolkit” provides the most important international legal basis and the popular claims that ground each element of the human right to adequate

⁴³⁹ See Housing and Land Rights Network, *Restructuring New Delhi's Urban Habitat: Building an Apartheid City?* (HIC-HLRN: New Delhi, 2002).

housing. This compilation attempts to be as comprehensive as possible; however, additional popular sources and legal developments will augment this inventory in the future.

It is vital to establish both the established sources in international law and the popular claims. The authority of the legal sources carries corresponding obligations on most States, and applies universally to all people on the planet as *human* rights. The popular sources advance claims that are “emerging” with human rights language eventually to be codified in the law. All legally established human rights norms originated as popular claims carried forth through various forms of historic struggle.

The Legal Authority

Please note that the legal instruments cited here carry differing levels of obligation, and they are organized for you accordingly. Customary law is made up of those norms and principles that legal opinion and interstate institutions consider so basic and so repeatedly affirmed as to be binding on all legal personalities. The Universal Declaration of Human Rights, the antecedent to all subsequent human rights treaties, is the most relevant example of customary law for our purposes, even though it does not establish a monitoring and enforcement mechanism to ensure compliance.

The ratified treaties (Covenants, Charters, Conventions, etc.) are binding on all their ratifying States parties, and each establishes an independent body to monitor and guide implementation. The treaty-monitoring process provides an opportunity for civil society, States and the international legal bodies each to play a role. These international treaties are also characterized as hard law (*lex lata*), because of their binding nature. Treaty law, by definition, is any agreement between two or more States. The treaties considered here are those of both international and regional nature.

The “soft-law” instruments (*lex feranda*) include the Declarations, Basic Principles, Minimum Rules, General Comments, etc., that are the multilateral commitments arising from international conferences, assemblies, summits, congresses and other specialised meetings. Also included in this category are the general and country-specific guidance that the treaty-monitoring bodies issue to guide and specify treaty obligations, as well as those instruments of inter-State agreement (decisions and resolutions) arising from the various political bodies of the international system (e.g., UN Commission on Human Rights, International Labour Organisation General Assembly, etc.). These instruments contain standards that are declaratory of already-binding international law, reflect the collective political will of States and provide specificity to the general Articles in the binding instruments. However, these form legal and policy guidance without the corresponding obligations of treaty law and without the corresponding legal monitoring mechanisms.

Thus, the list of legal sources in this section of the HLRN “Toolkit” maintains a corresponding priority order such that presents the binding instruments first (in chronological order of their adoption), and follows with the nonbinding, declaratory sources (in their chronological order):

- ***International Treaty Law***
- ***Regional Treaty Law***
- ***Declaratory Instruments and Jurisprudence***

The Moral Argument

The popular sources are useful especially in demonstrating ground-level recognition of the various elements of adequate housing as rights in and of themselves, but also provide a list

of human rights that reflect common human needs, but await codification as *bona fide* rights. The “emerging rights” include elements inextricable from the human right to adequate housing: water, land and energy, among others. The popular sources are indicators of the ever-evolving specificity of human rights law and the legal and problem-solving horizons toward which social movements and the human rights community are heading.

The relevant excerpts from these collective moral are listed in the “Toolkit” Sources (Step 2) as *Popular Sources*. These are moral, rather than legal, in nature. However, as claims, they bear legal dimensions in the sense that they are the substance of future legal standards. We continue to include these claims in the HLRN “Toolkit” as they emerge from popular struggles, natural and social sciences, nongovernmental forums, social movements, campaigns and labour action (strikes), as well as other forms of popular and collective problem-solving initiatives.

In this “Toolkit,” *Popular Sources* are distinguished from the legal sources by their presentation in *italic* script.

Another source of the human right with a legal dimension is the jurisprudence of course-based decisions on cases involving housing and land rights. These also could provide the basis for legal argument even in distant jurisdictions. Examples include the case-specific—but internationally relevant—rulings in famous decisions in favor of housing rights claims such as those arising from legal struggles in Cyprus, Palestine/Israel and South Africa:

Qa’adan versus Israel Lands Administration (ILA), Ministry of Construction and Housing, Tal-Iron Local Municipal Council, Jewish Agency for the Land of Israel (JA), KATZIR: Cooperative Association for Community Settlement in Samaria Ltd., and the Farmers Association; Case No. 6698/95 of the Israeli Supreme Court, sitting as the High Court of Justice.

Irene Grootboom and Others versus Oostenberg Municipality, Cape Metropolitan Council, the Premier of the Province of the Western Cape, National Housing Board, and Government of the Republic of South Africa, Constitutional Court of South Africa Case No: 6826/99 (1999).

Loizidou versus Turkey (Article 50 and Merits), European Court of Human Rights Case 40/1993/435/514 (18 December 1996).

✓ Legal sources

Customary International Law

Universal Declaration of Human Rights (UDHR) (1948)

Article 12. “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.”

International Treaty Law

Convention on the Rights of the Child (1989)

Article 24.1. “States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health.”

Article 27.1. “States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.”

Article 28(e) “States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular...take measures to encourage regular attendance at schools and the reduction of drop-out rates.”

International Covenant on Economic, Social and Cultural Rights (1966)

Article 12.1. “The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”

International Labour Organisation Convention No. 117 on Social Policy (Basic Aims and Standards) (1962)

4(d) “The measures to be considered by the competent authorities for the promotion of productive capacity and the improvement of living of agricultural producers shall include: (d) the supervision of tenancy arrangements and of working conditions with a view to securing for tenants and labourers the highest practicable standards of living...”

Convention relating to the Status of Refugees (1951)

Article 21. “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 favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.”

Declaratory Instruments and Jurisprudence

Millennium Declaration Goal 7, Target 11. [To] Have achieved by 2020 a significant improvement in the lives of at least 100 million slum dwellers (2000)

“Slums are the stage to the most acute scenarios of urban poverty, physical and environmental deprivation. Approximately one-third of the urban population globally live in these conditions. Typical slums in developing countries are unplanned informal settlements where access to services is minimal to nonexistent and where overcrowding is the norm. Slum conditions result in placing residents at a higher risk of disease, mortality and misfortune.”

“Health and Housing: How Homelessness and Bad Housing Impact on Physical Health” (London: Shelter, 2000)

“...a dwelling is unfit if it fails any of the criteria laid out in the Housing Act 1985 (Section 604). These are that the dwelling must:

- Be free from serious disrepair
- Be structurally stable
- Be free from dampness that threatens the health of the occupants
- Have adequate lighting, heating and ventilation
- Have an effective drainage system
- Have a suitably located toilet for the exclusive use of the occupants
- Have a suitably located bat or shower and basin, each with proper supply of hot and cold water
- Have satisfactory facilities for the preparation of food, including a sink with a proper supply of hot and cold water.

Housing should therefore provide a healthy and safe environment for its inhabitants since several risk factors related to deterioration of mental and physical health as well as social well-being could be prevented by good housing policies.”

The right to adequate housing: progress report submitted by Mr. Rajindar Sachar, Special Rapporteur Sub-Commission on the Promotion and Protection of Human Rights (E/CN.4/Sub.2/1993/15)

44. “‘Adequate housing’ is defined in the unanimously adopted Global Strategy as meaning: 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.”

Committee on Economic, Social and Cultural Rights (CESCR) General Comment No. 4, “the right to adequate housing” (1991)

8. (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 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”

World Health Organization, *Guidelines for Healthy Housing* (Copenhagen: WHO Regional Office for Europe, 1988)

“A healthful environment must do more than merely limit the occurrence and spread of physical disease and infections. It must permit individuals of all ages to conduct useful household activities without undue fatigue and without putting an excessive burden upon any organ of the body. The housing environment also should be comfortable, pleasant and provide a social setting for active and passive recreation, rest and exercise.”

International Labour Organization Recommendation No. 115 concerning Workers’ Housing (1961)

Section VI (Housing Standards), 19.“As a general principle, the competent authority should, in order to ensure structural safety and reasonable levels of decency hygiene and comfort, establish minimum housing standards in the light of local conditions and take appropriate measures to enforce these standards.”

American Declaration of the Rights and Duties of Man (1948)

Article XI. “Every person has the right to the preservation of his health through sanitary and social measures relating to...housing...to the extent permitted by public and community resources.”

✓ **Popular sources**

The European Charter for Human Rights in the City (2000)

Article XVI. “Right to a Home 1. All citizens have the right to a proper, safe and healthy home. 2. The municipal authorities endeavour to ensure the existence of an appropriate offer of homes and district amenities for all their inhabitants, without distinction by reason of their

resources. These amenities must include structures of welcome for those who are homeless which will guarantee their safety and dignity, and structures for women who are victims of violence, particularly domestic violence, ill-treatment and for those who are attempting to escape from prostitution....”

Jerusalem Declaration (1995)

(Draft Charter of the Palestinian Housing Rights Movement)

“...Habitable housing, with adequate space and protection from the elements and other threats to health and safety.”

5.3. Over-riding principles

Principles found in the initial Articles common to all the major international human rights treaties affirm standards of justice arising from the major legal systems of the world. These include principles of immediate application, such as the inalienable rights to self-determination; non-discrimination, in general; gender equality; and the rule of law, including access to justice and domestic application of the human rights contained in each treaty, particularly by adopting legislative measures.

In the case of economic, social and cultural rights, the International Covenant on Economic, Social and Cultural Rights (ICESCR) is the principle source of these rights in treaty form. The Covenant also clarifies that the State party’s treaty obligation entails ensuring the “progressive realisation” of the rights “to the maximum of its available resources” (Article 2.1), including the human right to adequate housing (Article 11). Therefore, a process of realising the rights should not regress, but should ensure “the continuous improvement of living conditions” (Article 11).

The ICESCR’s Article 2.1 also requires States to undertake steps, individually and through international assistance and cooperation, especially economic and technical, progressively to achieve the full realization of the covenanted rights by all appropriate means. Thus, States party to the Covenant bear an obligation to apply these principles extraterritorially and in their international relations. Therefore, “international cooperation” forms an important practical aspect of ESC rights application and, therefore, one of the principles over-riding States’ duties to implement human rights.

Comprehensive monitoring of the human right to adequate housing requires assessing each entitlement (element) in light of the rights and corresponding obligations arising from these over-riding legal principles:

- **Self-determination**
- **Nondiscrimination**
- **Gender equality**
- **Rule of law**
- **Progressive realization (nonregressivity/nonretrogression)**
- **International cooperation**

The normative approach provided in the international human rights system prevails upon the monitor to pose a number of relevant questions related to implementation not only of the specific content of the particular right, but also these over-riding principles common to the principal human rights treaties and applicable to all rights. This section will guide the monitor in applying these six over-riding principles in the respect, defense, promotion and fulfilment of the human right to adequate housing and land.

✓ Self-determination

General description

The principle of equal rights and self-determination of peoples is considered to have been a general principle of international law arising from common State practice already at the founding of the League of Nations. However, self-determination was first codified in the Charter of the United Nations in 1945, which sets forth the purposes of the United Nations as:

2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace...⁴⁴⁰

The Charter's Article 55 stipulates further:

With a view to the creation of conditions of stability and well-being, which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

- a. higher standards of living, full employment, and conditions of economic and social progress and development;⁴⁴¹
- b. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and
- c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

Every State has the duty, therefore, through unilateral, bilateral and multilateral action to promote universal respect for, and observance of human rights and fundamental freedoms in accordance with the Charter. Its Article 2.2 clarifies the universal duty of State membership such that:

All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with the present Charter.

The principle of self-determination has been progressively reaffirmed and legally defined throughout the UN system since its founding.⁴⁴² The material significance of self-determination is further elaborated in the Covenants on human rights adopted in 1966.⁴⁴³ The common Article 1(2) of both the ICCPR and ICESCR sets forth that:

⁴⁴⁰ Charter of the United Nations, 26 June 1945, Article 1(2).

⁴⁴¹ *Ibid.*, Chapter IX, "International Economic and Social Co-operation," Article 55.

⁴⁴² For example, see Declaration on the Granting of Independence to Colonial Countries and Peoples (1960), preamble and Article 7; "Permanent sovereignty over natural resources," General Assembly resolution 1803 (XVII) (1962), preamble and paras. 1–2, 5–7; International Convention on the Elimination of All Forms of Racism and Racial Discrimination (1965), Articles 1 and 5; Declaration on Social Progress and Development (1969), Articles 2, 3 and Part II; Declaration on Principles of International Law (1970), preamble and, esp., "The principle of equal rights and self-determination of peoples"; ECOSOC Declaration on Race and Racial Prejudice (1978), Articles 1, 3, 5 and 9; Declaration on the Right to Development (1986) preamble and Article 1, 6 and 8.

⁴⁴³ International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI), 16 December 1966 (entered into force 3 January 1976 in accordance with Article 27); Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI), 16 December 1966 (entered into force 23 March 1966 1976 in accordance with Article 49).

All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

How concerned persons/communities exercise an effective role in determining the terms by which they realize the human right to adequate housing is also a subject of the inalienable right of self-determination. Self-determination is the right of peoples, not of States. It is the State, however, that is the legal personality obliged to ensure the protection, defense, promotion and fulfillment of self-determination as a duty under international public law, as well as the essential legitimizing factor of the State itself.⁴⁴⁴

The concept of, and right to self-determination manifest in a spectrum of types and expressions of effective local control over developments and relations within a community and territory may involve either external or internal self-determination; that is, national independence as in the formal distinction of a self-determination unit with its own internationally recognized borders, a self-determination unit within the internationally recognized borders of a unitary State, or a community's⁴⁴⁵ effective control over developments and relations affecting it as an independent State.⁴⁴⁶

In its General Comment No. 12 on "the right of self-determination of peoples" (1984), The UN Human Rights Committee (HRC) gave its guidance on the corresponding obligations of States, with the following:

1. In accordance with the purposes and principles of the Charter of the United Nations, Article 1 of the International Covenant on Civil and Political Rights recognizes that all peoples have the right of self-determination. The right of self-determination is of particular importance because its realization is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights. It is for that reason that States set forth the right of self-determination in a provision of positive law in both Covenants and placed this provision as Article 1 apart from and before all of the other rights in the two Covenants.
2. Article 1 [of ICCPR] enshrines an inalienable right of all peoples as described in its paragraphs 1 and 2. By virtue of that right they freely "determine their political status and freely pursue their economic, social and cultural development". The Article imposes on all States parties corresponding obligations. This right and the corresponding obligations concerning its implementation are interrelated with other provisions of the Covenant and rules of international law.
3. Although the reporting obligations of all States parties include Article 1, only some reports give detailed explanations regarding each of its paragraphs. The

⁴⁴⁴ Consistent with the principle of the Universal Declaration of Human Rights, Article 21, which states that "the will of the people shall be the basis of the authority of government."

⁴⁴⁵ While a standard legal definition of nation and people remains a subject of debate, the International Court of Justice has offered criteria for a community, having distinct rights as "a group of persons living in a given country or locality, having a race, religion, language and traditions of their own and united by the identity of race, religion, language and traditions in a sentiment of solidarity, with a view to preserving their traditions, maintaining their form of worship, insuring the instruction and upbringing of their children in accordance with the spirit and traditions of their race and rendering mutual assistance to each other," Permanent Court of International Justice, The Greco-Bulgarian "Communities" Advisory Opinion No. 17, 13 July 1939 (Leyden: Sijthoff, 1930), 21.

⁴⁴⁶ For a comprehensive consideration of the human right of self-determination and its applications, see Hurst Hannum. *Autonomy, Sovereignty, and Self-Determination: The Accommodation of Conflicting Rights* (Philadelphia: University of Pennsylvania Press, 1996).

Committee has noted that many of them completely ignore Article 1, provide inadequate information in regard to it or confine themselves to a reference to election laws. The Committee considers it highly desirable that States parties' reports should contain information on each paragraph of Article 1.

4. With regard to paragraph 1 of Article 1, States parties should describe the constitutional and political processes which in practice allow the exercise of this right.

5. Paragraph 2 affirms a particular aspect of the economic content of the right of self-determination, namely the right of peoples, for their own ends, freely to "dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence." This right entails corresponding duties for all States and the international community. States should indicate any factors or difficulties which prevent the free disposal of their natural wealth and resources contrary to the provisions of this paragraph and to what extent that affects the enjoyment of other rights set forth in the Covenant.

6. Paragraph 3, in the Committee's opinion, is particularly important in that it imposes specific obligations on States parties, not only in relation to their own peoples but *vis-à-vis* all peoples which have not been able to exercise or have been deprived of the possibility of exercising their right to self-determination. The general nature of this paragraph is confirmed by its drafting history. It stipulates that "The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations". The obligations exist irrespective of whether a people entitled to self-determination depends on a State party to the Covenant or not. It follows that all States parties to the Covenant should take positive action to facilitate realization of and respect for the right of peoples to self-determination. Such positive action must be consistent with the States' obligations under the Charter of the United Nations and under international law: in particular, States must refrain from interfering in the internal affairs of other States and thereby adversely affecting the exercise of the right to self-determination. The reports should contain information on the performance of these obligations and the measures taken to that end.

7. In connection with Article 1 of the Covenant, the Committee refers to other international instruments concerning the right of all peoples to self-determination, in particular the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, adopted by the General Assembly on 24 October 1970 (General Assembly resolution 2625 (XXV)).

8. The Committee considers that history has proved that the realization of and respect for the right of self-determination of peoples contributes to the establishment of friendly relations and cooperation between States and to strengthening international peace and understanding.

Self-determination applied to communities

The over-riding principle of self-determination in this "Toolkit" is inspired by classic (customary and treaty) law criteria, as well as popular claims to the same. In both senses,

the claim is legally fixed in the common Article 1 of the human rights treaties. Using the ICESCR as a basic and integrated instrument, the "ToolKit" especially applies this over-riding principle to Article 11, which guarantees the human right to housing.

In making the case for ultimate "self-determination" at the community level, this "Toolkit" draws on a number of popular instruments (mostly written and collectively endorsed statements, but also those rooted in oral traditions) asserting the "right" of communities to determine their own destiny. "Community" also enjoys a legal definition (see below).

Self-determination becomes as vital as any other need that grounds other human rights, including those other over-riding principles of rule of law, nondiscrimination, gender equality and international cooperation consistent with all human rights. In their collective dimension, these all become community "needs" and, consequently, "rights" insofar as their absence leads to erosion and violation of a bundle of individual, stand-alone rights and can lead to the deprivation or demise of a community as such.

It should be noted that States and others have recognized the real problem of "ethnocide" and "cultural genocide" resulting from assimilation policies so as to compel the rewriting of the International Labour Organisation (ILO) Convention No. 107 on Indigenous and Tribal Populations in Independent Countries (1956), eventually to adopt the Indigenous and Tribal Peoples Convention No. 169 (1989). Relevant to the practice of self-determination is the question of land tenure, which ILO Convention No. 169 treats in Articles 13–19, while at the same time disclaiming that the term "people" in the Convention does not convey implications as a term of international law (i.e., conferring the right of self-determination).

However, it is the human consequence of the deprivation, rather than the legal "peoplehood," that makes self-determination vital for any putative victims. Therefore, collective self-determination becomes the right of communities as necessary, even if they are not (or not yet) internationally recognized as a "people" or "nation," the category To avoid the horrendous consequences of demise and deprivation, and to ensure survival of communities as a "right"—especially marginal and otherwise vulnerable ones such as those facing ethnic cleansing and/or elimination through military, administrative, globalization, forced eviction or development measures—local self-determination is vital, no matter what assimilationist governments individually or jointly say. In human rights, it is the human who has the first and final subject of respect, protection, promotion and fulfillment.

That having been said, and recognizing that self-determination can be either internal or external, the international public law term of art "internal self-determination unit" applies in the case of group or community, and is subject to case-by-case interpretation. This could refer to the rightful place of a minority or an indigenous people. It could conceivably apply also to a community of urban poor, particularly if their survival and/or well-being is threatened and their self-determination then becomes a need/right and requisite to the realization of other rights (life, adequate housing, culture, health, etc.).

In any case, the claimant of self-determination, whether an external or internal type, must meet the challenge and legal test of asserting that the claim at any level does not conflict with—or at least is balanced with—the rights of others. That may mean, of course, ensuring that self-determination claims do not negate general ecological values, others' self-determination rights, the rights of women to gender equality, security of person, regional peace and security, etc.

What are the criteria for *bona fide* claimants to local self-determination in the terms of international law as developed? The criteria presented by Martínez-Cobo (*Study of Discrimination against Indigenous Peoples*, UN document E/CN.4/Sub.2/1986/7/Add.4) has grounded much of the self-determination thinking about indigenous peoplehood and the rights arising. Based on his criteria for indigenous "people," the characteristics constituting a community with the right to claim external or internal self-determination could also be that the community (1) predate the influx of "others," (2) possess distinct cultural attributes, (3) occupy an identifiable territory and (4) identify itself as a people/community having the right to self-determination.

Legally defining the subjects of self-determination

Definitions of "people" or "nation," the legal self-determination rights holders, are generally unpopular with States and their sitting governments, unless the definition applies to an existing "nation-state." Of course, very few States can claim adherence to this definition, that is, to contain a single native people or nation (except, perhaps, Portugal, excluding immigrants). The General Assembly has assumed the task of defining self-determination (particularly in resolution 1514(XV), 14 December 1960). That has been construed typically as applying to cases of decolonization (Angola, Algeria, Namibia, Mozambique, Palestine, Puerto Rico, etc.). In its Advisory Opinion on Namibia, the International Court of Justice recognized Namibians as a "people" and "nation" in light of the value of, and for the purpose of decolonization. Despite this legal reference, the actual definition of "people" and "nation" remains under debate for political and practical reasons.

In addition to the guidance on "people," including indigenous peoples, as explicit self-determination rights holders, we have an international law definition of what constitutes a "community." The "community" definition does not deviate significantly from the four-part construct that Martínez-Cobo offered (above). It comes to us from the first International Court in a case sorting out criteria for transferring the ethnically Greek and Turkish communities between the Republic of Turkey and Greece after the First World War:

A group of persons living in a given country or locality having a race, religion, language and tradition of their own and united in the identity of race, religion, language and tradition in a sentiment of solidarity, with a view to preserving traditions, maintaining their form of worship, insuring the instruction and upbringing of their children in accordance with the spirit and traditions of their race and rendering mutual assistance to each other.⁴⁴⁷

Leaving aside the probability that the purpose of the Court's opinion (population transfer) would be legally impermissible today,⁴⁴⁸ the legal definition of "community" it provided is actually less ambiguous than that of "people" or "nation." The "people" definition remains elusive largely because some States find it a political Pandora's box that could challenge their jurisdiction and/or effective control over territory. Until now, some governments instead persist in proffering the legally vacuous term "indigenous populations," so that the legally more-significant term "people/s" would wane into disuse, as would also the corresponding rightful and self-preserving claims of its subjects to self-determination. However, if one is looking for a way to apply self-determination to "communities," one has this definition of the ICJ's predecessor as a reference.

⁴⁴⁷ Permanent Court of International Justice, The Greco-Bulgarian "Communities," Advisory Opinion No. 17, 31 July 1930 (Leyden: Sijthoff, 1930), p. 21.

⁴⁴⁸ See report of the Special Rapporteurs Aun al-Khasawneh and Ribot Hatano, "The human rights dimensions of population transfer, including the implantation of settlers and settlements," E/CN.4/Sub.2/1993/17.

Significant also is the fact that the Court's definitive Advisory Opinion was intended for a narrow and specific purpose. That was not to recognize an external self-determination right, but to rationalize a population transfer scheme that today would be considered a clear violation of international public law. That is not only because of the absence of consent and the obvious human suffering population transfer causes, but also because it deviates from the most basic concept of contemporary statecraft and democratic governance, which is that the State administer—including by way of implementing the right to self-determination—for *all* of its citizens. Population transfers and external self-determination claims, therefore, serve as a seismograph of a government's failure at effective statecraft.

This dissertation on self-determination has admittedly merged concepts and definitions of communities with peoples/nations, as the Permanent Court of International Justice effectively has done. Nonetheless, the values that sustain them are akin, and so should the safeguards that promise to prevent the worst of consequences arising from human rights violations against any identifiable group. In summary, self-determination has a local and community-based expression and basis as a right. For the purposes of advancing human rights through the "Toolkit," both "communities" as well as "nations/peoples" hold the right and responsibility to determine their own habitat, the essence of a people and/or community's survival and sustainability with dignity in its dwelling place.

Applied to habitability

Applied to habitability, the over-riding principle of self-determination means that every nation and people has the inalienable right to determine the terms of adequacy of housing and land in its administrative and territorial unit(s) from the aspect of safety, soundness of the structure and facilities, protection from the elements and material conditions required to sustain personal and public health. Naturally, this determination is to be made in accordance with local specificity, reflecting the criteria and consent of the people that is the subject of the self-determination. Therefore, for peoples and nations, as such, or for other affected persons as members of a community, a measure of self-determination assured through "genuine consultation" is required to realize secure tenure, regardless of the type of tenure.

✓ Nondiscrimination

General description

Like self-determination, an inalienable human right common to the major legal systems throughout the world, a fundamental requisite of justice is the absence of discrimination on any arbitrary basis. Discrimination typically results in deprivation of human needs and rights.

Given its centrality, the principle of nondiscrimination, consequently, is an over-riding human rights principle embodies in the first Articles of each major human rights treaty. Nondiscrimination, and its corresponding State obligation to ensure nondiscrimination, are enshrined in the preamble of all international declarations and resolutions concerned with human rights matters, governance and the relations between and among States, nations and peoples.

Common to Article 2 in both the Covenants, nondiscrimination stands out as an over-riding principle with *immediate* application to all the rights contained in those instruments.⁴⁴⁹ The

⁴⁴⁹ For further guidance on the legal obligations to immediate implementation of the nondiscrimination principle applied to housing rights, see the report of the Special Rapporteur on Adequate Housing E/CN.4/2002/59.

Covenants prohibit arbitrary preferential or punitive treatment and oblige States parties to undertake steps to ensure that rights be exercised without distinction or discrimination “of any kind [as to] race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”⁴⁵⁰

The International Convention on the Elimination of All Forms of Racial Discrimination (1965) defines discrimination as:

any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.⁴⁵¹

Article 5 of that Convention actually offers the historic first codification of the human right to housing, with particular reference to the over-riding principle of nondiscrimination. It reads:

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

In the Convention and its negotiation history, an important distinction emerges: While it is the obligation of States’ parties and their governments to combat both “racism” and “racial discrimination,” the former is a state of mind that should be eradicated through measures including education and other efforts to bring about a cultural and social transformation toward antidiscrimination. The latter, “racial discrimination” is the actual activation of prejudice which, in its manifestation, is a material violation of the rights of others. Any official action or omission of practicing or condoning racial discrimination is a violation of an *immediate* obligation of the State, not subject to “progressive realization.”

This distinction between (1) theoretical racism and (2) racial discrimination in practice has historic roots. It is found also in moral systems, as reflected in the Holy Qur’an, which recognizes the existence of prejudice, but, nevertheless, entreats against putting that into practice:

O you who believe, be upright for God, bearers of witness with justice; and let not hatred of a people incite you not to act equitably. Be just, [for] that is nearer to the observance of duty [the nearest thing to piety].⁴⁵²

This moral distinction was found relevant nearly one millennium later, during the French Revolution. Then, the revolutionary slogan and moral call to the Human Rights of Man and Citizen was “*liberté, égalité, fraternité*.” While all three qualities were found desirable and necessary to build a new, democratic society, only liberty and equality could actually be legislated. Fraternity (or sorority) could be developed and encouraged by the State and civil society much more likely than it could be enforced. Nonetheless, a range of practical measures can be undertaken to nondiscrimination in actual practice.

⁴⁵⁰ ICESCR, Article 2.2; ICCPR, Article 2.1.

⁴⁵¹ Article 1, International Convention on the Elimination of All Forms of Racial Discrimination, adopted by General Assembly resolution 2106 (XX) of 21 December 1965, entered into force, 4 January 1969.

⁴⁵² Chapter 5: The Food [al-Ma’da], Section 2: “Duty of Uprightness,” verse 8. Maulana Muhammad Ali, transl. The Holy Qur’an (Lahore: Ahmadiyya Anjuman Isha’at Islam, 1963), p. 243.

Inherent in the principle of nondiscrimination is the understanding that programs formally providing advantages to persons and groups historically subject to discrimination are not considered to constitute unlawful discrimination. On the contrary, international public law calls upon States to provide additional assistance to those persons and groups subject to past and/or present discrimination, as in corrective/positive discrimination or affirmative action programs that redress foregoing patterns of deprivation.⁴⁵³

Applied to habitability

Applied to habitability, the nondiscrimination principle ensures that individuals and groups are not deprived of opportunities to enjoy housing that is acceptably habitable, including legal enforcement, protection and remedy, nor denied this entitlement on the basis of race, color, creed, gender, sex, sexual orientation, political opinion, social or economic status, language, physical ability/disability, property, form of legitimate work, descent, or any other origin or arbitrary criterion. In other words, there should be no separate or inferior minimum standards of habitability or construction applied arbitrarily to different groups. For indigenous, tribal or other land-based peoples, the State has the obligation to recognize their standards of habitability in the legal, regulatory and administrative systems. Likewise, no State possesses the authority to practice or condone *de jure* or *de facto* discrimination that leads to the deterioration of habitability or application of arbitrarily unequal minimum standards to any member of any group, particularly to purposely favor another group. This applies to the practice of racial discrimination, nepotism and other forms of corruption that allow disparate standards to prevail at the expense of some, leading to their vulnerability or peril. Nondiscrimination duties are not subject to “progressive realization,” but are subject to immediate application.⁴⁵⁴

International public law calls States to provide special assistance to persons and groups who have been subject to past and/or present discrimination, as in affirmative action programs that redress foregoing patterns of deprivation.⁴⁵⁵ This consideration may call for increased efforts to upgrade material housing standards for those historically subject to discrimination or marginalization.

✓ Gender equality

General description

Despite the universal acceptance of the principle of gender equality in international law, many women are denied equal treatment and discriminated against in their housing on the basis of sex or gender. Approximately one-third of the world’s women may be homeless, living in inadequate housing and own less than one percent of the world’s property.⁴⁵⁶ The intersectionality of poverty or other factors (i.e., class, indigenous, refugee, migration, caste, sexual orientation, ethnic minority, age, disability, widowhood, citizenship or nationality status, etc.) further marginalize women. In the context of the increased feminization of poverty, decreased access to public services, and destruction of natural environments, all of

⁴⁵³ See Marjorie Cohn, “Affirmative Action and the Equality Principle in Human Rights Treaties: United States’ Violation of Its International Obligations,” *Virginia Journal of International Law*, Vol. 43 (2002), 249–74.

⁴⁵⁴ For further guidance on the legal obligations to immediate implementation of the nondiscrimination principle applied to housing rights, see the report of the Special Rapporteur on Adequate Housing E/CN.4/2002/59.

⁴⁵⁵ See Marjorie Cohn, “Affirmative Action and the Equality Principle in Human Rights Treaties: United States’ Violation of Its International Obligations,” *Virginia Journal of International Law*, Vol. 43 (2002), 249–74.

⁴⁵⁶ COHRE Fact Sheet on Women’s Right to Housing, Land and Property.

which are accelerating with the process of globalization, women are increasingly placed in situations where they do not have adequate housing.

The denial of adequate housing for women is a violation of women's human rights. It can also result in the violation of women's other human rights such as rights to life, livelihood, adequate food, employment and political participation (e.g., voting rights). In particular, the lack of adequate housing also can make women more vulnerable to various forms of violence against women (e.g., domestic violence, trafficking, sexual and gender-based violence against migrant workers etc.).

The right to nondiscrimination in gender relations, as an over-riding principle in human rights implementation, is generally stated in UDHR, Article 2 (nondiscrimination) and throughout the Declaration in its language of human rights for "everyone" and "all are equal before the law." More specifically, gender equality has emerged as a binding, over-riding principle in the two Covenants' common Article 3:

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all... rights set forth in the present Covenant.

This principle is further elaborated in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).⁴⁵⁷ Article 13 obliges States parties to take all appropriate measures to eliminate discrimination against women in areas of economic and social life, and to ensure women's equal right to bank loans, mortgages, and other forms of social credit. In Article 14, paragraph 2, CEDAW specifically addresses women's equal rights in human settlements as the right of women in rural areas to enjoy adequate standard of living conditions, particularly, in relation to housing sanitation, electricity and water supply, transportation, education, communications and access to credit. This extends explicitly to women's "equal treatment in land and agrarian reform as well as in land resettlement schemes." Article 15 also addresses women's equal right to conclude contracts and administer property; while Article 16, paragraph 1 (c) guarantees women's equal rights and responsibilities during marriage and its dissolution, including equal rights for both spouses in respect of ownership, acquisition, management, administration, enjoyment and disposition of property.

This legal norm is carried forward in the Beijing Platform for Action (BPFA), which calls on Governments to remove all obstacles for women in obtaining affordable housing and access to land.⁴⁵⁸ This remains standard in the subsequent multilateral agreements formulated in the Istanbul Declaration and the Habitat Agenda (1996)⁴⁵⁹ and the World Summit on Sustainable Development (WSSD) Plan of Implementation (2002).⁴⁶⁰

The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (1997), which were developed for understanding and determining violations of economic, social and cultural rights, affirmed that, in order to eliminate discrimination against women's rights recognized in the Covenant, the State party should face the need and legal obligation to eliminate discrimination against women that arises out of social, cultural and other structural advantages.⁴⁶¹

⁴⁵⁷ Adopted and opened for signature, ratification and accession by General Assembly resolution 34/180, 18 December 1979; entered into force, 3 September 1981, in accordance with Article 27(1).

⁴⁵⁸ Para 58(m).

⁴⁵⁹ Para 40 (b), 78 (e) and (g).

⁴⁶⁰ Para 67 (b).

⁴⁶¹ Related sources of gender equality for women in human settlements can be found in CEDAW Articles 1, 2(f), 3 and 5 (a); UDHR, Articles 2, 16, 17 and 25; UDHR, Articles 5 (d) (v) and (vi), 5 (e) (iii); ICERD, Article 2, para 1, Articles 3, 9, 16,

Typically, for women the home is the single most important place in the world. Beyond shelter, it is a place for the vast majority of woman to generate income, care for children, and seek respite from violence and patriarchy in the community at large. For many still, it is the only place where women can participate fully in decisions and social activities.

Applied to habitability

In the context of the burgeoning feminization of poverty in the context of globalization, decreased access to public services and destruction of natural environments, women are increasingly forced in to situations of uninhabitable housing. The intersectionality of poverty or other factors (i.e., class, indigenous, refugee, migration, caste, sexual orientation, ethnic minority, age, disability, widowhood, citizenship or nationality status, etc.) further marginalize women as tenure holders in their home. Gender discrimination commonly manifests against some men and transgendered persons on the basis of their presumed “passive” sexual roles.

“Cultural relativity” is to be understood as allowing for cultural choice and expression within the human rights framework; that is engaging local cultural norms as a vehicle for solving problems in implementing human rights. Preserving a practice of unequal application of habitability standards in a way that disadvantages women, through discrimination in inheritance, inaccessibility to habitable housing, or discrimination in the enjoyment of other economic/social/cultural rights leading to inhabitable housing conditions are not consistent with the framework of human rights duties of State and likely would violate both the gender-equality provisions of the Covenant, as well as provisions of the Vienna Convention on the Law of Treaties (1969).⁴⁶²

✓ Rule of law

General description

In the over-riding principles pertaining to previously discussed forms of discrimination, human rights are, by their nature, equal, inalienable and universal. By this is meant that the criteria for applying the standards and norms are to be inconsistent in their application. One way to ensure that is through the formal and institutionalized rule of law.

As enshrined in UDHR, Article 6, “Everyone has the right to recognition everywhere as a person before the law.” This right is codified in the ICCPR (Article 16), and is supported by regional instruments affirming the same.⁴⁶³ The equal inalienable and universal right to a fair trial, including the presumption of innocence, is enshrined in ICCPR,⁴⁶⁴ as well as the regional instruments.⁴⁶⁵

17, Article 23, para 4, ICCPR, Article 26; ICESCR, Article 2, para 2, Article 3, and Article 11, para 1; and CRC, Article 1, 16, para 1 and Article 27.

⁴⁶² The Vienna Convention sets forth, in Article 27, that “[A] party may not invoke the provisions of its internal law as justification to perform a treaty,” and the customary law principle, arising from Article 8 of the Universal Declaration of Human Rights, states that “everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him [or her] by the constitution or by law.”

⁴⁶³ African Convention on Human and Peoples’ Rights, Article 5; Inter-American Convention on Human Rights, Article 3.

⁴⁶⁴ Article 10 reads: “Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his[her] rights and obligations and of any criminal charge before him[her].” [Bracketed text added.] Article 14.2 sets forth that “Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to the law.”

⁴⁶⁵ African Charter, Article 7; Inter-American Convention, Article 8; European Convention on Human Rights, Article 6.

The law-abiding State and its officers must not withhold or impede remedies, apply the law inconsistently or arbitrarily, or exercise any form of discrimination that affects the human right to adequate housing. Inhabitants who have lost or undergone damage to their housing unjustly or illegally have the right to unobstructed access to legal remedy, including compensation for victims, which the State bears the corresponding obligation to respect, defend, promote and fulfill.

States are required to maintain the rule of law in order to ensure a consistent, predictable and accessible resolution of disputes with remedy and compensation for the victims. This covers the right of equal access to public services, such as law enforcement, public defense and judicial services. The conduct of law enforcement officers, prosecutors and judges can determine whether or not the rule of law is respected or violated. Therefore, there is a tremendous need for the State to train, discipline and rehabilitate legal enforcers and practitioners. In the case of police services, the use of force is required to follow strictly the principle of presumed innocence and the criteria of necessity and proportionality in case where State force is used.⁴⁶⁶ Where local statutory law may be silent on housing rights safeguards, lawyers and judges bear an extra professional duty to apply the human rights norms to the extent possible.

The principles of remedy and reparation have been firmly established in instruments declaratory of the human right to access to justice. Culminating the development of international law derived from the major legal systems in the world, the revised Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law (2003) outline the right and corresponding State obligations as follows:

VII. Victim's Right to Remedy

Remedies for violations of international human rights and humanitarian law include the victim's right to:

- (a) Access justice;
- (b) Reparation for harm suffered; and
- (c) Access the factual information concerning the violations.

VIII. Victims' Right to Access Justice

A victim's right of access to justice includes all available judicial, administrative and other public proceedings, mechanisms and modalities that exist under domestic laws, as well as under international law. Obligations arising under international law to secure the individual or collective right to access justice and fair and impartial proceedings should be made available under domestic laws. To that end, States should:

Make known, through public and private mechanisms, all available remedies for violations of international human rights and humanitarian law;

Take measures to minimize the inconvenience to victims, protect their privacy as appropriate, and ensure their safety from intimidation and retaliation, as well as that of their families and witnesses, before, during, and after judicial, administrative, or other proceedings that affect the interests of victims;

Facilitate assistance to victims seeking access to justice.

⁴⁶⁶ Code of Conduct for Law Enforcement Officials, adopted by General Assembly resolution 34/169, 17 December 1979, Article 3; Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted at the Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August–7 September 1990, preamble and Articles 1–11.

Make available all appropriate diplomatic and legal means to ensure that victims can exercise their rights to a remedy and reparation for violations of international human rights or humanitarian law.

In addition to individual access to justice, adequate provisions should also be made to allow groups of victims to present collective claims for reparation and to receive reparation collectively.

The right to an adequate, effective and prompt remedy against a violation of international human rights or humanitarian law includes all available international processes in which an individual may have legal standing and should be without prejudice to any other domestic remedies.⁴⁶⁷

The restitution of housing and property is one form of restitutive/restorative justice sought in the rule of law applied to housing rights violation victims. Efforts continue to develop these methods and disparate efforts, not least in the development of draft guidelines on restitution for refugees.⁴⁶⁸

Applied to habitability

In disputes over habitability of housing, the State bears an obligation to ensure that the rule of law is applied in a context of equality, inalienability and universality of rights, particularly with regard to the human right to adequate housing. In the case where the State (e.g., courts or police) assume a role in a dispute over tenure, the State bears the responsibility to refrain from violations of the right to housing, including secure tenure, such as unlawful forced eviction, or other forms of violence, or other punitive behavior inconsistent with the principles of (1) presumption of innocence until proven guilty and, in the use of force, (2) necessity and (3) proportionality. Inhabitants who endure inhabitable housing conditions due to unjust or illegal practices have the right to unobstructed access to legal remedy, including compensation for victims, for which the State bears the corresponding obligation.

✓ Nonretrogression/progressive realization

General description

ICESCR's Article 2 identifies the State party's obligation to ensure the "progressive realisation" of ESC rights. That is widely interpreted to mean that the State party breaches this provision if it tolerates or causes "regressivity" in the enjoyment of the right. The relevant jurisprudence has established that, even in the case of scarce resources, the State must exert good-faith efforts, including through international cooperation, to advance—and not derogate—the enjoyment of ESC rights, including adequate housing and its constituent entitlements.

The treaty bodies have clarified further that neither political processes, domestic legislation, scarcity of resources, or agreements with other parties can be invoked to justify nonimplementation of human rights treaty obligations.⁴⁶⁹ For example, the binding nature of a treaty obligation is further clarified in the Vienna Convention on the Law of Treaties (1969),

⁴⁶⁷ As revised in accordance with UN Commission on Human Rights resolution E/CN.4/2003/34 (2003).

⁴⁶⁸ Progress report of the Special Rapporteur, Paulo Sérgio Pinheiro, "Housing and property restitution in the context of the return of refugees and internally displaced persons," E/CN.4/Sub.2/2004/22, 2 June 2004.

⁴⁶⁹ Letter of CESCR Chairperson Mme. Virginia Bonoan-Dandan to S.E. M. Yaakov Levy, Permanent Representative, Permanent Mission of Israel to the United Nations Office and Specialized Agencies at Geneva, 11 May 2001, annex to Letter by the Chairperson of the Committee on Economic, Social and Cultural Rights to the President of ECOSOC (11 May 2001).

clarifying in its Articles 27 and 46, that invoking an internal law is not admissible as a justification for nonimplementation of a treaty obligation.⁴⁷⁰ To harmonize treaty obligations with local implementation, human rights obligations arising from the treaties and case law should guide policy formulation and decision-making processes in law-abiding States. Therefore, a process of realising the rights should not regress, but should ensure “the continuous improvement of living conditions” (Article 11).

This over-riding principle of “nonregressivity” has been reaffirmed in the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights (1986) and Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (1997),⁴⁷¹ as well as numerous cases of international jurisprudence through the monitoring functions of CESCR.

The many examples of globalization-era economic reforms demonstrate how the withdrawal of the State from its obligations to fulfill economic/social/cultural rights can lead to deprivation. The State nonetheless bears a covenanted obligation to ensure that economic policies do not make tenure more precarious and insecure, whether arising from domestic political change or pressures of an external actor, such as an international financial institution. In order to ensure “progressive realization,” therefore, it is vital to ensure that the human right to adequate housing forms a part of the overall human rights framework for development policy, especially guiding international cooperation arrangements. This civilizing process requires improved coordination among the relevant government bodies, such as ministries of Justice, Finance and Foreign Affairs. This is not only out of domestic duty toward citizens for States to ensure that development partnerships effect “progressive realization,” but also an extraterritorial obligation of the State party under ICESCR, Article 2.

The CESCR has commented also on the “core obligations” of States to implement the human right to adequate housing. It noted that, regardless of the state of development of any country, certain steps must be taken immediately, in addition to the over-riding principles of human rights law. These include abstaining from measures that would impinge upon the right, as well as to engage positively in practices to facilitate the people’s processes of groups seeking to improve their living conditions, in accordance with the specific elements outlined above.⁴⁷²

Applied to habitability

The State’s offices and agents, as well as its guiding policies and legislation should ensure that habitability standards are upheld more effectively in her/his home. This means that new laws or policies, as well as trends in official behavior and practice should improve in the direction of greater justice for all and protection for those vulnerable or victim to losing their

⁴⁷⁰ Article 27 (Internal law and observance of treaties): “A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to Article 46.” Article 46 (Provisions of internal law regarding competence to conclude treaties) states that: 1. A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance. 2. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith.”

⁴⁷¹ Text available at <http://ip.aaas.org/escrdocs.nsf/>.

⁴⁷² “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.” General Comment No. 4, para. 10.

tenure. It also means that those same parties should develop greater capacity for, and actually delivery of relief to those whose home or shelter does not meet minimum criteria for habitability.

✓ International Cooperation

General description

States parties to both Covenants bear an obligation to implement human rights within a context of “international economic cooperation.”⁴⁷³ The ICESCR’s Article 2.1 requires States party to undertake steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

In the spirit of the numerous multilateral agreements on human rights and development, “progressive realization of ESC rights,” as a borderless objective, logically engages “international cooperation” duties for States to conduct themselves accordingly through their relations with other States, nations and peoples:

In fraternity and solidarity
Domestically and extraterritorially
Individually, jointly and/or collectively.

The preamble of the United Nations Charter specifies the purposes of the world organization insofar as “we the peoples of the United Nations” are determined “to promote social progress and better standards of life in larger freedom.” Article 1, para. 3 of the Charter sets out one of the UN’s purposes as “to achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.”

Linking international cooperation and self-determination as essential to the peaceful order of the United Nations, the Charter’s Article 55 reads:

With a view to the creation of conditions or stability and well-being[,] which are necessary for peace and friendly relations among nations based on respect for the principles of equal rights and self-determination of peoples, the United Nations shall promote universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

The Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations considers as essential:

the progressive development and codification of the following principles:... (d) the duty of States to cooperate with one another in accordance with the Charter;...(g) the principle that States shall fulfill in good faith the obligations assumed by them in accordance with the Charter, so as to secure their more-effective application

⁴⁷³ Common Article 1.2.

within the international community would promote the realization of the purposes of the United Nations;...⁴⁷⁴

The UN States members share a duty to cooperate with one another, irrespective of their differences, to maintain international peace and security and promote international economic stability and progress, the general welfare of nations and international cooperation free from discrimination. To this noble end, the Declaration embodied by UN members commitments such that:

(c) States shall conduct their international relations in the economic, social, cultural, technical and trade fields in accordance with the principles of sovereign equality and nonintervention;

(d) States Members of the United Nations have the duty to take joint and separate action in cooperation with the United Nations in accordance with the relevant provisions of the Charter.

States should cooperate in the economic, social and cultural fields as well as in the field of science and technology and to the promotion of international cultural and educational progress. States should cooperate in the promotion of economic growth throughout the world, especially that of the developing countries.⁴⁷⁵

In addition to its Article 2, ICESCR also sets out to identify the UN systems itself as a vehicle for international cooperation to uphold the Covenant. The Covenant empowers ECOSOC to raise the Covenant-monitoring reports as a guide for UN technical assistance.⁴⁷⁶

Other instruments of international public law are dedicated to specifying norms for international cooperation agreements between and among States. Consistent with human rights norms and other *jus cogens* principles of law, the Vienna Convention, Article 53, provides clarity:

A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

States parties adhering to the international law principles of international cooperation are required to behave extraterritorially consistent with the progressive realization of economic/social/cultural rights. For our purposes, this extends especially to the human right to adequate housing and land.

As a donor country, a State must ensure that the projects and programs it supports do not erode any of the entitlements contained in their right to adequate housing for inhabitants in

⁴⁷⁴ Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly in its resolution 2625 (XXV) of 24 October 1970 Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly in its resolution 2625 (XXV) of 24 October 1970

⁴⁷⁵ Ibid.

⁴⁷⁶ Article 22 reads: "The Economic and Social Council may bring to the attention of other organs of the United Nations, their subsidiary organs and specialized agencies concerned with furnishing technical assistance any matters arising out of the reports referred to in this part of the present Covenant which [sic] may assist such bodies in deciding, each within its field of competence, on the advisability of international measures likely to contribute to the effective progressive implementation of the present Covenant."

beneficiary countries. That includes avoiding any action that leads to forced evictions, confiscation or demolition of housing. In the case of development assistance resulting in dislocation of inhabitants, all aspects of the undertaking are to be the subject of consultation with the affected persons, and the efforts should enhance legal security of tenure as a result within the covenanted human rights framework.

As a recipient country, structural adjustment, deregulated foreign investment, privatization and related measures typified by today's bilateral and multilateral arrangements assistance agreements and programs must be compatible with the human rights obligations of the affected State. Measures that deny or reduce tenure security would be illegal and unaccepted as a condition of the assistance. States parties to the human rights instruments have a self-preserving opportunity and responsibility to uphold their prior treaty obligations as a form of (moral, legal and practical) resistance to negotiation pressures or conditionalities that may derogate the terms of legal security of tenure for inhabitants.

As all human rights implementation ultimately is a local matter, regional instruments can be a source a greater specificity in determining of State obligations and practical measures needed to uphold economic, social and cultural rights. For example, the African Charter on Human and Peoples' Rights (1981) provides a broad agreement on the term of international cooperation in its Article 21: 1, which establishes that:

All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it. 2. In case of spoliation, the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation. 3. The free disposal of wealth and natural resources shall be exercised without prejudice to *the obligation of promoting international economic cooperation based on mutual respect, equitable exchange and the principles of international law*. 4. State Parties to the present Charter shall individually and collectively exercise the right to free disposal of their wealth and natural resources with a view to strengthening African Unity and solidarity. 5. *State Parties to the present Charter shall undertake to eliminate all forms of foreign exploitation particularly that practised by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources.* [Emphasis added.]

States Parties are required to review multilateral agreements on investment, trade-related intellectual property arrangements, poverty-reduction strategy papers (PRSPs), bilateral and multilateral relations in the World Trade Organization context, World Bank lending and assistance terms, and the International Monetary Fund programs operating in, or otherwise affecting the State, in order to ensure consistency with covenanted obligations and avoid either retrogressivity or violations of its citizens' ESC rights. The State party is obliged to apply the Covenant *a priori* to ensure that any such conditionality would be subject to the ESC rights safeguards for its own inhabitants, and for those of another State party.

Privatization programs may lead to deprivation of the housing rights entitlement to tenure security. In the event of workers living in administrative housing who become laid off as part of a privatization or State-enterprise sell-off arrangement may lose their tenure altogether. Even in cases where local legislation is silent, international treaty obligations remain for the State party to defend the workers' human right to adequate housing by legal and enforceable protection for their secure tenure and all other housing rights entitlements.

As an extreme example of international cooperation conducted in explicit violation of ESC rights applying to adequate housing and secure tenure would be a scenario wherein a State engaged in, or condoning third parties to engage in acts or omissions that would contribute to population transfer or any of its related international crimes, such as mass deportations, ethnic cleansing, destruction of civilian or private property, implantation of settlers and settler colonies, or other forms of demographic manipulation of an internal or external self-determination unit. Duty prohibits States party from allowing public or private resources to accrue to settler colonies in an occupied territory, for example, or engage in any other acts or omissions that would facilitate another State party's violations of the Covenant or Convention in this way. There are numerous examples today in countries where these forms of violation continues unaddressed with the accomplice and collaboration of other States. Impunity still characterizes the conduct of many of these crimes, as the perpetrators have not yet been prosecuted at any level, including at the International Criminal Court.

A State's participation in international economic sanctions or blockades that lead to violations of the ESC rights of persons other than the State Party's own residents, citizens and nationals may lead to conditions that undermine housing rights. CESCR has provided guidance to States parties of the Covenant on ESCRs affected by sanctions regimes and subject to protection measures to avoid regressivity and violation.⁴⁷⁷

Direct provision, or participation in multilateral programs of development and financial assistance actually may lead to violations of rights embodied in the Covenant (e.g., stagnation, deterioration or denial of work, education, health or housing rights, forced eviction, etc.) and constitute a breach of treaty obligations. Specifically, ICESCR and its enshrined rights should guide and govern a State's policies and conduct in any multilateral institution that imposes economic conditionalities on other States or their agents that bring about a negative consequences effect inhabitants housing rights conditions. The legacy of development banks' support for forced evictions of all possible scales and levels of deprivation has become notorious, and States that promote, finance or engage directly or indirectly in making decisions or executing these policies may be in breach of their human rights treaty obligations.

Applied to habitability

International development cooperation should result in improved protection of habitability conditions, whether that be in the enhancement of administrative capacity, governance, service provision or technical cooperation of a material nature. Any cross-border cooperation and investment in human settlements and/or in other sector should not negatively affect habitability or habitability standards.

✓ Other principles of application

The principles discussed above are those explicitly stated in the major international human rights treaties. At the same time, we can consider additional principles and concepts that also guide the application of the human right to adequate housing. These arise from the international jurisprudence of individual State party reviews by the treaty-monitoring bodies, as well as from their General Comments and General Recommendations. They also come to us from popular claims of people's movements, from the political resolutions of the multilateral organizations, from expert opinions found in the legal literature, and from the evolving experience at implementing human rights. Three such principles of application for

⁴⁷⁷ See CESCR General Comment No. 8, "the relationship between economic sanctions and respect for ESC rights."

us to consider are known as the “indivisibility of rights,” “minimum core obligations” and “universality.”

Indivisibility

The concept of all human rights as indivisible is as practical as it is theoretical. It arises from the realization that, when we unpack the contents of a right, we encounter aspects of the other rights as well.

Take, for example, the “habitability” entitlement contained in the human right to adequate housing. The deterioration of the structural features of the home leaving the inhabitants exposed to the elements, or pollution in the immediate vicinity of the housing surely effect the enjoyment of the human right to “a standard of living adequate for the health and well-being of himself and of his family,” as recognized in Article 25 of the 1948 Universal Declaration of Human Rights (UDHR), and codified as the “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health” in Article 12 of the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR).

Likewise, homelessness is a status synonymous with the denial of voting rights in most States, where registration and voting require a *domicile fixe*. Thus, the human right to adequate housing is linked with everyone’s “right to take part in the government of his [sic] country, directly or through freely chosen representatives,” as promised in UDHR (Article 21), and codified in the Covenant on Civil and Political Rights (ICCPR), in 1966, as everyone’s “right to take part in public life, directly or through freely chosen representatives” (Article 25). Incorporating the experience of HIC members and others around the globe, it has become clear that our monitoring methodology calls our attention also to the “congruent” human right to participation and self-expression among the constituent entitlements of the human right to adequate housing.

Sorting, categorizing and distinguishing subjects of any kind can be a useful exercise that makes manageable order out of complexity and facilitates understanding. Human rights are no exception. However, in practice, we find that human rights are interdependent, and categorical separation can become artificial and actually impede understanding. One example is in the division of human rights found in the UDHR into the two, separate Covenants. The reason for adopting two basic Covenants, instead of one, is largely attributed to the divergent Cold War ideologies that dominated the General Assembly when it adopted the Covenants in 1966. Ideology is also the reason that one of the largest and wealthiest industrialized States has failed to ratify the ICESCR until today, and ideology also prevailed to exclude a “human right to own property” from that Covenant, although that right is included in the UDHR (Article 17). Despite the false impression left by the Covenants dividing human rights into two instruments camps, the ICCPR’s nonetheless recognizes, in its preamble, that:

... in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights.

Without appreciating the over-riding principle of indivisibility, other distortions can arise. With civil and political rights traditionally gaining from more attention and specificity than economic/social/cultural rights (consistent with some Western Bloc preferences), some

authors have proposed that we consider “generations” of rights.^{478[1]} Presenting distinct rights in such a priority order perpetuates the historic neglect of economic/social/cultural rights and promotes a logic that may culminate in violations. Nominating civil and political rights in a hierarchical order as “first generation” rights classifies economic/social/cultural rights as secondary: the “second generation” of rights. Group rights, as distinct from individual rights, environmental rights and, in certain cases, self-determination thus become degraded as “third generation.” This view is kept alive by a simple misunderstanding of “progressive” realization, required in ICESCR, such that slow realization of economic/social/cultural rights is acceptable and that all aspects of economic/social/cultural rights, as such, are subject to gradual implementation. The indivisibility of human rights belies such gradualist or generational notions. Therefore, this toolkit cannot accommodate the divisive, generational approach to human rights not for ideological reasons, but for the fact that theories neatly segregating rights are not sustained in practice.

It is with this recognition of the indivisibility of rights that CESCR commented:

...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....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.^{479[2]}

Core obligations

Alone, the very general reference to the human rights in treaty texts does not provide the specific guidance needed for States parties around the world to know their precise obligations. ICESCR’s English-language version requires States to “take steps.” The French texts calls on States “to act” (*s’engage à agir*) and, in Spanish, the Covenant requires States “to adopt measures” (*a adoptar medidas*), but offers little about what those steps/actions/measures should be, except to say that these should be “appropriate,”

^{478[1]} French jurist Karel Vasak is attributed with first proposing the division of human rights into three generations, while at the International Institute of Human Rights (Strasbourg), in 1979. His division adapted the French Revolution’s slogan of *Liberté, Égalité, Fraternité* as ordinal categories. The three generations are subsequently reflected in some of the rubrics of the European Charter of Fundamental Rights.

First-generation human rights deal essentially with liberty. In Vasak’s view, these are seen as fundamentally civil and political in nature and serve to protect the individual from excesses of the State. First-generation rights include, *inter alia*, freedom of speech, the right to a fair trial, and freedom of religion, as enshrined in Articles 3–21 of UDHR and ICCPR.

Second-generation human rights would be those related to equality, and are supposedly the social, economic, and cultural rights. This theory sees these essentially as positive rights; that is, actions that the State is required to provide to the people under its jurisdiction, as opposed to actions from which the State should refrain—e.g., forced eviction—in order to realize rights.

Third-generation human rights correspond with fraternity, or involving “solidarity.” They include group and collective rights, such as self-determination, economic and social development, sovereignty over natural resources, and the right to participate in the common heritage of mankind. Treated as third generation, the generational theory of rights presumes that these rights are not yet binding and dubiously judicial.

In an alternative explanation for the three-generational approach rests on the political divisions of the Cold War, where the West promoted allegedly first-generation (civil and political) rights, and the East promoted second-generation (economic, social and cultural) rights. The Third World (i.e., third priority in the putative hierarchy) promoted (third-generation), solidarity rights, as in the decolonization struggles of the 1970s, including decolonization processes delayed until today.

^{479[2]} General Comment No. 4: “the right to adequate housing” (1991), para. 9.

“progressive” (nonregressive/ nonretrogressive), nondiscriminatory (nondiscrimination), involve international cooperation and include legislative measures (rule of law). Therefore, the treaty-monitoring bodies bear the task of issuing General Comments and General Recommendations to supply the needed specificity, based on international public law and the implementation experience of all States parties.

In its General Comment No. 3: “The nature of States parties’ obligations,”^{480[3]} CESCR addressed the principle of “minimum core obligations”:

...a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party. Thus, for example, a State party in which any significant number of individuals is deprived of ...basic shelter and housing...is, *prima facie*, failing to discharge its obligations under the Covenant. If the Covenant were to be read in such a way as not to establish such a minimum core obligation, it would be largely deprived of its *raison d’être*.^{481[4]}

The General Comment, like the Covenant, takes into consideration material limits of States. However, the Covenant’s Article 2 (1) obligates each State party to take the necessary steps “to the maximum of its available resources,” and the treaty body has determined that the nature of treaty obligations are such that a State bears a heavy burden of proof to demonstrate that “every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations.”^{482[5]}

The “minimum core obligations” also include those appropriate steps to respect, defend, promote and fulfill the human right to adequate housing, like other economic/social/cultural rights, as a matter of immediate application. Among the appropriate measures, in addition to harmonizing domestic legislation with the covenanted rights, is to provide judicial remedies to victims within the national legal system. That would be among the most effective measures to ensure compliance with obligations to implement certain aspects of economic/social/cultural rights *immediately*, such as by ensuring nondiscrimination. The Committee has determined that it is “difficult to sustain” any suggestion that these immediate obligations are inherently non-self-executing. This legal authority is consistent also with the terms of the Vienna Convention on the Law of Treaties (1969), which provides that “A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.”^{483[6]} The treaty bodies have clarified further that neither political processes, domestic legislation, scarcity of resources, nor agreements with other parties could be invoked to justify nonimplementation of human rights treaty obligations.^{484[7]}

Nondiscrimination is perhaps the most obvious and urgent of the immediate principles in implementing the human right to adequate housing. CESCR has provided specific guidance

^{480[3]} Adopted by the CESCR in its fifth session (1990), E/1991/23.

^{481[4]} *Ibid.*, para. 10.

^{482[5]} *Ibid.*

^{483[6]} Vienna Convention on the Law of Treaties, signed at Vienna, 23 May 1969; entered into force, 27 January 1980, Article 27: “Internal law and observance of treaties.” The Article also goes on to state that “this rule is without prejudice to Article 46.” Article 46: “Provisions of internal law regarding competence to conclude treaties” states that “1. A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance. 2. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith.”

^{484[7]} Letter of CESCR Chairperson Mme. Virginia Bonoan-Dandan to S.E. M. Yaakov Levy, Permanent Representative, Permanent Mission of Israel to the United Nations Office and Specialized Agencies at Geneva, 11 May 2001, annex to Letter by the Chairperson of the Committee on Economic, Social and Cultural Rights to the President of ECOSOC (11 May 2001).

such that, among other things, “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.”^{485[8]}

The measures needed for States parties to comply with obligations of immediate application include negative obligations. That is, many of the measures to realize the human right to adequate housing would require little more than the State and its agents to refrain from certain harmful practices, such as arbitrary house demolitions and forced eviction, or a meaningful commitment to enabling “self-help” or “social production of habitat” by affected groups. Such changes in State behavior would not require significant expenditure of public resources.

Universality

The principle of human rights’ “universality” is simply expressed in the UDHR’s recognition that “All human beings are born free and equal in dignity and rights” (Article 1). Everyone, without exception, is entitled to human rights by virtue of belonging to the human family. From a moral point of view, the universality of human rights is an essential principle if the human civilization is to advance for the better. In international law, the text of ICESCR also speaks consistently of right of “everyone,” which obliges States not to discriminate in adherence to minimum core obligations. In the field of housing, in particular, States are not permitted to interpret its minimum core obligations to apply selectively, that is, only to citizens, or only certain citizens, but also to ensure the human right to adequate housing is realized also for “everyone,” including residents, immigrants and migrant workers, etc. The only conditionality permitted in law is that the subjects of human rights qualify as members of the human family.

Before the Universal Declaration, the social movements, revolutions, antislavery struggles and intellectual contributions of the past have served as vehicles for the promotion of human rights that eventually have been incorporated into local and international law and practice. However, many of these famous accomplishments were limited in their substance or application, geographically or socially, or were subject to reversal. Social science and philosophy have contributed greatly to the recognition of human rights, but have not carried the force of law. The recognition of the universality of human rights overcomes the shortcomings left by these otherwise-significant accomplishments:

Limits in scope of application:

- The rights and ethics delivered through the world’s moral systems, especially those found in the religions, also are limited in scope by the fact that they apply to adherents to a particular faith group, not applying universally;
- The Magna Carta of 1215 imposed limits on royal impunity that equate as new rights for citizens, especially property-owning citizens. However, this historical achievement had only local application in the geographical realm of the English king.

^{485[8]} General Comment No. 3: “The nature of States parties’ obligations,”^{485[8]} CESCR addressed the principle of “minimum core obligations,” adopted by the CESCR in its fifth session (1990), E/1991/23, para. 11.

^{485[9]} The Vienna Convention sets forth, in Article 27, that “[A] party may not invoke the provisions of its internal law as justification to perform a treaty,” and the customary law principle, arising from Article 8 of the Universal Declaration of Human Rights, states that “everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him [her] by the constitution or by law.”

Exclusion of social sectors and substantive rights:

- The “American Revolution,” in the English colonies that eventually became the original United States of America, realized the right to self-determination as a legal right and *raison d'état*. However, the right to self-determination, as inalienable as it is, applied in the American Revolution case as a right limited only to the white colonizers who identified themselves as a distinct people. The remaining indigenous peoples—whom the settlers mostly largely and replaced—have yet to achieve their self-determination to this day;
- The French Revolution, for all its achievements, realized rights for individuals. French farmers and workers sought recognition of their group rights in the context of the revolution; however, its leadership rejected those expansive notions of rights and insisted on *liberté, égalité and fraternité* with an individual focus;
- The results of the Bolshevik Revolution institutionalized recognition of group rights for workers, etc.; however, rejected a right to property ownership. However ethically grounded the rationale for that omission, the denial of property rights also has emerged as a common tool for depriving persons, communities and entire peoples of their means of subsistence, thereby demonstrating, by its violations, the importance of that neglected human right.

Retrogression:

- The antislavery movement in Haiti at the end of the 18th Century resulted in a democratic regime and Constitution under the leadership of former slave and eventual General Toussaint Louverture. However, the same France that produced the world-changing Revolution only 12 years before saw the French General Napoleon I crush the new democracy in 1801 for reasons of imperial interest, reversing the accomplishments of Haitian antislavery democracy, with consequences extending to this day.

Despite their shortcomings, these episodes in the gradual achievement of rights through local struggle all have contributed to the accumulation of human rights recognition as universally applicable. Human rights law today embodies that cumulative recognition into an international and universal code that seeks to leave no human group, geographical region or human need without mutual protection in the multilateral legal regime.

Universality of human rights now means that it is impermissible to neglect certain rights as if they were intended selectively for certain cultures, as if and people of other cultures deserve an inferior standard. Universality also means that no State or government is exempt from its obligations, either for reasons of specificity of local law, as the Vienna Convention has addressed, or to uphold traditional practices that violate rights or their over-riding principles of application.

Interpreting rights consistent with one's own culture (as in the cultural adequacy of housing) means applying locally specific options and idiomatic expressions consistent with the human rights framework. However, practices that preserve or condone unequal rights to secure tenure, inheritance or other entitlements of the human right to adequate housing are not consistent with the present framework and likely to violate both the gender-equality provisions of the Covenant, as well as essential provisions of the Vienna Convention on the Law of Treaties (1969).^{486[9]}

While local experience of application and struggle continue to provide specificity on how to realize human rights, reveal a variety of possible strategies and define emerging rights (such as the rights to water, land and energy), cultural specificity does not mean allowance for the derogation of rights to something short of the over-riding principles and entitlements reflected in this toolkit. As affirmed by moral arguments and legal authority, adequate housing is the right of everyone, everywhere.

Conclusion

The over-riding principles featured in the monitoring steps of this toolkit are those explicitly mentioned in the major human rights treaties. The “Other principles of application” are implied in the human rights instruments or recognized in international jurisprudence, but are not less important to keep in mind.

The HLRN toolkit attempts to go further than merely encouraging the monitor to keep these additional principles in mind, however. The toolkit’s design actually incorporates all of these three principles, but without culling them out as additional steps in the monitoring process.

The indivisibility of rights is already present in the 12 entitlements; whereas, the first eight derive directly from the CESCR’s General Comment No. 4 specifically on the right to housing. The “Congruent rights” derive from rights whose sources and concepts arise from the ICCPR, Refugee Convention and other instruments. Therefore, the housing rights entitlements themselves embody the indivisibility concept in a practical form.

The core minimum obligations applying in the case of the human right to adequate housing also are consistent with those entitlements outlined in the General Comment No. 4, which are embedded in this methodology (human right to adequate housing entitlements A–H). Naturally, the local specificity as to the nature and level of effort required to realize the human right to adequate housing is precisely your contribution through your monitoring effort, your critical process and by posing your solutions to problems in the field.

The universality of the human right to adequate housing is also inherent to this toolkit, by design. That is manifest in the wide range of international and regional instruments guaranteeing the right and incorporated into the Step 2 presentation of both the Sources in international law and Popular sources.

The good news is that, with these principles integrated in the design of the toolkit, you are able to apply them as a matter of course. Therefore, it would be unnecessary and redundant to create corresponding, additional tasks. By applying the methodology in this Housing and Land Rights Monitoring Toolkit, you will be putting all of these inter-related and interdependent principles into living practice.

5.4. Guarantees

Guarantees of the Human Right to Adequate Housing

We will now determine the existing assets guaranteeing the entitlements of the human right to adequate housing in your country situation. We can begin by making our assessment at the general and international level, then proceeding to the more instrumental and local level. The “guarantees” do not mean only legal provisions, but also institutional, policy and other assets that function to ensure, or at least contribute to implementation of the various contents of our human right to adequate housing.

Therefore, one should assess first the State's current obligations by its ratification of international (and then regional) treaties recognizing the human right to adequate housing, its over-riding principles and its specific entitlements. Then this method would have us determine any similar guarantees in the national constitution (or equivalent). At the more-specific level of legislation, the inquiry should have us identify which statutes, regulations and even municipal ordinances actually guarantee the right or any entitlement within the right. Presumably, public policies, programs, institutions and budgets in place should form the practical implementation counterparts to complement these legal criteria and the respect, defense, promotion and fulfillment of the human right at the most-localized operational level.

Inquiry Begins Here

Following this logic, our line of inquiry on "guarantees" poses a number of questions for the monitor to provide the answer. Now your role will become more active. Accordingly, we will follow the method of assessing the guarantees in your country situation for implementation of the human right to adequate housing from general to specific, thus, focusing on:

- Ratifications and multilateral commitments:** Obligations arising from multilateral (international and regional) ratification of relevant treaties;
- Constitutional provisions** relevant to the human right to adequate housing and land;
- National legal system:** Legislation and other local law;
- Institutions:** both binding and bonding institutions, whether as a formal structure, or a more-customary, social character;
- Policies:** having nationwide application;
- Programs:** long-term, policy-based and systematic efforts;
- Projects:** having more temporary and localized application; and
- Budgets** of public institutions.



In that order, our line of inquiry will explore these guarantees for each of the twelve entitlements of the human right to adequate housing and land. You will likely find that you may already have the answers to many of these questions from the previous sections on "Sources" and "Over-riding Principles." For instance, you have already learned about, and identified many multilateral treaty instruments guaranteeing the human right to adequate housing. Now, you will be able to fill in the rest of the guarantees to complete the picture of how these norms translate into legal and functional assurances locally for this and every entitlement of our human right that you choose to monitor and assess.

This method ensures that the monitor take into consideration also the guarantees of the over-riding human rights principles (as explained above in "Over-riding principles applied to legal security of tenure and freedom from dispossession" in Step 3 of this toolkit). These principles, found in the first Articles of all the major human rights treaties, are to be generally and universally applied in order to ensure a context for the realization of all rights, not least the human right to adequate housing and land. Since these principles over-ride, or sit on top of the human rights framework applied to housing and land, they appear first in the list of questions in our line of inquiry. These questions include a list of legal instruments and commitments by States to guarantee these over-riding principles. (Please note that these are

illustrative lists; they are not exclusive lists. You may know of other such guarantees, and you may find that some listed do not apply to your country situation.)

In the same way that we proceed from the general to the specific, the inquiry about the guarantees of the over-riding principles is followed by the more precise, practical guarantees that ensure the human right to adequate housing and land is made real in practice. Therefore, the systematic questions here include a test of (1) the present (general and contextual) guarantees for applying the over-riding principles of international human rights law in the case of the entitlement legal security of tenure and freedom from dispossession (i.e., self-determination, nondiscrimination, gender equality, rule of law, nonregressivity/nonretrogression and international cooperation), as well as (2) the (functional and specific) local guarantees of legal security of tenure and freedom from dispossession deriving from the guaranties listed above.

✓ Guarantees of the over-riding principles

Self-determination

Which international treaties has the State ratified, acceded to or succeeded to that guarantee that the principle of self-determination be applied, including in the housing context?

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention on the Elimination of All Forms of Racial Discrimination (1965)
- Convention on the Rights of the Child (1989)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- ILO No. 107 concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (1957)
- ILO Convention No. 169 concerning Indigenous Peoples in Independent Countries (1989)
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee that the principle of self-determination be applied, including in the housing context?

- Declaration on the Right to Development (1986)
- Declaration on Social Progress and Development (1969)
- Habitat II Agenda (1996)
- Istanbul Declaration (1996)
- Social Summit Declaration and Programme of Action (1995)
- Universal Declaration of Human Rights (1948)
- United Nations Commission on Human Rights resolutions
- UN General Assembly resolutions [various]
- Vienna Declaration and Programme of Action (1993)
- Durban Declaration and Programme of Action [of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] (2002)
- Johannesburg Declaration of the World Summit on Sustainable Development and Plan of Implementation (2001)

Which regional treaties has the State ratified, acceded to or succeeded to that guarantee that the principle of self-determination be applied, including in the housing context?

- African Charter on Human and Peoples Rights (1981)
- American Convention on Human Rights (1969)
- American Declaration of Human Rights (1948)
- Arab Charter on Human Rights (1994)
- (European) Convention for Protection of Human Rights and Fundamental Freedoms (1950)
- European Social Charter (1961)

Has the State participated in the adoption of multilateral agreements in the form of regional conferences, summits, or congresses, etc., or voted in favor of resolutions in regional organizations that guarantee that the principle of self-determination be applied, including in the housing context?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (2000)
- Rabat Declaration (1995)

Nondiscrimination

Which international treaties has the State ratified, acceded to or succeeded to that guarantee that the over-riding principle and human right to freedom from discrimination be applied, including also in the housing context?

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention on the Elimination of All Forms of Racial Discrimination (1965)
- Convention on the Rights of the Child (1989)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- International Labour Organisation Convention No. 107 concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (1957)
- International Labour Organisation Convention No. 117 *on Social Policy (Basic Aims and Standards)* (1962)
- ILO Convention No. 169 concerning Indigenous Peoples in Independent Countries (1989)
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)
- Refugee Convention (1951)
- Convention relating to the Status of Stateless Persons (1954)
- Convention on the Reduction of Statelessness (1961)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee that the over-riding principle and human right to freedom from discrimination be applied, including also in the housing context?

- Declaration on Asylum (1967)
- Declaration on the Right to Development (1986)
- Declaration on Social Progress and Development (1969)
- Declaration on the Elimination of Violence against Women (1993)
- Habitat II Agenda (1996)
- Declaration on Cities and Other Human Settlements in the New Millennium [Habitat II+5 UNGAR S-25/2] (2001)
- UN Guidelines on Internally Displaced Persons (1998) [vote in favor of adoption in UNHRCR E/CN.4/1998/53/Add.2, dated 11 February 1998]
- International Labour Organisation Recommendation No. 162 concerning Older Workers (1980)
- Istanbul Declaration (1996)
- Rio Declaration and Agenda 21 (1992)
- Social Summit Declaration and Programme of Action (1995)
- Universal Declaration of Human Rights (1948)
- UN General Assembly resolutions [various]
- United Nations Commission on Human Rights resolutions [various]
- Vancouver Declaration Human Settlements (1976)
- Vienna Declaration and Programme of Action (1993)
- Durban Declaration and Programme of Action [of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] (2002)
- Johannesburg Declaration of the World Summit on Sustainable Development Plan of Implementation (2001)

Which regional treaties has the State ratified, acceded to or succeeded to that guarantee that the over-riding principle and human right to freedom from discrimination be applied, including also in the housing context?

- African Charter on Human and Peoples Rights (1981)
- American Convention on Human Rights (1969)
- Arab Charter on Human Rights (1994)
- (European) Convention for Protection of Human Rights and Fundamental Freedoms (1950)
- European Social Charter (1961)

Has the State participated in the adoption of multilateral agreements in the form of regional-level conferences, summits, or congresses, etc., or voted in favor of resolutions in regional organizations that guarantee application of the over-riding principle and human right to freedom from discrimination, including also in the housing context?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (2000)

- Rabat Declaration (1995)

Gender equality

Which international treaties has the State ratified, acceded to or succeeded to that guarantee the application of the over-riding principle of gender equality be applied, including also in the housing context?

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention on the Rights of the Child (1989)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- International Labour Organisation Convention No. 117 *on Social Policy (Basic Aims and Standards)* (1962)
- International Labour Organisation Convention No. 131 Concerning Minimum Wage Fixing, with Special Reference to Developing Countries (1970)
- International Labour Organisation Convention Recommendation No. 115 concerning Workers' Housing (1961)
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee the application of the over-riding principle of gender equality be applied, including also in the housing context?

- Declaration on Asylum (1967)
- Declaration on the Right to Development (1986)
- Declaration on Social Progress and Development (1969)
- Habitat II Agenda (1996)
- Declaration on Cities and Other Human Settlements in the New Millennium [Habitat II+5 UNGAR S-25/2] (2001)
- International Labour Organisation Recommendation No. 162 concerning Older Workers (1980)
- Istanbul Declaration (1996)
- Rio Declaration and Agenda 21 (1992)
- Social Summit Declaration and Programme of Action (1995)
- Universal Declaration of Human Rights (1948)
- United Nations Commission on Human Rights resolutions
- Vienna Declaration and Programme of Action (1993)
- Durban Declaration and Programme of Action [of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] (2002)
- Johannesburg Declaration of the World Summit on Sustainable Development and Plan of Implementation (2001)

Which regional treaties has the State ratified, acceded to or succeeded to that guarantee the application of the over-riding principle of gender equality be applied, including also in the housing context?

- African Charter on Human and Peoples Rights (1981)

- American Convention on Human Rights (1969)
- American Declaration of Human Rights (1948)
- Arab Charter on Human Rights (1994)
- (European) Convention for Protection of Human Rights and Fundamental Freedoms (1950)
- European Social Charter (1961)

Has the State participated in the adoption of multilateral agreements in the form of regional conferences, summits, or congresses, etc., or voted in favor of resolutions in regional organizations that guarantee the application of the over-riding principle of gender equality be applied, including also in the housing context?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (2000)
- Rabat Declaration (1995)

Rule of law

Which international treaties has the State ratified, acceded to or succeeded to that guarantee the State's application of the over-riding principle of the rule of law, which also extends to the housing sphere?

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention on the Elimination of All Forms of Racial Discrimination (1965)
- Convention on the Rights of the Child (1989)
- Rome Statute on the Establishment of the International Criminal Court (1998)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- International Labour Organisation Convention No. 107 concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (1957)
- International Labour Organisation Convention No. 117 *on Social Policy (Basic Aims and Standards)* (1962)
- International Labour Organisation Convention No. 131 Concerning Minimum Wage Fixing, with Special Reference to Developing Countries (1970)
- ILO Convention No. 169 concerning Indigenous Peoples in Independent Countries (1989)
- International Labour Organisation Convention Recommendation No. 115 concerning Workers' Housing (1961)
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)
- Refugee Convention (1951)
- Convention relating to the Status of Stateless Persons (1954)
- Convention on the Reduction of Statelessness (1961)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee the State's application of the over-riding principle of the rule of law, which also extends to the housing sphere?

- Declaration on Asylum (1967)
- Declaration on the Right to Development (1986)
- Declaration on Social Progress and Development (1969)
- Habitat II Agenda (1996)
- Declaration on Cities and Other Human Settlements in the New Millennium [Habitat II+5 UNGAR S-25/2] (2001)
- International Labour Organisation Recommendation No. 162 concerning Older Workers (1980)
- Istanbul Declaration (1996)
- Rio Declaration and Agenda 21 (1992)
- Social Summit Declaration and Programme of Action (1995)
- Universal Declaration of Human Rights (1948)
- United Nations Commission on Human Rights resolutions
- Vancouver Declaration Human Settlements (1976)
- Vienna Declaration and Programme of Action (1993)
- Durban Declaration and Programme of Action [of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] (2002)
- Johannesburg Declaration of the World Summit on Sustainable Development and Plan of Implementation (2001)

Which regional treaties has the State ratified, acceded to or succeeded to that guarantee the State's application of the over-riding principle of the rule of law, which also extends to the housing sphere?

- African Charter on Human and Peoples Rights (1981)
- American Convention on Human Rights (1969)
- American Declaration of Human Rights (1948)
- Arab Charter on Human Rights (1994)
- (European) Convention for Protection of Human Rights and Fundamental Freedoms (1950)
- European Social Charter (1961)

Has the State participated in the adoption of multilateral agreements in the form of regional conferences, summits, or congresses, etc., or voted in favor of resolutions in regional organizations that guarantee the State's application of the over-riding principle of the rule of law, which also extends to the housing sphere?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (2000)
- Rabat Declaration (1995)

Nonregressivity/nonretrogression

Which international treaties has the State ratified, acceded to or succeeded to that guarantee the State's implementation of the principle of nonregressivity/nonretrogression in the respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human right to adequate housing and land?

- Convention on the Elimination of All Forms of Racial Discrimination (1965)
- Convention on the Rights of the Child (1989)
- International Covenant on Economic, Social and Cultural Rights (1966)
- International Labour Organisation Convention No. 117 *on Social Policy (Basic Aims and Standards)* (1962)
- International Labour Organisation Convention Recommendation No. 115 concerning Workers' Housing (1961)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee the State's implementation of the principle of nonregressivity/nonretrogression in the respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human right to adequate housing and land?

- Declaration on the Right to Development (1986)
- Declaration on Social Progress and Development (1969)
- Habitat II Agenda (1996)
- Declaration on Cities and Other Human Settlements in the New Millennium [Habitat II+5 UNGAR S-25/2] (2001)
- Istanbul Declaration (1996)
- Rio Declaration and Agenda 21 (1992)
- Social Summit Declaration and Programme of Action (1995)
- Universal Declaration of Human Rights (1948)
- United Nations Commission on Human Rights resolutions
- Vancouver Declaration Human Settlements (1976)
- Vienna Declaration and Programme of Action (1993)
- Durban Declaration and Programme of Action [of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] (2002)
- Johannesburg Declaration of the World Summit on Sustainable Development and Plan of Implementation (2001)

Which regional treaties has the State ratified, acceded to or succeeded to that guarantee the State's implementation of the principle of nonregressivity/nonretrogression in the respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human right to adequate housing and land?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (200)
- Rabat Declaration (1995)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee the State's implementation of the principle of nonregressivity/nonretrogression in the respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human right to adequate housing and land?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (2000)
- Rabat Declaration (1995)

International Cooperation

- Which international treaties has the State ratified, acceded to or succeeded to that guarantee the State's implementation of the principle of international cooperation to ensure respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human rights to adequate housing and land?
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention on the Elimination of All Forms of Racial Discrimination (1965)
- Convention on the Rights of the Child (1989)
- Rome Statute on the Establishment of the International Criminal Court (1998)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- International Labour Organisation Convention No. 107 concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (1957)
- International Labour Organisation Convention No. 117 on Social Policy (Basic Aims and Standards) (1962)
- International Labour Organisation Convention No. 131 Concerning Minimum Wage Fixing, with Special Reference to Developing Countries (1970)
- ILO Convention No. 169 concerning Indigenous Peoples in Independent Countries (1989)
- International Labour Organisation Convention Recommendation No. 115 concerning Workers' Housing (1961)
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)
- Refugee Convention (1951)
- Convention relating to the Status of Stateless Persons (1954)
- Convention on the Reduction of Statelessness (1961)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee the State's implementation of the principle of international cooperation to ensure respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human rights to adequate housing and land?

- Agenda 21 (1992)
- Declaration on Environment and Development (1992)
- Declaration on Asylum (1967)
- Declaration on the Right to Development (1986)
- Declaration on Social Progress and Development (1969)
- Habitat II Agenda (1996)
- Declaration on Cities and Other Human Settlements in the New Millennium [Habitat II+5 UNGAR S-25/2] (2001)
- International Labour Organisation Recommendation No. 162 concerning Older Workers (1980)
- Istanbul Declaration (1996)
- Rio Declaration and Agenda 21 (1992)
- Social Summit Declaration and Programme of Action (1995)
- Universal Declaration of Human Rights (1948)
- United Nations Commission on Human Rights resolutions
- Vancouver Declaration Human Settlements (1976)
- Vienna Declaration and Programme of Action (1993)
- Durban Declaration and Programme of Action [of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] (2002)
- Johannesburg Declaration of the World Summit on Sustainable Development and Plan of Implementation (2001)

Which regional treaties has the State ratified, acceded to or succeeded to that guarantee the State's implementation of the principle of international cooperation to ensure respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human rights to adequate housing and land?

- African Charter on Human and Peoples Rights (1981)
- American Convention on Human Rights (1969)
- American Declaration of Human Rights (1948)
- Arab Charter on Human Rights (1994)
- (European) Convention for Protection of Human Rights and Fundamental Freedoms (1950)
- European Social Charter (1961)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee the State's implementation of the principle of international cooperation to ensure respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human rights to adequate housing and land?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (2000)
- Rabat Declaration (1995)

What additional multilateral commitments has the State made to guarantee nondiscrimination in the respect, protection, promotion and fulfillment of the human right to adequate housing and, by extension, habitability?

Do not forget that the body of the binding international treaties that the State already has ratified contains binding human rights obligations that take precedence over nonbinding declarations of mere intent or political will. Monitoring these obligations is the covenanted task of the treaty parties [ratifying States], which has been delegated to neutral treaty-monitoring bodies that are supported in their task by government and civil-society monitors. Keep in mind also that some multilateral declarations and many agreements with international financial and development institutions may contain standards less protective of human rights and freedoms than those of a binding nature under human rights treaties. Those agreements may even impede the enjoyment of economic/social/cultural rights. Such agreements are to be evaluated subject to prior human rights treaty obligations—not vice versa.

✓ Local guarantees

Ratifications and international commitments

- Which international treaties has the State ratified (acceded or succeeded to) that guarantee the human right to adequate housing, in particular habitability?

Constitutional provisions

- Does the State have a Constitution, or equivalent, guaranteeing the right to human right to housing and land, including habitability?
- Does the State have a Constitution, or equivalent, guaranteeing the right to local self-determination?
- Does the State have a Constitution, or equivalent, guaranteeing the right to freedom from discrimination?
- Does the State have a Constitution, or equivalent, guaranteeing gender equality?
- Does the State have a Constitution, or equivalent, guaranteeing the rule of law, including access to justice and democratic participation and representation?
- Does the State have a Constitution, or equivalent, guaranteeing the right to the continuous improvement of living conditions?
- Does the State have a Constitution, or equivalent, providing that international relations be conducted within the framework and objectives of human rights, including economic, social and cultural rights?

National legal system

- Is the right to adequate housing, including habitability recognized as a distinct right in the country's legal system?

- Is national and local legislation consistent with the human rights right to housing and land, including habitability?
- Is national and local legislation consistent with the principle of local self-determination?
- Is national and local legislation consistent with the right to freedom from discrimination? What statutes has the State/government legislated, and are in force, to ensure nondiscrimination in the respect, defense, promotion and implementation of the human right to adequate housing, in particular, habitability?
- Do the concerned persons or community have the sense that the terms of their entitlement to habitability are equal and consistent with others'?
- Does national and local law maintain the principle of gender equality, particular as it relates to housing, land and habitability?
- Do local and national laws and regulations uphold the rule of law, including access to justice and democratic participation and representation in matters related to housing, land and habitability?
- Does the State's legal system maintain the right to the continuous improvement of living conditions?
- Are the laws and regulations of the State consistent with the principle that international relations, including international entities operating locally, conduct themselves within the framework and objectives of human rights, including economic, social and cultural rights, in particular, the human right to adequate housing and land, including habitability?
- Does the performance of the law-enforcement services guarantee the practice and enforcement of the respect, defense, promotion and implementation of the human right to adequate housing, including habitability?
- Are judges and lawyers performing sufficiently and consistently to uphold the human right to adequate housing, including the entitlement of habitability? What are some examples?

Institutions

- Is there a sense in the community that the State and government institutions represent their aspirations to self-determination?
- What State and public institutions exist as a guarantee of nondiscrimination in the respect, defense, promotion and implementation of the human right to adequate housing, in particular, habitability?
- Do the concerned persons or community have the possibility to exercise an effective role in determining the terms and conditions of habitability?
- What State and public institutions exist as a guarantee of gender equality in the defense, promotion and implementation of the human right to adequate housing, in particular, habitability?

- What private and nongovernmental institutions exist as a guarantee of gender equality in the defense, promotion and implementation of the human right to adequate housing, in particular, habitability?
- What informal institutions (including social norms) function so as to help implement the human right to adequate housing and, in particular, habitability?⁴⁸⁷
- What social institutions and consistent social practices exist as a guarantee of gender equality in the defense, promotion and implementation of the human right to adequate housing, in particular, habitability?
- How have these institutions actually improved capacity to protect, or actual protection of habitability for those in need?

Policies

- What statewide policies are in place and implemented to guarantee of the human right to adequate housing and, in particular, habitability?

Keep in mind that the body of the binding international treaties that the State has ratified contain provisions that call for human rights to be implemented in the presence of the over-riding principles of self-determination, nondiscrimination, gender equality, the rule of law, international cooperation in the implementation of human rights, and progressive realization (nonregressivity/ nonretrogression) and the continuous improvement of living conditions.

- How have national policies enhanced local self-determination so as to ensure acceptable levels of habitability?
- How have national policies to ensure nondiscrimination positively affected habitability in the country?
- How have national gender policies led to improvements in the conditions of habitability in the housing sphere, especially for those in need?
- How have the State's policies on access to justice enhanced conditions of habitability, especially for those in need?
- How have national housing policies ensured the continuous improvement of living conditions, in particular the housing rights entitlement of habitability, especially for those in need?
- In what ways have national housing policies ensured that international relations and international entities operating within the country respect, defend, promote and fulfil the human right to housing, in particular the entitlement of habitability for those in need?

⁴⁸⁷ The operative concept of institutions here encompasses both bonding and bridging institutions. "Institutions," in this sense, involve the rules of the game under which formal and informal activity is conducted, and include public institutions, private institutions, collective practices and norms, as well as changing norms (e.g., brought about through the youth, technology, economic or demographic shifts, and other emerging behaviours). According to Douglas C. North, 1993 Nobel economics laureate, institutions are "humanly devised constraints that shape human interaction."

- To what extent have external parties positively influenced your country's official policies or practices in guaranteeing the entitlement to habitability?

Programs

- What progressive steps has the State made on a national scale in the past period (year[s], or since your last assessment) to improve housing rights, especially the entitlement of habitability? (These may include: law reforms, improved infrastructure, more effective implementation methods, population registry programs, programs to consider ratification of international covenants, and evaluations of housing rights implementation, etc.)

Keep in mind that the body of binding international treaties that the State has ratified contain provisions that call for human rights to be implemented in the presence of the over-riding principles of self-determination, nondiscrimination, gender equality, the rule of law, international cooperation in the implementation of human rights, and progressive realization (nonregressivity/ nonretrogression) and the continuous improvement of living conditions.

- What private-sector or NGO programs are in place and implemented to guarantee the human right to adequate housing and, in particular, habitability?
- How have these national programs enhanced local self-determination in a way that has improved the conditions of habitability?
- What national programs are completed, ongoing, or planned to ensure nondiscrimination positively affected habitability in the country?
- Are there any national gender programs completed, ongoing or planned with the purpose and effect of improving the conditions of habitability in the housing sphere, especially for those in need? Do they cover land rights and inheritance issues?
- What are have the State's recent, present or future programs to enhance access to justice that are intended to improve housing and living conditions, especially for those in need? How have those programs implemented to date succeeded in enhancing habitability of housing?
- How have national housing programs ensured the continuous improvement of living conditions, in particular the housing rights entitlement of habitability, especially for those in need?
- In what ways have national housing programs ensured that international relations and international entities operating within the country respect, defend, promote and fulfil the human right to housing, in particular the entitlement of habitability for those in need?
- Has the government in the concerned State cooperated with other State or non-State parties to find identify and adapt good practices locally to improve habitability for all those living there?

Projects

- What progressive actions has the State undertaken in the way of limited-scale or pilot projects in the past period (year[s], or since your last assessment) to improve housing rights, especially the entitlement of habitability?
- What private-sector or NGO projects are in place and implemented to guarantee the human right to adequate housing and, in particular, habitability?
- How have such local projects enhanced local self-determination in a way that has improved the conditions of habitability?
- What projects completed, ongoing, or planned to ensure nondiscrimination positively affected habitability in the country?
- Are there any gender-based projects completed, ongoing or planned with the purpose and effect of improving the conditions of habitability in the housing sphere, especially for those in need? Do they cover land rights and inheritance issues?
- What are have the State's recent, present or future projects to enhance access to justice that are intended to improve housing and living conditions, especially for those in need? How have those programs implemented to date succeeded in enhancing habitability of housing?
- How have these projects ensured the continuous improvement of living conditions, in particular the housing rights entitlement of habitability, especially for those in need?
- In what ways have public or private projects ensured that international relations and international entities operating within the country respect, defend, promote and fulfil the human right to housing, in particular the entitlement of habitability for those in need?
- Has the government in the concerned State cooperated with other State or non-State parties to find identify and adapt good practices locally through projects that actually improve habitability for all those living affected?
- Are there foreign State or foreign private interests operating projects affecting the housing and human settlements sector in the country and affecting the situation under review? Are their roles positively affecting the enjoyment of habitability?

Budgets

- What public budgets are in place to guarantee the human right to adequate housing and, in particular, habitability? How does the budget correspond to actual spending and implementation targets?
- Is the necessary public budget information available to conduct a multiyear assessment of the financial performance of policies, programs and projects affecting housing and living conditions of those vulnerable and needy inhabitants of the country?
- Does the public have access to the budgets of private companies and organizations operating in the housing sphere and having an effect on the housing rights entitlement of habitability?

- ❑ Does the reliable budget information support the public claims of those responsible for the budgets intended for improvement of living conditions of the needy, particularly in the housing rights entitlement of habitability?
- ❑ What international obligations and commitments affect the public budget with ramifications on the housing sector, including the entitlement of habitability?
- ❑ What national obligations and commitments affect the public budget with ramifications on the housing sector, including the entitlement of habitability?
- ❑ What financial policies affect the public budget with ramifications on the housing sector, including the entitlement of habitability?

5.5. Obstacles, impediments, barriers

At the present stage in the monitoring process, you have well identified the elements arising from the human right and legal concept of adequate housing. You have completed the necessary review of international minimum standards that codify the right, along with the corresponding obligations on the ratifying State. Your process has taken you through the moral arguments of social movements and others, who are the very source of human rights throughout history. Those sources fill legal gaps and provide specificity to local human rights priorities and application. In your context, you also have identified which of the binding instruments and other theoretical guarantees apply to the case at hand.

At this point, you are advancing beyond the theoretical dimensions of the human right to adequate housing, its constituent elements and its guarantees. As a housing-and-land-rights monitor, you will now enter the practical dimension and assess the most difficult challenge in the field of human rights: implementation. The following sample questions guide the monitor to prepare needed data and arguments by detailing the present obstacles, impediments, barriers, threats and constraints that have brought about, or threaten to bring about a violation or deprivation of the right and the element of security of tenure and freedom from dispossession, which you are currently addressing.

When monitoring documenting any stage of this toolkit inquiry, or assessing the conditions affecting any right, it is essential to ensure the highest quality of information possible. It has been said often that information is power. In our case, this is especially true, but the degree of that power will depend largely on the following qualities of your information:

- Completeness
- Level of detail and specificity
- Date (freshness) of the information
- Integrity of the information (i.e., lack of contradictions)
- Effective (articulate, concise, understandable and correct) use of language
- Relevance: linkage to the question of housing and land rights implementation
- Credibility of source (reputation, effective presentation, link to issue and community)

In order to begin assessing the compatibility of the theoretical affirmations of the human right to housing and land with the local reality, you will determine now whether, and to what extent barriers, contradictions, obstacles, and impediments contribute to actual and/or potential violations of the entitlement to security of tenure and freedom from dispossession. This process is aided with the following battery of questions:

Self-determination

- Are the people dissatisfied with the terms of their conditions of housing habitability?
- Do the concerned persons or community lack the possibility to exercise an effective role in determining the terms of their housing habitability?
- Does the community lack sufficient information or capacity sufficiently to enjoy the human right to adequate housing, in particular, the entitlement of habitability of housing? [See the “**Information, education, capacity and capacity building**” entitlement in this toolkit.]
- Is illiteracy an impediment to the community’s access to sufficient information to enjoy the human right to adequate housing, in particular habitability of adequate housing (and land)? [See the “**Information, education, capacity and capacity building**” entitlement in this toolkit.]

Nondiscrimination

- To what extent is discrimination an issue in realizing the entitlement to habitability of housing?
- Is there (does the affected community report) any type of discrimination practiced randomly, occasionally or on the social level, or institutionalized in some form, affecting habitability of housing?
- What are the nature of the discrimination and its effects of the entitlement of habitability of housing?
- Is the community subject to a pattern of environmental discrimination, causing the degradation of housing and subjecting them to pollution and other harmful physical and social conditions. [See also the entitlement of “**Environmental goods and services**” and “**Location**” in this toolkit.]

Gender equality

- Is there any gender-based discrimination applied in realizing the entitlement to habitability of housing?
- Is the discrimination practiced randomly, occasionally or on the social level, or is it institutionalized in some form such that affects habitability of housing?
- Does local law on inheritance, divorce or other specialization fail to provide equal rights to males and females of all ages? How?

Rule of law

- Has the State failed to ratify any of the relevant international or regional treaties guaranteeing the human right to adequate housing?

- Has the State issued any reservations, declarations or understandings to international or regional treaties that possibly limit the affect of human right to adequate housing guarantees, particularly so as to affect the entitlement of habitability of housing?
- Has the State government failed to conduct a legal evaluation of housing rights implementation?
- Has the State government failed to present timely reports to the relevant treaty-monitoring bodies covering the human right to adequate housing?
- Has the State and its government failed to implement in good faith the Concluding Observations of the various treaty bodies concerning implementation of the human right to adequate housing?
- Do the three branches of government (judiciary, legislative and executive) operate with autonomous authority?
- Do the three branches of government coordinate to uphold and enforce a single system of law?
- Does the State lack a Constitution, or equivalent, guaranteeing gender equality?
- Does the State lack a Constitution, or equivalent, guaranteeing the rule of law, including access to justice and democratic participation and representation?
- Does the State lack a Constitution, or equivalent, guaranteeing the right to the continuous improvement of living conditions?
- Does the State lack a Constitution, or equivalent, providing that international relations be conducted within the framework and objectives of human rights, including economic, social and cultural rights?
- Does the country's legal system lack recognition of the human right to adequate housing, including habitability of housing?
- Do legal or procedural shortcomings impede the admissibility of claims invoking international treaty obligations in the defense of human right to adequate housing, in particular, the entitlement to habitability of adequate housing (and land)?
- Has the State failed to ratify the Rome Statute on the International Criminal Court, limiting the options to seek justice and remedy for gross violations of the human right to adequate housing?
- Does the political system in the country lack coordination among branches of executive, legislative and judicial government?
- Does the State lack a Constitution, or equivalent, guaranteeing the rule of law, including access to justice and democratic participation and representation?
- Has the legislature failed to harmonize national laws with international human rights treaty obligations in the formulation of policies affecting the human right to adequate housing, in particular, with affect on habitability of adequate housing (and land)?

- Are there contradictions in the national law affecting habitability of housing?
- Is there insufficient enforcement of laws and/or policies against arbitrary eviction enforced, including safeguards for vulnerable groups, such as: women, children, orphans, etc.?
- Do local authorities fail to recognize explicitly the application of the international human rights treaties that the State has signed and/or ratified and that guarantee the human right to adequate housing, including the entitlement of habitability of housing?
- Is national and local legislation inconsistent with the human rights right to housing and land, including habitability of housing?
- Is law enforcement inadequate to ensure enjoyment of the entitlement of habitability of housing?
- Are law enforcement officers in need of training in, and information about the human right to adequate housing in order to uphold the entitlement of habitability of housing?
- Do lawyers, prosecutors and/or judges lack awareness and training in the housing and land rights law in order to uphold and defend the entitlement of habitability of housing?
- Has the national court system failed in any way to admit claims of housing and land rights victims, including those whose entitlement to habitability of housing has been violated?
- Do the rule-of-law, regulations, or their enforcement fail to govern market forces effectively to ensure the respect, protection, promotion and fulfilment of the right to adequate housing (e.g., governing monopolies, procedures for legal redress)? How does fact affect the enjoyment of the housing rights entitlement to habitability of housing?
- Is enforcement of national or local zoning-and-planning standards of habitability of housing unenforced, or inconsistently enforced, including minimum structural and environmental criteria. What is the cause of this failure: e.g., corruption, lack of training for law enforcement, prosecutors, lawyers, etc.?
- Does local law restrict civil society associations from advocating rights or providing services that would advance the respect, defense, promotion and fulfillment of the human right to housing, including habitability of adequate housing (and land)?

Nonregressivity / nonretrogression

- Has the State failed to take steps to improve housing rights, especially affecting habitability of housing, in the past period (year[s], or since your last assessment)?
- Have new laws degraded protection of human right to adequate housing in the recent period, particularly affecting habitability of housing?



- Have new policies degraded protection or enjoyment of human right to adequate housing in the recent period, particularly affecting habitability of housing?
- Have national programs led to a decline in the enjoyment of human right to adequate housing in the recent period, particularly affecting habitability of housing?
- Have infrastructure or physical features of the built or natural environment led to a decline in the enjoyment of human right to adequate housing, particularly affecting habitability of housing?
- Have nationwide programs failed to improve, or led to a decline in, the enjoyment of human right to adequate housing, in particular the terms of habitability of housing?
- Have local projects supported by State or local authorities failed to improve, or led to a decline in, the enjoyment of human right to adequate housing, in particular the terms of habitability of housing?
- Have public budget allocations failed to improve, or led to a decline in, the enjoyment of human right to adequate housing, in particular the terms of habitability of housing?
- To what extent has the State government's efforts fallen short in the improvement the terms of habitability of housing, especially of the poor, vulnerable and minorities?

International cooperation

- Are foreign State or non-State interests operating in the housing and human settlements sector in the country and affecting the entitlement of habitability of housing? Are their roles negatively affecting the enjoyment of habitability of housing?
- To what extent have external parties (States, or international financial institutions) negatively influenced your country's official policies or practices in guaranteeing the right to habitability of housing?
- Has the State neglected to take steps, "individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources" and capacities to ensure (especially poor and vulnerable) people's habitability of housing?

✓ Local obstacles

Institutions

- As far as human right to adequate housing and habitability of housing are concerned, are there gaps or shortcomings in the State, government and other public institutions positioned to improve living conditions, including the housing-rights entitlement of habitability of housing?
- Do national or local zoning-and-planning institutions fail to uphold standards of housing habitability consistently, including minimum structural and environmental criteria. What is the cause of this failure: e.g., corruption, lack of training or professionalism of building inspectors, incompetence of physical planners, etc.?

- Has there been a recent decrease in the quantity or quality of civil society institutions upon which the community now relies.
- Do the concerned private and nongovernmental institutions fail to guarantee gender equality in the defense, promotion and implementation of the human right to adequate housing, in particular, habitability of housing?
- What informal institutions (including social norms) function so as to impede the enjoyment of the human right to adequate housing and, in particular, habitability of housing?⁴⁸⁸
- Do these institutions actually lack the will or capacity to protect legal habitability of housing for those in need?
- Do these institutions actually lack the will, knowledge or capacity to use the relevant treaty body Concluding Observations in work of monitoring and lobbying officials

Policies

- Do the relevant ministries omit to incorporate international human rights treaty obligations in the formulation of policies affecting the human right to adequate housing, in particular, with affect on habitability of adequate housing (and land)?
- What statewide policies are still needed to guarantee of the human right to adequate housing and, in particular, habitability of housing?
- Have the relevant national policies neglected to ensure acceptable levels of self-determination in determining the terms and conditions of habitability of housing? How and why?
- Have national policies failed to reach their targets (even despite announcements of official intent) positively to affect habitability of housing? How and why?
- Do national or local zoning-and-planning policies fail to establish sufficient habitability standards, including structural, environmental and other standards of habitability
- Have national gender policies led to improvements in the conditions of legal habitability of housing in the housing sphere, especially for those in need? How and why?
- Have the State's policies on access to justice failed to improve conditions of legal habitability of housing, especially for those in need?



⁴⁸⁸ The operative concept of institutions here encompasses both bonding and bridging institutions. "Institutions," in this sense, involve the rules of the game under which formal and informal activity is conducted, and include public institutions, private institutions, collective practices and norms, as well as changing norms (e.g., brought about through the youth, technology, economic or demographic shifts, and other emerging behaviours). According to Douglas C. North, 1993 Nobel economics laureate, institutions are "humanly devised constraints that shape human interaction."

- Have national housing policies failed to ensure the continuous improvement of living conditions, in particular, by stagnating or degrading the housing rights entitlement of habitability of housing, especially for those in need? How and why?
- Do national housing policies lack consideration of, and/or reference to the international human rights instruments relevant to the human right to adequate housing and habitability of housing, and to which the State is bound?
- To what extent have external parties negatively influenced your country's official policies or practices in guaranteeing the habitability of housing?
- Have State housing-policy implementing institutions omitted to seek international cooperation in the human right framework by conditioning international entities operating within the country also to respect, defend, promote and fulfil the human right to housing, in particular the entitlement of habitability of housing?

Programs

- What negative steps has the State taken on a national scale in the past period (year[s], or since your last assessment) to improve housing rights, especially the entitlement of habitability of housing? These may include declining legal assistance laws, deteriorating infrastructure without repair, declining implementation efforts?
- What related private-sector or NGO programs have failed to enhance the enjoyment of the human right to adequate housing, in particular, habitability of housing?
- Is there a lack of, and need for national gender programs completed, ongoing or planned with the purpose and effect of improving the conditions of legal habitability of housing in the housing sphere, especially for those in need?
- Do existing programs omit to cover land and inheritance rights?
- Have the intergovernmental relations declined between your State and others leading to a decline on options for international cooperation in advancing the respect, defense, promotion and/or fulfilment of the human right to adequate housing, in particular habitability of housing?
- Has the government in the concerned State declined to cooperate with other States, intergovernmental agencies, or foreign non-State parties to identify and adapt good practices locally to improve the entitlement to habitability of housing?



Projects

- What relevant State actions or omissions have led to the failure of limited-scale or pilot projects in the past period (year[s], or since your last assessment) to improve housing rights, especially the entitlement of habitability of housing?

- ❑ What private-sector or NGO projects have failed to seek, or fallen short of their intended goal to guarantee the human right to adequate housing and, in particular, habitability of housing?
- ❑ Have such local projects undermined local self-determination with negative effect on the conditions of habitability of housing? How and why?
- ❑ Are foreign State or foreign private interests operating projects negatively affecting the housing and human settlements sector in the country and affecting the entitlement of habitability of housing? How and why?
- ❑ Have projects conducted by local or international entities in the country privatized the provision of housing or public services replaced the role and responsibility of the State and local authorities to fulfil the human right to adequate housing, in particular the entitlement of habitability of housing for those in need?



Budgets

- ❑ Are there obstacles to obtaining adequate information about public expenditures in the housing sector, or in areas affecting the enjoyment of the human right to adequate housing, including habitability of housing?
- ❑ Is there a lack of legal and actual protection of the right to information, including information and documentation on public budget expenditures in the housing sphere related to the entitlement of habitability of housing?
- ❑ Are public budgets inadequate to guarantee the human right to adequate housing and, in particular, habitability of housing?
- ❑ Is there underspending of the budget such that impedes the achievement of policy, program or project implementation targets, affecting habitability of housing?
- ❑ Do public budget items and actual financial performance reflect a lack of sufficient priority given to implementing policies, programs and projects to improve housing and living conditions, affecting also habitability of housing, of those vulnerable and needy inhabitants of the country?
- ❑ Does the public have access to the budgets and financial performance data of private companies and organizations operating in the housing sphere and having an effect on the housing rights entitlement of habitability of housing?
- ❑ Does the reliable budget information contradict the public claims of officials and institutions responsible for the continuous improvement of living conditions of the needy, particularly in the housing rights entitlement of habitability of housing?
- ❑ Do international obligations and commitments negatively affect the public budget with ramifications on the housing sector, including with negative affect on the entitlement of habitability of housing?

- What national obligations and commitments affect the public budget with ramifications on the housing sector, including the entitlement of habitability of housing?
- What financial policies constrain the public budget with negative consequences on the housing sector, including the entitlement of habitability of housing?
- Is the achievement of habitability of housing accompanied by an inordinate economic burden?
- Is the State failing to regulate effectively the terms and conditions of housing market, so as to avoid corruption, collusion, fraud, discrimination, nepotism and any arbitrary criteria? How is this affecting the entitlement of habitability of housing?
- Is the State prohibiting or impeding individual and community initiatives toward obtaining habitability of housing, individually as well as collectively?
- Are State authorities permitting other parties to interfere with community efforts toward obtaining habitability of housing, individually as well as collectively?
- Are present government mechanisms and structures inefficient at assisting the needy population from gaining access to habitability of housing?
- Does the State lack needed resources to ensure habitability of housing, especially for the poor, vulnerable and needy?
- Does national political disharmony impede enjoyment of the human right to adequate housing and habitability of housing?
- Is there armed conflict in the country impeding the private and/or public institutions from carrying out development and delivering services that safeguard and improve habitability of housing conditions?
- Has a natural disaster inflicted parts of the country, creating conditions that negatively affect the human right to adequate housing, including the entitlement to habitability of housing? Do these conditions impede relief or reconstruction assistance by public and private actors?

5.6. The victims and vulnerable persons: the actors

At this step in the housing and land rights monitoring process, you will have to provide relevant facts and figures concerning the people who already have been affected and those who remain vulnerable. You should also identify and describe precisely which part of the population is affected.

Those affected (victims or vulnerable) individuals and groups could be, for example, an indigenous community historically undergoing discriminatory treatment and land confiscation. It is essential to report the number of affected people, among them proportions of children, women and other groups having special needs, such as the elderly, who may be particularly affected.

In your inquiry into the identities of the victims and the vulnerable inhabitants, it is vital that you determine the place and time, as well as the characteristics of the affected persons in

the case. The numbers and any demographic data of the composition of the affected population are critical to understanding the case and characterizing the type of violations. The violation or vulnerability may be multidimensional (or intersectional), involving more than one form of discrimination. Knowing the victims and vulnerable persons can help determine which combinations of housing rights elements are simultaneously affected. In describing the population, knowing the particular vulnerabilities and special needs of the affected persons or community (whether arising from historical factors, gender, age or other demographics) complete the picture that you eventually will present to your intended audience.

✓ Distinguishing between the victims and vulnerable

It is also important for the monitor to distinguish between those victims, whom already have been violated, and those who are vulnerable to future violation or deprivation. Of course, this distinction will be strategically important later in the process, when the housing and land rights monitors and defenders choose an action in response to the violation. You will have to determine then if your intervention is to be remedial or preventive. In any case, an eye to those who remain vulnerable even after the principal violation, as well as after a particular solution to a case, will maintain the monitors focus—as necessary—on the further interventions needed toward the ultimate realization of the human right to adequate housing and land.

The following sample questions guide the monitor to prepare needed data and arguments, in the case of any present obstacles, but focusing on the human dimension in the case of a violation of the housing rights entitlement of habitability of housing.

Victims

- Identify the type and form of violation of the entitlement to habitability of housing:
 - Homelessness
 - Forced eviction
 - Arbitrary demolition
 - Denial of equal inheritance rights
 - Confiscation of property by public officials and bodies
 - Confiscation by private actors (criminal gang, settlers, armed groups)

- Who has been affected by the violation of the entitlement of habitability of housing?

- How many people have been affected in the same way in the last year (any time period)? Does it demonstrate a pattern?

- Identify and provide demographic details of the victims:
 - Numbers and proportions of refugees
 - Affected prisoners, including numbers
 - Numbers and proportions of migrant workers
 - Numbers and proportions of minority persons
 - Numbers and proportions of males and females
 - Numbers and proportions of indigenous and/or tribal and semitribal people
 - Numbers and proportions of elderly, disabled, medically challenged persons with special needs
 - Numbers and proportions of members of groups subject to (current and historic) discrimination

- Numbers and proportions of impoverished inhabitants, including those subject to discrimination on the basis of their economic status or work (e.g., Dalits)
 - Numbers and proportions of any other relevant group identity of victims
- Where does the violation of this right mostly occur (i.e., rural, urban, slums)?
- When does this violation mostly occur? Day or night? Weekend? Certain times of the year? Why does the violator choose this timing?

Vulnerable individuals and groups

- Identify the type and form of vulnerability to future violation of the entitlement to habitability of housing:
- Prisoners
 - Homelessness
 - Forced eviction
 - Arbitrary demolition
 - Denial of equal inheritance rights
 - Confiscation of property by public officials and bodies
 - Confiscation by private actors (criminal gang, settlers, armed groups)
- Who are the populations most likely to experience the violation of the right to habitability of housing? Why are they vulnerable?
- Identify and provide demographic details of the concerned vulnerable persons or groups:
- Numbers and proportions of refugees
 - Numbers and proportions of migrant workers
 - Numbers and proportions of minority persons
 - Numbers and proportions of males and females
 - Numbers and proportions of indigenous and/or tribal and semitribal people
 - Numbers and proportions of elderly, disabled, medically challenged persons with special needs
 - Numbers and proportions of members of groups subject to (current and historic) discrimination
 - Numbers and proportions of impoverished inhabitants, including those subject to discrimination on the basis of their economic status or work (e.g., Dalits)
 - Numbers and proportions of any other relevant group identity of vulnerable persons
- Explain the insecurity of their situation and give details about the naturally vulnerable populations (women, children, indigenous, slum dwellers, refugees, workers/migrant workers, farmers, etc.).



Focus on multidimensional / intersectional affects

Your case will be enhanced when your information includes emphasis on the particular types of victimization or vulnerability by focusing on the social groups typically subject to multidimensional, or intersectional types of deprivation. The monitor should identify such multiple forms of deprivation for each of the groups already identified in this section (above). This step allows you to identify the nature and causes of the particular affects on certain

groups who may be made vulnerable already in addition to, or in advance of the specific housing land rights violation, or anticipated violation. The following sample questions will lead you to clarify this point.

Women

- Are women in the given community or case subject to deprivation of their entitlement to habitability of housing?
- What are the reasons for this condition? Is it by some custom, religion or other ideological motivation?
- Does the practice of domestic or social violence against women somehow impede women's enjoyment of their entitlement to habitability of housing?
- Are the formal or informal terms of inheritance already biased against women in a way that negatively affects the enjoyment of the entitlement to habitability of housing?

Children

- Do housing conditions impede acceptable access to public goods and services as an element of the RAH, so as to obviate violence and abuse, including psychological & sexual abuse, within the home or community?
- Are housing conditions, in particular, the rights element of habitability of housing, suitable for children to carry out their studies?
- Are housing conditions, including habitability of housing, conducive to achieving the highest attainable standard of physical and mental health?
- Do poor and degraded living conditions in the housing contribute to a denial of, or decline in the enjoyment of the congruent right to education, especially for children? How does this denial or decline manifest? [See also the entitlement "**Information, education, capacity and capacity building**" in this toolkit.]



Racial, ethnic or other groups

- Who are the victims or vulnerable persons or community subject to discrimination that includes denial of habitability of housing?
- Have the affected persons or groups (either the vulnerable or the victims) been denied their right to suitable housing, and particularly to habitability of housing, because they belong to a specific minority, ethnic or indigenous group?
- How has historic discrimination, if any, affected the current situation?

✓ **Victims' case documentation form**

5.7. Losses/consequences

✓ Quantification methodology

Quantifying violations to the right to adequate housing: a tool for evaluating the effects of demolitions, confiscations and forced evictions

The purpose of this tool is to help determine the value of costs and losses that victims incur as a consequence of the violation their housing rights. Using this tool will aid in the various necessary stages of proper monitoring of specific violations of the right to housing, including:

1. Documentation and recording
2. Monitoring and reporting
3. Quantifying/evaluating
4. Identifying and solving problems
5. Follow-up assessments
6. Fact-finding missions
7. Public information and campaigns
8. Social mobilization
9. Media work
10. Compensation efforts
11. Legal defense and prosecution
12. Monitoring international obligations

The quantification methodology and “Loss Matrix” are designed to aid human rights workers responsible for each stage in the monitoring process, including interventions that are both preventive and remedial. These stages may involve the same individual human rights worker at each stage, or may involve a division of team labor. In either case, this tool also can serve as a vehicle for organizing tasks in a coordinated and complementary way, when more than one individual or organization is involved in the process. For instance, if different teams or organizations are specializing in respective geographical areas, applying this tool commonly aids the process to avoid duplication and the discrediting contradiction of facts.

Whether or not your monitoring objective is legal defense, policy analysis, compensation or public information, the quantification of the effects of the violation strengthen your argument and, consequently, help mobilize support for the movement to end, redress and compensate/obtain restitution for the violations. In particular, your findings will substantiate the assertion that many housing rights violations actually widen and deepen poverty, having a de-development effect on the community and country.

The material and otherwise-calculable costs resulting from the violation are determined for each unit (household) affected and then totaling them. Alternatively, in the case of multiple units affected, a representative sample should be obtained to determine the average values, which then are to be multiplied by actual numbers of units affected.

Other incalculable losses still have to be recorded and reported in narrative terms. Such narrative explanation and analysis will be useful as an accompaniment to this quantification table.

Both short-term and long-term values are to be assessed.(You can follow examples of traffic dispute jurisprudence, or the law pertaining to insurance or divorce cases in your country to come up with a methodology of determining personal injury and pain-and-suffering damages claims for compensation purposes.) Accurate and thorough quantification of costs and losses calls for both a great deal of cooperation between the monitor and the affected

community, and a continuous relationship over time. In order to capture many of the values, sustained monitoring and calculation are required over time. It is, therefore, recommended that such monitoring effort be undertaken or coordinated by those who maintain a program and commitment to the affected community over the long term.

This tool seeks to quantify the costs of victims, as well as public, or social costs. For our purposes, the principal victim(s) would be those persons whose property and lives are directly affected by the act, be it a demolition, confiscation and/or eviction, etc. (This tool would be used for any and all categories of violation.) Ancillary or indirect victims would be those who undergo the cost or other harm as a result of an act intended or directed at others. The indirect victims' losses and damage should be included in the overall assessment of the violation's effects.

The middle column, entitled "Methodology," in the quantification table found at the "**Loss Matrix**" link contains commentary on the contents of the calculated costs/losses and provides guidance on how to calculate them. It is there where you will record in your applied version of the "Loss Matrix" the type of items or values totaled under the particular type of cost/loss. There, too, you could cite whether or not the values are losses/costs to the principal victims only, or include those of indirect victims, such as those enduring collateral damage from a house demolition. The "Methodology" description should be as complete but concise as possible, within a short line or two.

It is possible to modify "Loss Matrix" to the user's discretion. (However, we emphasize that any modifications be shared among the community of monitors to ensure compatibility of findings.) For example, certain direct and indirect victims' losses may need to be separately calculated for some reason. In that case, an additional column can be added. In any case, however, it is important to arrive at a global cost figure for the violations under review. The column at the far right under each category of cost should be totaled using the imbedded Excel formula.

Follow the links to access the details of the quantification methodology and "**Loss Matrix.**"

- Victim's material losses
- Victim's nonmaterial losses
- Other than victim's material losses (public costs)
- Other than victim's nonmaterial losses (including social costs)

Contents and methodology for determining each category of loss/costs

Victims' Material Losses

The Structure

The fair market value of the house, shelter or other structure(s). This is probably greater than the cost, as indicated in official records of the most recent tax assessment, for example. That price may be a guide, but is likely to be out of date with the value that would be obtained if the property were to be sold on the market. The market value would also likely be less than the "speculative value," which is considered to be that value (price) that a speculator, investor or other interested party would anticipate after the demolition/eviction and after converting the structure—if partially retained—for eventual exchange or reassessment. The reference for determining the market value would be reliable real estate agents, banks, or other parties involved in the sale and exchange of such properties. The

standard methodology would involve collecting three quotes/estimates and selecting the average, or taking the middle quote as the fair market value.

In the likely event that no such property market is actively issuing quotes on the value of the affected property. The remaining alternative method for determining market value would be the estimated cost of replacing the property at current market values.

Note that the victim incurring the loss in this case would be the owner(s) and or title holder(s), including those owning the property individually, or collectively, under formal title, or by traditional tenure systems.

Plot

The plot and the structure are considered separately in this methodology to accommodate systems where the two aspects of property value are determined separately, or by different methods. For example, a cooperative arrangement may provide for outright title to the structure, but a “share” of the land area under it. It also allows for disaggregating these values in the event of a dispute over one and not the other. In the event that the structure and the land are both held in title by the same owner and the values are customarily assessed in combination, the structure and plot values could be combined in the matrix.

The eviction and/or demolition may not involve the dispossession of land title or ownership of the plot on which the structure stands. In that case, the evaluator would proceed to the next categories and not enter a value for the plot. However, in some cases, such as in Israel, the land plot under a demolished structure may, perforce, be assumed by, or “revert to” the state as “state land” or “national land.” The evaluator must be familiar with the local laws and regulations to determine if that is the case in the event of an eviction or demolition. That may determine whether or not a value is entered in this category of the matrix or not.

In the case of a housing plot being confiscated by the state, determining the value of that plot may be difficult if, again, no market value can be determined for the affected area. In that case, the methodology would involve determining the cost at current market value of a comparable site in another location.

Contents

Each affected party should cooperate with the field workers to provide an inventory of the actual contents lost and damaged in the demolition. The value of those contents for this quantification purpose is the **replacement value** of the items, not the market value. The contents (furniture, clothing, foodstuffs, electronics, housewares items, etc.) would be subject to depreciation and the resale or fair-exchange values would not be sufficient to cover the cost of replacement. The replacement value represents the actual cost of repurchasing items comparable in quality to those lost or damaged by the demolition. (For heirlooms and other items sentimental value, a replacement cost should be included in this category; however, the nonmaterial loss or irreplaceability should be expressed in the “Victims’ Nonmaterial Losses” section of the matrix, with a narrative either included in the matrix or attached to it.

Collateral damage

This section of the matrix allows for inclusion of the material losses to the indirect victims in particular, including neighbors' and public property that are affected by the act. In cases of violent eviction or demolition, using bulldozer or explosives, for example, nearby property can be damaged in various degrees, or destroyed.

Infrastructure

This section refers to services and other infrastructure lost in the demolition/eviction/confiscation that would have to be replaced after the event. For example, electricity provided at the original site may have to be replaced by a generator or purchasing energy from an alternate source. Water, previously available from installed or nearby facilities may have to be replaced by purchasing water or hauling it from another source. The resulting added cost—including the relative cost of labor at the going rate of such work for hire, which is beyond the existing regular costs of obtaining same—is the value to be calculated here.

Business losses

If the demolition/eviction/confiscation results in the loss of a business, or a portion of business, that cost is to be included here. Those losses are the subject of subcategories to be detailed below.

Equipment/inventory

This includes the value of machinery and equipment, other installations, such as furnishings and built ins, as well as all stock and supplies. This should include also the property belonging to others lost or damaged in the event. For example, a laundry or repair service would hold clients' property to be processed and returned. The values of those items are also to be included in this figure.

Prospective income

The loss resulting from inability to deliver goods and services, and the anticipate profit from existing stores, orders, contracts, etc. that would be unfulfilled due to the event. The short-term and long-term affects are to be calculated by different methods. This category of loss follows the method developed locally for determining "goodwill" as an asset, which would include the projected income from a pattern of business developed through the lifetime of the enterprise. [Refer to insurance law methods.]

Mortgage, other debts and penalties

The demolition/eviction/confiscation removes the owner's relationship with the land and/or structure, contents, livestock, inventory and other matters of material value, such as materials and work performed for physical improvement to the property. However, the event does not relieve the owner from responsibility to repay for those values obtained on a credit basis. Those values, including any penalties and increased interest resulting from the event, are to be included here for both the short-term and long-term. If a situation prevails, as in many legal systems, that a debtor relinquishes claims (as in a natural disaster, for example), then that cost should nonetheless be calculated and listed under the category of "Other than Victim's Losses."

Livestock

The value of livestock lost and the treatment of those injured by the event is calculated here. This would include also the labor costs for time spent in rounding up dispersed livestock at the rate of pay for such work for hire. The calculus for these values includes the loss of anticipated returns from normal sale of, and/or produce from the animals, including their normally anticipated progeny over the short-term and long-term. In the case of the animals' value as beasts of burden, the returns on their labor are to be included in the figures provided under lost revenue, increased transportation costs, returns from crop loss, or other appropriate category.

Land

The landed property not associated with the affected structure itself is to be calculated on the basis of fair market value, as with the structure and its plot entered above. This could be land adjacent to the dwelling or other affected structure, or land confiscated separately. This land could be lost entirely through confiscation, or its value could be reduced as a result of the eviction or demolition. In the case of eviction, land title might not be lost outright, but the conditions created by the eviction may prevent the owner(s) from returning to or reclaiming their land. In that case, the land in question would be calculated as an outright loss.

Trees/crops

The value of a lost or damaged nonfruit-bearing, or otherwise unharvestable tree or other vegetation would be determined by the cost of purchasing and replanting a comparable replacement. The nonmaterial, aesthetic, or sentimental value of the tree or other vegetation would be included by narrative in the Victim's Nonmaterial Losses item under Environment or Heritage, as appropriate. The value of harvestable trees and crops would include the value of the replacement itself for fruit-bearing trees and crops, as well as the (short-term and long-term) value of the harvest. The loss of timber would be calculated accordingly also, with the value being the anticipated return from the harvesting or sale of the tree itself.

The ecological loss of vegetation, depending on the nature of the event—if by demolition were by fire or other destructive means—also carries a value. Ecological damage is calculated on the basis of the restoration costs entailed. Collateral damage to wildlife and other natural assets, owing to the damage and the time required to restore it, may be of both a calculable and incalculable loss. Where possible, such calculable values should be included here. Otherwise, those losses are to be recorded in the narrative section of both the Victim's and Nonvictim's Nonmaterial Losses, for those losses would be of a more public nature.

Lost/decreased wages/income

The loss of a home, including subsequent short-term or long-term resettlement, may involve the loss of livelihood, whether that livelihood is linked to the dwelling and/or land lost. In any event, wages would inevitably be lost (to victim or her/his employer) for nonproductive time attending to the event and its aftermath. Resettlement can lead to loss of a job or jobs altogether, or necessitate securing alternative employment, especially if temporary or long-term resettlement is far from the regular workplace. To calculate that value, one would subtract the short-term and long-term wages and other income of affected persons from the normal, anticipated wages and other income before the event. Since obtaining new

employment and other income involves a loss of certain benefits, such as accumulated vacation leave, seniority and other benefits, the relative loss of those values should be included here if calculable. Job seniority may not be calculable value in monetary terms if it involves merely standing vis-à-vis colleagues. However, if that seniority arguably would have led to promotion with material effect in the short or long terms, that value is to be factored here as well.

Health care

The event itself or its aftermath may have negative health consequences. Social science has recorded the effects of eviction and resettlement upon the increased mortality and morbidity rates of the affected communities. While these notable consequences belong among the Victim's Nonmaterial Losses, the care for these consequences has clearly calculable values. The loss of life, limb and other health effects are the subject of the laws of states for the purposes of calculating victim compensation in insurance and other cases involving law suits. A sample of such methods taken from such statutes could form a composite methodology for calculating victims' health losses here.

The overcrowding, such as in interim or alternative housing arrangements, often leads to negative health consequences for those evicted, as well as for those providing the alternative shelter in their own quarters. The care and treatment of these health consequences (such as influenza, scabies, malnutrition, etc.) are an additional value added to these health care costs.

Interim housing

Eviction, confiscation and demolition victims often seek alternative housing with relatives or friends, either within the community or elsewhere. This housing has a value, which is to be calculated on the basis of fair rental rates for such shelter, whether rent is paid or not. It remains a cost and value that is subsidized in one form or another. It also can lead to an actual expanded definition of what constitutes the victim, for persons and groups offering assistance in various forms can be counted as second tier victims by virtue of the loss—voluntary or otherwise—incurred as a result of servicing the persons directly affected by the eviction, confiscation or demolition.

Bureaucratic and legal fees

While under threat of a violation, such as eviction, demolition and confiscation, the eventual victim would likely undergo costs related to both time spent and out-of-pocket costs in order to restrain or defend against the impending violation (if the threat is known in advance). Both the time and monetary costs incurred by both bureaucratic processes and legal advice and defense work should be quantified. Even if the legal advice given is free of charge to the affected person(s), those rendering the advice (NGO, CBO, other *pro bono* service) should put a value on that service for the purposes of this costing exercise. (The costs of bureaucratic efforts by public personnel is determined below under "Other than Victims' Nonmaterial Costs.")

Before the victim(s) can restore their proper housing, s/he conventionally undergoes a procedure and cost toward obtaining a license to rebuild or otherwise restore a dwelling. The costs incurred in this process, including fees, legal service, bribes and other out-of-pocket expenses should be included as a category in its own right.

Alternative/replacement housing

The cost of securing comparable housing on a permanent basis is represented here. (Temporary lodging costs are treated above under “Interim housing.”) The comparable housing is meant to include a dwelling with similar spatial dimensions, infrastructure, location and services as the home lost in the violation. This may involve calculation of the replaceable features of the original dwelling with some adjustments, depending on circumstances. For instance, a comparable dwelling space may be found near the source of livelihood, but may be in a differently priced market, and the adjusted figure would account for that. That dwelling may be comparable in most aspects, but lack services or infrastructure. In that case, the cost of obtaining the replacement services or infrastructure at the local rate would have to be added. Likewise, if the replacement housing is comparable to the original dwelling lost, but its location is less convenient for commuting to one’s source of livelihood or family and original community members, that additional transportation cost would be included in the “Transportation” item below.

Since this category of cost is of a more-or-less permanent nature, it should be cited in the “Long-term” cost column of the matrix. Typically, obtaining permanent replacement housing is a lengthy process; therefore, calculating this costs would be a subject for, and a further argument for follow up monitoring of violation cases.

Resettlement

The expenses of traveling and transport of goods to both interim and replacement housing sites form part of the resettlement cost. This, too, would likely involve the efforts and time on the part of several persons—with equivalent values—in order to locate and secure the short-term and long-term housing alternatives. All related costs should be calculated as much as possible.

Transportation costs

This category is the amount of difference between the amounts spent on transportation as a result of the eviction, demolition or confiscation and the amounts spent (if any) on transportation in the normal conduct of life at the original place of residence. Such values include expenses *and* time spent commuting to and from the source of livelihood, visiting family and community members, going to market, carrying out cultural and religious activities, visiting grave sites, conducting other official or private business, etc.

Victims’ nonmaterial losses

Health

In addition to the cost of medical treatment, the loss of health has a value seldom calculated in monetary terms. Methods for calculating the values of losses of life and limb can be found in local legal practice concerning divorce, traffic and insurance. This loss will have to be described in some detail in order to make your case.

Living space

A reduction in living space can have negative physical and emotional effects, as when an evicted family takes refuge with friends and relatives in small, temporary quarters. Consequences may include nervousness, loss of sleep or skin ailments. Be sure to describe this situation as part of the victim's experience.

Reconstruction licensing

Long waiting and frustration may result from the search for a license to rebuild after demolition, eviction or confiscation. This loss can be measured in time and stress, and should be included here.

Psychological harm

The victims may suffer mental stress and psychological harm, especially in the context of violence during eviction, or the trauma that accompanies homelessness after the violation. Children are particularly susceptible. Their story needs to be told. You may find criteria for quantifying the value of pain and suffering from the specialized practice of local law on traffic and insurance.

Disintegration of family

Displacement and other violations of adequate housing could lead to separation of family members and the deterioration of family relationships. With the psychological depression arising from housing and land loss, some victims may engage in antisocial behavior, such as violence or substance abuse that harms family relations.

Loss of community

Eviction, resettlement or land loss can fragment communities and reduce social capital built up over time. It can separate people from support systems (including child-care arrangements, domestic division of labor, etc.) upon which they depend for livelihood and social activities, while women bear an extra burden of maintaining an uprooted home.

Investment in infrastructure

Even—and especially—the most-impoverished communities have to invest in local infrastructure (e.g., electricity, water, transport, roads), particularly if the municipal institutions exclude them. Separation from these facilities by forced eviction, confiscation or demolition means a total loss of that investment, which may not be quantified, partly because they are the product of volunteer labor.

Investment in sanitation and waste-management systems

A community may provide its own waste-management solutions, however simple it may be, especially in the absence of public services. The vital functions of waste management may no longer be possible because of the separation, causing a loss of labor divisions or disposal options and spell a deterioration in the quality of life, including entitlements to environmental health as a result of the violation.

Investment in security protection systems

Informal communities are typically forced to seek their own security arrangements, since civil police may fail to serve them, or deteriorating living conditions may coincide with increased social violence.

Investment in educational infrastructure

Local communities' arrangements for popular education may be curtailed with eviction, leading also to the disruption of formal education (e.g., lost school days). Each home also is a locus of educational infrastructure, especially where children carry out their homework.

Heritage

For heirlooms and other items of sentimental value, as for land-based identity and culture, a replacement cost should be included in this category. However, the incalculable nonmaterial dimension, or irreplaceability should be expressed in the "Victims' Nonmaterial Losses" section of the matrix, with a narrative either included in the matrix or attached to it.

Victims' nonmaterial costs

Environment/ecology

Various forms of housing rights violation can spell the loss of environmental safety, health and recreation. Displacement and eviction sever the relationship between the inhabitants and their habitat. It may also force them to live in precarious or unsafe environments as a consequence.

Standing/seniority

A home owner who loses her/his housing also loses the status that comes with the property and securely tenured lifestyle. The formerly real or perceived capacity of the victims to advise and support others dissipates with the violation of their right to adequate housing, especially through land loss.

Relocating long-standing communities to new areas makes them low-status newcomers in competition with new, indigenous neighbors. Environmental degradation or rezoning may affect the status of a community negatively, leading to intangible—but sometimes also quantifiable—losses.

Political marginalization

Homeless people in many States are denied the right to vote for lack of a fixed address. Resettlement renders inhabitants politically weak vis-à-vis new neighbors, especially without the benefit of local connections and established relationships.

Social marginalization

Losing one's home and place to live often means losing also the social integration once enjoyed in the former residence. Spatial marginalization to the outskirts of the city may be synonymous with exclusion from social services and infrastructure.

Further vulnerabilities

The loss of home, land and social capital (i.e., productive relations within the community) can leave the victim(s) without protection from the natural elements, and/or without livelihood and sources of income. The homeless woman becomes further vulnerable to threats against her personal security and integrity long after the housing-rights violation.

Other-than-victims' material costs (public costs)

Police

The law enforcement officials engaged in either committing or remedying a housing and land rights violation, for example, represent a cost to the public purse. You can calculate their number, multiplied by the hours/days engaged and by corresponding wages and benefits to derive an estimate of the public costs incurred.

Bulldozers

In some cases (e.g., in Israel), courts issue orders to targeted inhabitants and communities to demolish their own homes. If they do not comply, the State carries out the deed and charges the victim for the service. In other cases, the housing rights monitor would have to calculate the cost of using the equipment and the wages of the operator to determine the public expenditure in carrying out that part of the violation.

Legal practitioners

Lawyers, either arguing against or defending housing and land rights, as well as judges, prosecutors and court staff dedicate time and materials that are covered from public budgets. Their level of effort and cost per unit of time (hours or days) could form a method of calculating these public costs.

Army

Military personnel and equipment used in the violation (or defense against a violation) also represent a cost. Quantifying these costs may be a more-elusive exercise, but it may be useful to pose estimates for your public's consideration.

Other forces

The public bodies may subcontract tasks and functions to private parties; however, those expenditures related to the case at hand would factor among the nonvictim's material costs.

Bureaucratic and personnel costs

The inspection, administrative processing, clerical and other desk work in public institutions may be carried out in connection with your case and paid by the tax payer. Your educated estimate of these values forms part of the public cost scenario.

Other-than-victims' nonmaterial costs

Social costs

Housing rights violations can be a cause or consequence of social unrest in a country. Depressed living conditions within a community often coincide with increased social violence, and dislocation often generates new adversary relations among inhabitants competing over territory and property, either at the original site, or in resettlement. Squalid living conditions also could give rise to practices and pathogens that bear a social cost in the form of declining public health.

Civic order

Linked to adequate housing and other economic and social rights, civic order typically deteriorates commensurate with the deprivation of living conditions. Resistance to eviction and forced relocation, demolitions and dispossession by any party is the natural response to a breakdown in civic order, including that characterized by the State omitting to implement its obligation to respect, defend, promote and fulfill the human right to adequate housing and land.

Political legitimacy

Depending on the facts and scale of a particular situation, a housing and land rights violation could undermine the legitimacy of the political party, government or even State in whose name the violation is committed. Alternatively, resolving and remedying a violation could have the opposite effect of recovering the loss of official credibility and legitimacy.

✓ **Loss matrix**

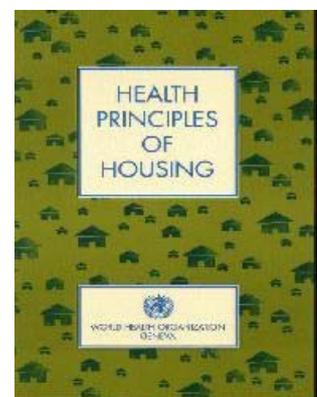
✓ **Housing contents inventory**

5.8. Duty holders

The professional monitor of the human right to adequate housing should provide a list as complete as possible of the duty holders both legally and morally responsible. This legal duty holder (i.e., the State and its agents) may be operating in conjunction with others in either the violation or the potential solution. The audience of your eventual action, whether they are the general public, journalists, or a prosecutor or judge, will need a clear and complete picture of the legal personalities, those who are responsible for their acts of commission and/or acts of omission, and who does what to whom, from the beginning to the present.

As borne out in the foregoing sections on sources of law and guarantees, the concerned State is always the principal duty holder. The State is the legal personality that is treaty bound by the obligation to respect, protect, promote and fulfil human rights, but also to aid those who have been deprived of them. The State's duties are threefold:

- To avoid deprivation,
- To protect and defend those facing deprivation,

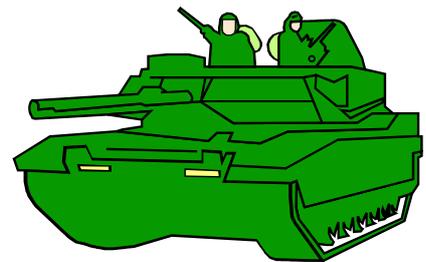


- To provide remedy in the forms of assistance and justice to those deprived.

You may find that the State, as duty holder, has committed acts that cause deprivation, or omitted to protect or remedy a deprivation through the obstacles identified above. One might also find that the duty holder is constrained by other actors or factors, such as natural disaster, or global economic recession.

Identifiable institutions and man-made forces, either internal or external, may be known to contribute to a violation. These may include actors such as the International Monetary Fund (IMF), the World Bank, a multinational corporation or national planners. You may find that these parties are either directly or indirectly responsible for the deprivation, or conditions leading up to it. So, too, are factors such as debt or traditional social practices. Especially when the role of the State is passive (i.e., by denial or failure to protect and ensure remedy to the victims), other actors may come to the fore. Private companies, including multinational corporations, for instance, regularly acquire assets and carry out projects that involve forced evictions and land confiscation. In some cases, the regional and international development banks have their well-articulated policies on compensation/relocation. However, these companies may be the right hand of State policies, or implementers of international public projects. That is why it can be crucial to record the relations between the different actors forming a whole chain of duty holders.

One must not overlook the possibility that duty holders, particularly as violators owing remedy and restitution to victims, might also be members of the community, or even family members of the victim(s). Where does the State duty lie in such a situation?



As the legal personality obliged to respect, defend, promote and fulfil the human right to adequate housing, the State's duty lies squarely in the execution of its human rights obligations to regulate behavior of legal persons within its jurisdiction (and areas where it exercises effective control) in order to uphold rights. The human rights treaties and other instruments provide the guidance on how States—and statecraft—should address human rights violations by third parties not only as matters of civil or criminal law, but also as means to ensure the legitimacy of the concerned government, or even State itself.

To have a full outline of questions for identifying the duty holders and the applicable legal obligations, you can use this "Toolkit" very effectively, since each element of the right to adequate housing that you have identified as relevant to your case has corresponding duty holders.

Primary duty holders: State authorities

- Has the State failed to take to prevent the violation of housing rights, especially habitability of housing? What are those neglected steps?
- Has the State protected the impoverished and vulnerable inhabitants and aided the victims (e.g., by prosecution, return, compensation, etc.) in the violation of housing rights, especially habitability of housing? Which are the particular bodies responsible for these preventive and remedial steps?
- Has the State taken sufficient measures to promote the entitlement of habitability of housing (e.g., human rights education, campaigns, public-service announcements,

awareness-raising publications, etc)? Which are the specific bodies responsible for those measures?

- ❑ What is the State's relationship with other duties holders regarding the assessed violations? Explain the nature of that relationship. Is it a contract, foreign aid package, nepotism, political patronage, etc.?

Secondary: Have other actors affected the denial of habitability of housing?

- ❑ Are other local, non-State actors somehow engaged in the denial of habitability of housing? Who are they and what is their role?
- ❑ What role do international financial institutions (IFIs) such as the World Bank, IMF, a regional development bank, or the World Trade Organisation have in determining the policies or conditions affecting of housing in the affected community/country?
- ❑ What role and influence do multinational corporations or international development agencies have in determining the policies or conditions of of housing in the affected community/country?
- ❑ How are these secondary duty holders responsible for the violation of the right to habitability of housing? To what extent do they influence State policies, programs, and laws having an effect on the violation?
- ❑ Do the secondary duty holders have internal policies/codes of conduct regarding housing rights, especially affecting the entitlement to habitability of housing? If so, are they publicly accessible?
- ❑ What are the relevant details of those policies or codes? How do they protect the human right to adequate housing and the entitlement of habitability of housing?
- ❑ Are these conditions part of an implementation contract or other cooperative agreement with State bodies or other partners?
- ❑ Before implementation, do they study the impact the projects will have or consider the possible unintended consequences?
- ❑ If there are several secondary duty holders, what is their relationship to each other, and how do they share responsibility for the assessed violation of the entitlement to habitability of housing? What is the relationship between each of them and the State?
- ❑ Do local authorities lack sufficient autonomy in housing and community development to apply locally relevant options to ensure the human right to adequate housing, especially habitability of housing?
- ❑ Do local authorities use their autonomy to protect and influence the central authorities of the State in a positive way, or do they participate in the violation and denial of the State's obligations and national policies?

Assessment

- To what extent is the State responsible for the vulnerability or violation of the housing rights entitlement to habitability of housing?
- To what extent are non-State actors responsible for the vulnerability or violation of the housing rights entitlement to habitability of housing?

5.9. Actions

The following table of actions (comprised of both preparation and implementation tasks) arranges a variety of possible problem-solving options for you by categorizing them for organizational and selective decision-making purposes. It is not an exhaustive set of options, but merely part of an array of possibilities for you to undertake with the affected community, depending on the present strengths (assets), weaknesses (liabilities), opportunities and threats.

Before selecting your actions, you should conduct a strategic planning exercise. For guidance click [here](#).

Footnotes shown here refer to relevant manuals, training materials, expertise, trainers, recorded experiences and/or methodologies already available to guide your chosen action toward a desired goal/result/solution. Toolkit users are encouraged to consult the HIC-HLRN website regularly for updates and further reference (www.hlrn.org) on constantly evolving updates, including strategies and practices arising from experiences throughout the global HIC and HIC-HLRN community.

Action		Solution
Preparation	Implementation	
Alternative tenure options		
Gather information for community to consider tenure options	Develop “limited equity cooperatives” ⁴⁸⁹	Legal secure tenure in adequate housing and sustainable land
	Inform and train community in pursuing land-tenure options ⁴⁹⁰	
Community capacity building		
Conduct training for community on their human right to adequate housing ⁴⁹¹	Mobilize community in local and national human rights campaigns	Greater community participation in projects,

⁴⁸⁹ The limited-equity cooperative is a form of housing tenure in which shareholder residents manage their buildings, within limits imposed by a charter, and have the right to get back what they have paid for their shares plus an allowance for improvements, if and when they decide to leave. See Duncan Kennedy, “The Limited Equity Coop as a Vehicle for Affordable Housing in a Race and Class Divided Society,” 46 Howard Law Journal 85–125, 85 (Fall 2002).

⁴⁹⁰ Luanne Warnock, *Sharing the Cost of Land Tenure and Stewardship* (Davis CA: Sustainable Agriculture Research and Education Program, University of California, 1996).

⁴⁹¹ See Circle of Rights (Washington: 2000); Jules N. Pretty, Irene Guijt, John Thompson and Ian Scoones, *Participatory Learning and Action, A Trainer's Guide* (London: International Institute for Environment and Development, 1995), available from Earthprint at www.earthprint.com; also materials of Peoples' Movement for Human Rights Education, <http://www.pdhre.org>.

		programs and policy formulation with well-defined human rights orientations
Legal service organizations and centers provide legal advice and representation to disadvantaged individuals and communities ⁴⁹²	Organize popular resistance to HRAH violations (demonstrations, petitions, sit-ins, street theater, etc.) ⁴⁹³	Community blocks housing rights violations by State and non-State entities
<i>Pro bono</i> (volunteer) lawyers provide legal advice and representation to disadvantaged individuals and communities	Organize national campaign on RAH ⁴⁹⁴	Coordinated community action and reaction to influence State authorities on housing policies
Build capacity of community-based and other civil society organizations to manage projects and campaigns ⁴⁹⁵		CBOs and NGOs more capable to support the affected people in responding rapidly and effectively to crises/violations
Train communities (in HRAH, strategic planning, technical skills, etc.) ⁴⁹⁶	Public agencies provide adequate technical, marketing and research assistance to disadvantaged community on an affirmative-action basis	Community better able to mount specific alternatives to official plans
Raise public awareness toward social mobilization through public education ⁴⁹⁷	Mobilize peaceful public protests to housing rights violations	Prevent forced evictions

⁴⁹² Gridley Hall and Burton Fretz, "Legal Services in the Third World," Clearinghouse Review (December 1990); Jose Diokno, Developmental Legal Aid in Rural Asean: Problems and Prospects (Washington: 1981); Richard J. Wilson and Jennifer Rasmussen, Promoting Justice: A Practical Guide to Strategic Human Rights Lawyering (Washington: Human Rights Law Group: 2001).

⁴⁹³ Morjane Baba, Guérilla Kit (Paris: La Découverte, 2003) ; Mike Prokosh and Laura Raymond, The Global Activist's Manual: Local Ways to Change the World (New York: Nation Books, 2002).

⁴⁹⁴ "Global Struggle and National Focus Note" (Geneva: HIC, 1996).

⁴⁹⁵ Kaplan, Allan, The Development of Capacity (Geneva: UN Nongovernmental Liaison Service, 1999); Goggey, Shirley, Rural Community Resource Centers: A Guide for Developing Countries (London and Basingstoke: MacMillan, 1988).

⁴⁹⁶ Barrameda, Teresita V. and Lea I. Espallardo, Learning, Reflecting and Acting for a Human Rights Future: A Training Manual for the Education of the Human Right to Housing in Urban Communities (Quezon City: Process, Inc. and New York: PDHRE, 2000).

⁴⁹⁷ Writing for change: An interactive guide to effective writing, writing for science, writing for advocacy [CD and user's guide] (Oxford: fahamu and IDRC, 2000); International Human Rights Internship Program, Ripple in Still Water: Reflections by Activists on Local- and National- Level Work on Economic, Social and Cultural Rights (Washington: University of Minnesota Human Rights Resource Center, 1997), Chapter 6, online at <http://www1.umn.edu/humanrts/edumat/IHRIP/ripple/toc.html>; Allan McChesney, Promoting and Defending Economic, Social and Cultural Rights: A Handbook (Washington: AAAS and HURIDOCS, 2000) Chapter 7 online at: <http://shr.aaas.org/escr/handbook/>.

Enhance monitoring-and-documentation skills and methods (e.g., archiving, statistics, multimedia, etc.) to build strong argumentation ⁴⁹⁸	Urgent Action appeals (organize regional and/or international mobilization) ⁴⁹⁹	Convince public of violations and need for resolution
	Public-information campaigns ⁵⁰⁰	
Design and implement alternative planning (community generated techniques in the people's initiative to design their own living environment) ⁵⁰¹		Participatory alternative housing projects adapted to the community's needs
Conduct an inventory (enumeration) of community human resources and social capital ⁵⁰²	Organize and divide volunteer labor of affected communities; and to areas to develop alternative plans	Community housing and built environment upgraded on-site as alternative to relocation.
	Community representatives lobby officials and legislators to cooperate with/approve community-proposed alternatives	Obtain adequate relocation site with suitable location, environmental conditions and livelihood options
Community organizing		
Consult with community representatives and conduct an inventory (enumeration) of community human resources and social capital	Establish a tenants union ⁵⁰³	Community presents a common position in defense of its rights and interests
Identify and locate absentee landlord ⁵⁰⁴		
Cooperate and negotiate⁵⁰⁵		

⁴⁹⁸ For guidance and methodology in documenting housing rights cases, see HLRN, Urgent Action! HLRN Guide to Practical Solidarity for Defending the Human Right to Adequate Housing [Arabic, English, French and Spanish versions] (Cairo: HLRN, 2003); and HIC Housing and Land Rights Network website: www.hlrn.org.

⁴⁹⁹ For guidance and methodology in building housing rights cases argumentation and mobilise solidarity, see HLRN, Urgent Action! HLRN Guide to Practical Solidarity for Defending the Human Right to Adequate Housing [Arabic, English, French and Spanish versions] (Cairo: HLRN, 2003); and HIC Housing and Land Rights Network website: www.hlrn.org.

⁵⁰⁰ Strategic Campaigning (London: Amnesty International, 2003).

⁵⁰¹ Youth in Unity for Voluntary Action--YUVA and University of Tasmania, "Settlement Upgrading Manual) [Sakkardara alterantive plan] (October 2000); UNCHS, Human Settlements Development through Community Participation (Nairobi, UNCHS, 1991); Nick Waters, The Community Planning Handbook: How People Can Shape Their Cities, Towns and Villages in Any Part of the World (London: Earthscan, 2001).

⁵⁰² Ibid.

⁵⁰³ Tenant organizing resources" on the National Alliance of HUD Tenants website: <http://www.saveourhomes.org/>.

Practical steps for forming a tenants union can be found on http://www.radio4all.org/aia/pro_tenant.html.

⁵⁰⁴ "Who is my landlord anyway?" (Seattle: The Tenants Union, 2004), go to <http://www.tenantsunion.org/research.html>.

Learn/use conflict resolution techniques and, including alternative dispute resolution ⁵⁰⁶	Decriminalize actions taken to obtain elements of HRAH	Administrative recognition of tenure and the human right to adequate housing of people without economic access
Mobilize inhabitants	Organize squatter actions and squatter-empowerment interventions ⁵⁰⁷	
Cooperate with National Human Rights Institutions ⁵⁰⁸	Propose and lobby for the implementation of National Plans of Action for Human Rights ⁵⁰⁹	National housing shortage, upgrading needs and land conflicts addressed in a National Plan of Action with provision for law and policy reform
Negotiate with municipal authorities to include the community/civil society as a partner ⁵¹⁰	Increase community participation in design, planning, implementation and maintenance of housing ⁵¹¹	Maintained and upgraded social housing
Train in negotiation and mediation skills ⁵¹²	Negotiation toward reconciling evictions/	Indigenous peoples regain historic land claims

⁵⁰⁵ For a collection of popular experiences in government-nongovernment cooperation in the field of human settlements, see Habitat International Coalition, *Building the City with the People: New Trends in Community Initiatives with Local Governments* (Mexico City: Habitat International Coalition, 1997), contents also available on line at HIC General Secretariat website, at <http://www.hic-net.org/library.asp>.

⁵⁰⁶ American Arbitration Association (AAA), *Grievance Mediation Procedures* (New York: AAA, 1992); AAA, *Resolving Your Disputes* (New York: AAA, 1993); American Bar Association, *Alternative Dispute Resolution: An ADR Primer* (Washington: Standing Committee on Dispute Resolution, 1989); Carpenter, Susan L. and W.J.D. Kennedy, *Managing Public Disputes: A Practical Guide to Handling and Reaching Agreements* (San Francisco: Jossey-Bass Publisher, 1988); Cochrane, Michael G. ed., *Attorneys General and New Methods of Dispute Resolution* (Washington: American Bar Association, 1990); Costantino, Cathy, A. and Merchant, Christina, S. *Designing Conflict Management Systems* (San Francisco: Josey-Bass Publisher, 1996); Edelman, Lester, Frank Carr, and James L. Creighton, *The MiniTrial* (Ft. Belvoir VA: U.S. Army Corps of Engineers Institute for Water Resources, 1989); Edelman, Lester, Frank Carr, Charles Lancaster, and James L. Creighton, *Non-Binding Arbitration* (Ft. Belvoir VA: U.S. Army Corps of Engineers Institute for Water Resources, 1990); Fine, Erika S. and Elizabeth S. Plapinger, eds. for the CPR legal Program, *Containing Legal Costs: ADR Strategies for Corporation, Law Firms, and Government* (Butterworth Legal Publishers, 1988); ; Folberg, Jay and Alison Taylor, *Mediation: A Comprehensive Guide to Resolving Conflicts without Litigation* (San Francisco: Jossey-Bass Publishers, 1984). For a bibliography and resources guide on alternative dispute resolution, see Office of Personnel Management website: <http://www.opm.gov/er/adrguide/Section7.asp>.

⁵⁰⁷ Diana Mitlin and David Satterthwaite eds., *Empowering Squatter Citizen: Local Government, Civil Society and Urban Poverty Reduction* (London: International Institute for Environment and Development, 2004), available from Earthprint at www.earthprint.com.

⁵⁰⁸ OHCHR, *National Institutions for the Promotion and Protection of Human Rights* [Human Rights Series No. 19] (Geneva: OHCHR, undated), at <http://www.unhcr.ch/html/menu6/2/fs19.htm>.

⁵⁰⁹ Office of the High Commissioner for Human Rights, *Handbook on National Human Rights Plans of Action* [Professional Training Series No. 10] (Geneva and New York: OHCHR, 2002), at: <http://www.ohchr.org/english/about/publications/docs/nhrap.pdf>.

⁵¹⁰ Janelle Plummer, *Municipalities and Community Participation: A Sourcebook for Capacity Building* (London: Earthscan, 2001); Janelle Plummer, ed., *Focusing Partnership: A Sourcebook for Municipal Capacity Building in Public-Private Partnerships* (London: Earthscan, 2002); Diane Warburton, ed., *Community and Sustainable Development: Participation in the Future* (London: Earthscan, 200X).

⁵¹¹ UNCHS, *Human Settlements Development through Community Participation* (Nairobi, UNCHS, 1991).

⁵¹² Scott Beattie, "Is Mediation a Real Alternative to Law? Pitfalls for Aboriginal Participants," *Australian Dispute Resolution Journal* 8 (1997) 57; Larissa Behrendt, *Aboriginal Dispute Resolution: A Step towards Self-Determination and Community Autonomy*. (Sydney: Federation Press, 1995).

	removals and land grabbing ⁵¹³	
Develop community/local government cooperation	Monitor transparency in decision-making processes	Obtain social housing (provided by government), based on need, with amortization based on minimum wage level (affordability)
	Design infrastructure projects	
	Reform public policy toward providing affordable housing	
	Propose and implement National Shelter Strategy ⁵¹⁴	
	Design national (comprehensive) development plans	
Develop the cooperative sector	Promote cooperative sector initiatives to provide affordable housing	
Use/lobby/cooperate with the international human rights system (interventions with factual, legal and political mechanisms of the UN and regional human rights systems) ⁵¹⁵	Undertake negotiations at international/ multilateral level (whereby negotiators representing the State assert their prior obligations under international human rights treaty law against IFI [World Bank, regional development bank, IMF, etc.] and WTO conditionalities leading to housing rights regressive / retrogressive violations) ⁵¹⁶	Obtain/ensure continuous regulation of housing market practices (e.g., to ensure tenure security, accessibility of housing, building materials, direct investment, etc.)
		End to practices of land confiscation through foreclosure, adverse possession and eminent domain without adequate, consensual alternatives
Develop / reform / enforce law⁵¹⁷		

⁵¹³ Michael Asch and Norman Zlotkin, "Affirming Aboriginal Title: A New Basis for Comprehensive Claims Negotiations," in Michael Asch, ed., *Aboriginal and Treaty Rights in Canada: Essays on Law, Equality, and Respect for Difference* (Vancouver: University of British Columbia Press, 1997).

⁵¹⁴ UNCHS, *Developing a National Shelter Strategy: Lessons from Four Countries* (Nairobi: UNCHS, 1990); OHCHR, *Handbook on National Human Rights Plans of Action* (Geneva: OHCHR, 2001)

⁵¹⁵ See "NGO participation in the activities of the Committee on Economic, Social and Cultural Rights," UN doc. E/C.12/2000/6, 7 July 2000, website: <http://www.hchr.un.ch>; and "Revised general guidelines regarding the form and contents of reports to be submitted by states parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights," UN doc. E/C.12/1991/1, 17 June 1991.

⁵¹⁶ INCHRITI, *Trade, Investment, Finance and Human Rights: Essential Documents* (Geneva: INCHRITI, 2001).

⁵¹⁷ Mario Rosário, "[Action "Tsimá Ga Ku Aka" to build together](#)" (1996); Janeth López, "[Asesoría en vivienda para el proceso de reinserción en Colombia](#)" (1996); K.A. Jayaratne, "[Collaborative Partnership to Improve the Low Income Neighbourhoods](#)," (1996); Michael Shapcott, "[Rupert Pilot Project. A self-Help and Community Rehabilitation Project in Canada](#)" (1996); Leopold Mutembei, "[Struggles of the urban poor to improve their living conditions](#)" (1996); Leonard Chileshe Mulenga, "[The case of Bauleni Upgrading](#)" (1995); Johan Silas, "[The Improvement of Low Cost Housing and](#)

Initiate/reform legislation and regulatory processes in compliance with the human-right-to-adequate - housing framework	Undertake class action suits (with minimum of [e.g., at least 15] physical or legal persons undertaking a litigation action, generally in the name of a whole group of the population), or public-interest litigation (e.g., India) ⁵¹⁸	Law and policy enforced to respect, defend, promote and fulfill housing rights
		Law enforcement officers protect population from and implied protection
Collect sufficient data to determine material and nonmaterial losses to victims of housing and land rights violations		Violators prosecuted and punished
		Victims receive restitution and full compensation for violation and material and nonmaterial losses
Conduct national housing and land rights assessment ⁵¹⁹	Lobby parliament	Law promotes housing and land acquisition and retention in disadvantaged communities consistent with international commitments to promote just patterns of land distribution
	Raise test cases, constitutional challenges through court system	
	Develop laws on properties left without will and testate in order to narrow the class of heirs and prevent fractionation of the ownership	
	Nationwide constitutional review campaign	Constitutional reform ⁵²⁰
Institutional reform		

[Environment](#)" (1996); in Habitat International Coalition, Building the City with the People: New Trends in Community Initiatives with Local Governments (Mexico City: Habitat International Coalition, 1997), contents also available on line at HIC General Secretariat website, at <http://www.hic-net.org/library.asp>.

⁵¹⁸ "Public interest litigation" (PIL) is a form of litigation filed in a court of law, for the protection of "public interest." Most prominently used in the Indian context, it is not defined in any statute or act. It has been interpreted by judges to consider the intent of public at large. Although, the main and only focus of such litigation is public interest, PIL can be filed in cases involving, e.g., such issues as pollution, "terrorism," road safety, constructional hazards, violated human rights of the poor, the content or conduct of government policy, to compel municipal authorities to perform a public duty, etc. See, for example: Upendra Baxi, "Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India" [revised], in Upendra Baxi, ed., Law and Poverty: Critical Essays (Bombay: Tripathi 1988); Mario Gomez, In the Public Interest: Essays on Public Interest Litigation and Participatory Justice (Colombo: Legal Aid Centre, University of Colombo, 1993); Sampat Jain, Public Interest Legislation (New Delhi, Deep & Deep, 2002); Shri. V.S.Vadivel, "Public Interest Litigation (PIL) A Boon or Bane?" (Legal Services India, 2004),

<http://www.legalserviceindia.com/articles/pil.htm>; see also Help Line Law website:

<http://www.helpline.law.com/docs/main.php3?id=PIL11>.

⁵¹⁹ Apply this HIC-HLRN Housing and Land Rights Monitoring Toolkit on a national scale to all elements of the human right to adequate housing.

⁵²⁰ See, for example, "The history of constitutional reform in Kenya," World History Archives (2004), <http://www.hartford-hwp.com/archives/36/index-bbh.html>.

Establish and maintain an effective Land Trust to support communities subject to discrimination and dispossession		Land ownership expanded for disadvantaged communities on an affirmative-action basis
Monitor and survey practices of public and private lending institutions for discrimination practices and patterns	Lobby for disciplinary action and rehabilitation of institutions to end discriminatory practices	Institutions apply uniform criteria in housing and community development programs, policies and transactions
International human rights system interventions		
Prepare and present collective parallel report to human rights treaty bodies (or submit cases under individual complaints procedures under Optional Protocols)		UN treaty body Concluding Observations coincide with community's evaluation of housing rights conditions and proposals for solutions
Raise cases and submit briefs before regional human rights courts and commissions ⁵²¹		State compelled to implement its treaty obligations to respect, defend, promote and fulfill the human right to adequate housing and land
Use Concluding Observations in public information and media campaigns, litigation		
Submit cases to UN Commission on Human Rights 1503 Procedure		States intervene to resolve impasse in housing rights violation case
Submit question/case to UNESCO complaints procedure		States intervene to resolve impasse in housing rights violation case
Legal defense		
Develop and deliver legal literacy and litigation strategy training ⁵²²	Provide legal-aid services to defend individual and community housing and land rights	Judicial rulings include legal precedents for future litigation and law reform to ensure individual and group rights to

⁵²¹ Litigating Economic, Social and Cultural Rights: Achievements, Challenges and Strategies (Geneva: COHRE, 2004), available at <http://www.cohre.org/library/Litigating%20ESCR%20Report.pdf>; Amicus Curiae in Grupo Interdisciplinario por los Derechos Humanos v. Colombia [submitted by COHRE to Inter-American Commission on Human Rights on case of housing destruction by paramilitary groups in Ituango and El Aro, Colombia], on line at <http://www.cohre.org/downloads/amicuscolombia1.doc>; Amicus Curiae in Justiça Global, et al. v. Government of Brazil, Inter-American Commission on Human Rights [submitted by COHRE on actual and threatened violations of housing rights, including forced evictions, with the planned Alcântara Spaceport expansion, in Brazil] available at <http://www.cohre.org/downloads/amicusbrazil1.doc>; Amicus Curiae in CELS & CEJIL v Argentina, Inter-American Commission on Human Rights [submitted by COHRE to Inter-American Commission on Human Rights on case local authorities conducting forced evictions in Barrio Ejército de los Andes, Provincia de Buenos Aires, Argentina], available at <http://www.cohre.org/downloads/amicusargentina1.doc>. See also COHRE Case Law Database on line at <http://www.cohre.org/lframe.htm>; Case law database for economic, social and cultural rights available on the ESCR-Net website at <http://www.escr-net.org/>; found in "Case Law" at http://www.escr-net.org/EngGeneral/Case_law.asp, or "Jurisprudencia" at http://www.escr-net.org/EspGeneral/Case_law.asp.

⁵²² Margaret Schuler and Sakuntala Kadirgamar-Rajasingham, Legal Literacy: A Tool for Women's Empowerment (Washington: Women, Law and Development, OEF International, 1992).

Collect detailed data on violations, perpetrators, values of losses and other consequences ⁵²³	Present admissible evidence in litigation on behalf of victims ⁵²⁴	adequate housing and land
		Crimes and perpetrators prosecuted and punished
		Judicial remedies, including legal precedents for future litigation and law reform to ensure gender equality
Develop gender-awareness and gender-justice training for communities, police, lawyers, prosecutors and judges ⁵²⁵	Provide legal-aid services to defend equal rights to housing and land for women and gender-discrimination victims	Victims receive restitution and full compensation for violation and material and nonmaterial losses ⁵²⁶
Develop judicial procedures and expertise to provide for land-consolidation courts	Consolidate and reduce unstable “in-common” tenancy to maintain family and community land retention, especially to uphold land base for minority groups and indigenous peoples	Communities restore and retain their land base
Media cooperation and campaigns		
Conduct training for media professional in the human right to adequate, corresponding obligations, interviewing victims, quantifying victims’ losses and community follow-up ⁵²⁷	Meet journalists and media professionals to follow-up on training and present new documentation and information on developments	Informed public supports community alternative-development and/or anti-eviction proposals
Provide media outlets with economic analyses of various possible alternatives (on-site upgrading v. relocation)		

⁵²³ See “Housing and Land Rights Violation Case Documentation Form” in this toolkit.

⁵²⁴ Domestic Implementation of International Human Rights: Litigating Economic, Social and Cultural Rights, on Human Rights Internet website at http://www.hri.ca/forthecanada/vol1/guide-part_11.htm; Case Law Database for Economic, Social and Cultural Rights available on the ESCR-Net website at <http://www.escr-net.org/>; found in “Case Law” at http://www.escr-net.org/EngGeneral/Case_law.asp, or “Jurisprudencia” at http://www.escr-net.org/EspGeneral/Case_law.asp.

⁵²⁵ Shelter Rights Initiative, Gender Specific Rights Litigation and Protection Strategies (Lagos: SRI, 1998); SRI, Manual on Judicial Protection of Economic, Social and Cultural Rights (Lagos: SRI, 2000).

⁵²⁶ “Seminar on the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms,” Netherlands Quarterly on Human Rights Special Issue (1993); S. Nadasen, “Restitution, Reconstruction, Reconciliation and Restitution: Land Reform—Balancing the Interests of the Dispossessed, the Homeless and Development,” Stellenbosch Law Review (1997), 360–77. For a bibliography of global restitution and compensation experience, go to: <http://userpage.fu-berlin.de/~theissen/biblio/>.

⁵²⁷ HIC-HLRN training module on “Housing and Land Rights for Media Professionals.”

Provide media outlets with alternative plans and community proposals for their development		
Policy reform		
Reverse and prosecute discriminatory practices toward disadvantages individuals and communities by both public and private lending institutions		Fairness-in-lending policy formulated and enforced for housing and land purchase, rehabilitation and sustainability
Expand public-private initiatives to stimulate investment and multipurpose development communities		Integrated development with low-cost housing on public and donated lands
Provide housing and relief		
Exchange expertise in temporary housing and relief provision	Organize emergency relief (immediate provision of housing and/or housing resources at no cost to those denied: water, medical services, economic relief, housing resources and building materials, etc.)	Eviction and displacement victims receive emergency (temporary) housing
Resource mobilization		
Conduct an inventory (accounting) of community (human and material) resources	Design, adapt and implement alternative-finance schemes; (e.g., small savings toward common projects) and self-financing for needy inhabitants (with freehold tenure options) ⁵²⁸	Upgrading and generally improved living conditions on site, as alternative to relocation
	Establish and operate nonbank institutions as lenders and builder of adequate, low-income housing ⁵²⁹	

⁵²⁸ Alternative Financing Models: Hybrids of Homeownership Mutual Housing (The Enterprise Foundation, 2003); "Capitalizing on Collaboratives: New Partners for Comm. Dev. Finance" (Washington: Center for Policy Alternatives, July 1996); Enrique Ortíz, FONHAPO: The Experience of the National Fund for Low Income Housing in Mexico (London: International Institute for Environment and Development, 1998), available from Earthprint at www.earthprint.com.

⁵²⁹ Jeffrey Carmichael and Michael Pomerleano, The Development and Regulation of Non-Bank Financial Institutions (Washington: World Bank, 2002); Indonesia: Housing Finance for the Urban Poor (Manila: Asia Development Bank, 2001); Peer Smet, "Indian Housing Finance Alliances and the Urban Poor," Global Built Environment Review Vol. 2, No. 1, 58–66, <http://www.edgehill.ac.uk/qber/pdf/vol2/issue1/Eight.pdf>.

	Organize self-help cooperation through rotating community credit (building & upgrading infrastructure, social production of housing ⁵³⁰)	
	Immediate, diligent and effective increase in advice-and-lending services, on an affirmative-action basis within public lending institutions	
	Develop microcredit schemes (for upgrading and construction, but with social and legal components providing HRAH content) ⁵³¹	
Analyze economic costs of the various possible alternatives (on-site upgrading v. relocation)		
Raise material support (raise funds) from private, public and intergovernmental donors), including microcredit ⁵³²		
Plan/undertake reconstruction, ⁵³³ upgrading and general improvement of living conditions (with multiple parties cooperating)		
Restoration and increase housing subsidy programs for low-income people, including by tax reform (e.g., reversal of tax cuts for the wealthiest tax payers)		Low-income people pay no more than 30% of monthly incomes for adequate housing

⁵³⁰ Joseph Schechla, ed., [Anatomies of a Social Movement](#) (Cairo: HIC-HLRN, 2004); Habitat International Coalition, [Building the City With the People. New Trends in Community Initiatives in Cooperation with Local Governments](#) (Mexico City: Habitat International Coalition, 1997); Prem Pangora, [Citizen's Initiatives for environmental improvements: The case of River Sabarmati, Ahmedabad, India](#) (Mexico City: Habitat International Coalition, 1997); Joël Audefroy, [Construyendo la Ciudad con la Gente. Nuevas tendencias en la colaboración entre las iniciativas comunitarias y los gobiernos locales](#) (Mexico City: Coalitón Internacional para el Habitat, 1998); Gustavo Romero, La producción social del hábitat: reflexiones sobre su historia, concepciones y propuestas (2000), available on line at http://www.hic-net.org/online/Romero_PSH-intro.pdf; Eike Jacob, [Social Production of Habitat in Latin America](#) (2003); Habitat International Coalition-América Latina, "Social Production of Habitat. Conceptual framework" (2003); Enrique Ortíz, Social Production of Habitat: Marginal option or reality-transforming strategy? (2003), available on line at http://www.hic-net.org/online/Ortiz_SPH.pdf; Enrique Ortíz, [Vivitos y Coleando. 40 años trabajando por el hábitat popular en América Latina](#) (2002).

⁵³¹ Nazrul Islam, [Grameen Bank Bangladesh. A credit institution for housing](#) (1996); Jaffer Murtaza, [The Tanzania-Bondeni Community Lands Trust](#) (1996).

⁵³² Nazrul Islam, [Grameen Bank Bangladesh. A credit institution for housing](#) (1996); Jaffer Murtaza, [The Tanzania-Bondeni Community Lands Trust](#) (1996).

⁵³³ See York University Postwar Reconstruction and Development Unit, website: <http://www.york.ac.uk/depts/poli/prdu>.

Conduct an inventory of community financial and material resources	Develop community savings schemes	Social production of habitat: Community/self-financed upgrading of housing and improvement of living conditions
Conduct public budget analysis from the housing rights perspective ⁵³⁴	Develop participatory budgeting ⁵³⁵ (ensuring that necessary programs and projects are budgeting according to housing rights obligations)	Public budgets comply with State's housing rights obligations to ensure "progressive realization" with "maximum of available resources"
Training other actors (outside community)		
Train civil servants in HRAH (including international treaty obligations upon the State and local authorities)	Reform urban/land planning criteria, procedures and objectives to harmonize with local community needs and criteria ⁵³⁶	Physical planning integrates human rights obligations, language and priorities directed to needy and vulnerable communities
Train lawyers in HRAH, (including international treaty obligations upon the	Legal argument, litigation and judicial decisions invoke international norms and treaty obligations	Legal recognition of traditional legal and tenure systems and provision of secure title ⁵³⁸

⁵³⁴ Ravikant Joshi, *A Case for Reform: how municipal budgets can change our cities* (Mumbai: YUVA Books, 2001); Maria Socorro I. Diokno, "A Rights-based Approach towards Budget Analysis" (Washington: International Human Rights Internship Program, 1999); Institute for Development Policy Analysis and Advocacy—IDPAA (Atiur Rahman et al.), *Alternative Budget Analysis: A Series of Studies on the National Budget for the Perspective of Poverty Eradication* [three volumes: Budget and the Poor, The Budget-making Process, People's Budget: An Alternative Exercise Using Participatory Tools] (Dhaka: University Press Ltd., 2002).

⁵³⁵ Rebecca Abers, 1998, "From clientelism to cooperation: Local government, participatory policy, and civic organizing in Porto Alegre, Brazil"; *Politics and Society*. 26(4)c 511–37; Rebecca Abers, *Inventing Local Democracy: Grassroots Politics in Brazil* (Boulder: Lynne Rynner, 2000); Baierle, Sergio, 1998, "The Explosion of Citizenship: The Emergence of a New Ethical-Political Principal in Popular Movement in Porto Alegre, Brazil," in Sonia E. Alvarez, Evelina Dagnino and Arturo Escobar, *Cultures of Politics/Politics of Cultures: Revisioning Latin America Social Movements* (Boulder: Westview Press, 1998); Sousa Boaventura de Santos, "Participatory Budgeting in Porto Alegre: Toward a Redistributive Democracy." *Politics and Society* 26(4) (1998), 461-509; *Quem é o público do Orçamento Participativo: se perfil, porque participa, e o que pensa do processo* (Porto Alegre: Cidade de Porto Alegre, 1999); Luciano Fedozzi, *Orçamento Participativo: Reflexões sobre a experiência de Porto Alegre* (Porto Alegre: Tomo Editorial, 1998); Pedro Jacobi and Macro Antonio Carvalho Teixeira, "Orçamento Participativo: co-responsabilidade na gestão das cidades," *São Paulo em Perspectiva*, 10 (3) (1996) 119–28; Brian Wampler, "Orçamento Participativo: Os paradoxos da participação e governo no Recife," *Cadernos de Estudos Sociais*, 15(2) (1999), 343–73; Brian Wampler, *A Guide to Participatory Budgeting* (October 2000). Internet sources: Participatory budget: The Case of Porto Alegre (Brazil) at:

<http://www.goethe.de/br/poa/buerg/en/framebag.htm> (2004);

World Bank: http://www.worldbank.org/html/fpd/urban/urb_age/porto.htm,

<http://www.worldbank.org/wbiep/decentralization/Topics13.7.htm>, <http://www.worldbank.org/participation/>; Inter-American Development Bank: <http://www.iadb.org/exr/IDB/stories/2000/eng/JAN00E/c200c1.htm>,

<http://www.iadb.org/exr/idb/sidebars/2000/eng/c200c4.htm>; Conference Proceedings on Participatory Budgeting:

<http://www.idre.ca/lacro/docs/conferencias/stren.html>, <http://www.ssc.wisc.edu/~wright/deliberative.html>,

<http://www.pgualc.org>.

⁵³⁶ UNCHS, *Developing a National Shelter Strategy: Lessons from Four Countries* (Nairobi: UNCHS, 1990); OHCHR, *Handbook on National Human Rights Plans of Action* (Geneva: OHCHR, revised draft May 2001).

⁵³⁷ Shelter Rights Initiative, *Gender Specific Rights Litigation and Protection Strategies* (Lagos: SRI, 1998); SRI, *Manual on Judicial Protection of Economic, Social and Cultural Rights* (Lagos: SRI, 2000).

⁵³⁸ Peter R. Grose, "An Indigenous Imperative: The Rationale for the Recognition of Aboriginal Dispute Resolution Mechanisms." *Mediation Quarterly* 12 (4) (summer 1995), 327–38.

State, as well as litigation strategies) ⁵³⁷		Legal recognition of tenure and the human right to adequate housing of people without economic access
Train judges in HRAH (including international treaty obligations upon the State) ⁵³⁹		Judge issues restraining orders halting forced evictions and removals, land confiscation, property destruction and other housing and land rights
Train law enforcement officials in the human right to adequate housing (including international treaty obligations upon the State)	Quantify losses/costs of housing rights violations	Judicial decision orders return, restitution and compensation for evictees, IDPs, refugees ⁵⁴⁰
Transitional justice (post conflict)⁵⁴²		Victims compensated for losses ⁵⁴¹

⁵³⁹ Shelter Rights Initiative, Manual on Housing Rights Protection Strategies for Lower Court Judges (Lagos: SRI, 2000).

⁵⁴⁰ UNCHS, Housing and Property Rights in Kosovo (Pristina: UNCHS, March 2000).

⁵⁴¹ For elaboration of the principles of compensation to victims of human rights violations, see Theo Van Boven, "Basic Principles and Guidelines on the Right to Reparation for Victims of Gross Violations of Human Rights and Humanitarian Law, Appendix 8 ("The van Boven Principles"), Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, E/CN.4/Sub.2/1996/17; also E/CN.4/1997/104, annex and subsequently revised as "Basic principles and guidelines on the right to a remedy and reparation for victims of violations of international human rights and humanitarian law," by Cherif Bassiouni, independent expert, Commission on Human Rights (E/CN.4/2000/62, annex). John Dugard, "Is the Truth and Reconciliation Process Compatible with International Law? An Unanswered Question," South African Journal on Human Rights Vol. 13, 258–68. For quantification methodology, see HIC-HLRN Loss Matrix in this Housing and Land Rights Monitoring Toolkit, or go to www.hlrn.org; for implementation, see to UNCHS, Housing and Property Rights in Kosovo (Pristina: UNCHS, 2000).

⁵⁴² For a general bibliography on transitional justice, go to <http://www.peacemakers.ca/bibliography/bib26reconciliation.html> or <http://userpage.fu-berlin.de/~theissen/biblio/> (on experiences of Germany and South Africa).

Document details on violations, perpetrators, values of losses and other consequences ⁵⁴³	Present evidence to truth (and reconciliation) commission ⁵⁴⁴	Public aware of population transfer, mass dispossessions and other crimes committed during conflict
	Issue amnesty for past crimes and perpetrators of forced evictions/removals ⁵⁴⁵	Social reconciliation
	Present evidence to Truth and Justice Commission	Social reconciliation
		Crimes and perpetrators prosecuted and punished
Present evidence to “mixed courts”	Return, restitution and compensation for evictees, IDPs, refugees ⁵⁴⁶	

Of course, an illustrative list of potential interventions does not sufficiently convey the wealth of local governmental and nongovernmental experience available for review and exchange. Moreover, it is, as always, at the local level of implementation where human rights, including the human right to adequate housing, are transformed from moral suasion and legal theory to implementable reality. Therefore, both the practical, case-based perspective and the theoretical-and-comparative perspective become mutually dependent, mutually reinforcing and, hence, equally needed.

5.10. Evaluation & follow-up

Evaluation of any action you choose should be an ongoing function parallel to the events and development as they happen. This note offers some simple guidance on the specific

⁵⁴³ Use “Housing and Land Rights Violation Case Documentation Form” in this toolkit.

⁵⁴⁴ Kerry Able, and Jean Friesen, eds., *Aboriginal Resource Use in Canada: Historical and Legal Aspects* (Winnipeg: University of Manitoba Press, 1991); Alfred, Gerald R., and Franke Wilmer. “Indigenous Peoples, States and Conflict,” in D. Carment and P. James, eds., *Wars in the Midst of Peace: The International Politics of Ethnic Conflict* (Pittsburg: University of Pittsburgh Press, 1997); Michael Coyle, “Claims Resolution: A Healing Process?” in J. Oakes, R. Riewe, K. Kinew and E. Maloney, eds., *Sacred Lands: Aboriginal World Views, Claims and Conflicts* (Calgary: Canadian Circumpolar Institute, 1998); Robert Rotberg and Dennis Thompson, eds., *Truth v. Justice: The Morality of Truth Commissions* (Princeton: Princeton University Press, 2000); Truth and Reconciliation Commission of South Africa Report, Vols. 1–5 (Cape Town: Juta, 1998); Theo van Boven, “Study Concerning the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms” [final report of Special Rapporteur] (Geneva: Commission on Human Rights, Subcommission on Prevention of Discrimination and Protection of Minorities) E/CN.4/Sub.2/1993/8. For an extensive bibliography of sources, go to: <http://userpage.fu-berlin.de/~theissen/biblio/>.

⁵⁴⁵ John Dugard, *Dealing with Crimes of a Past Regime: Is Amnesty Still an Option?* [The Third Manfred Lachs Memorial Lecture] (1999); Carla Edelenbosch, “Human Rights Violations - A Duty to Prosecute?” *Leiden Journal of International Law* Vol. 7, No. 2 (1994), 5–22; Dianne F. Orentlicher, “Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime,” *The Yale Law Journal* Vol. 100, No. 8 (1991) 2537–615.

⁵⁴⁶ Uma Dhupelia Mesthrie, *The Truth and Reconciliation Commission and the Commission on Restitution of Land Rights: Some Comparative Thoughts* [“The TRC: Commissioning the Past” conference] (Johannesburg: University of the Witwatersrand, 1999); S. Nadasen, “Restitution, Reconstruction, Reconciliation and Redistribution: Land Reform: Balancing the Interests of the Dispossessed, the Homeless and Development,” *Stellenbosch Law Review* (1997) 360–77; David B. Southern, “Restitution or Compensation: The Land Question in East Germany,” *International and Comparative Law Quarterly* Vol. 42, No. 3 (1993), 690–97; David B. Southern, “Restitution or Compensation: The Open Property Question,” *German Politics* Vol. 2, No. 3, 436–49. For a bibliography of global restitution and compensation experience, go to: <http://userpage.fu-berlin.de/~theissen/biblio/>.

evaluation tasks you will face. They are described in stages, with particular emphasis on the final stages and the vision for the future.

For our purposes, evaluation and follow-up imply two levels of assessment: (1) evaluation the action and (2) following the situation after the action concludes. The former is internal in nature and helps your organization, community or network become a learning institution by building on the lessons (successes, near-successes, failures and unanticipated results) of your efforts. The latter enables you, your organization, community or network to test the outcome to ascertain whether or not it has tangible benefits for those persons, communities, populations and peoples affected and targeted in your action. Ultimately, the follow-up process should lead you to the necessary conclusion as to what, if anything, to do next.

✓ Evaluating the action

Evaluation your action includes three integrated but conceptually distinct processes: (1) monitoring progress, (2) formative evaluation and (3) measuring the development impact.

1. Monitoring implementation progress

Monitoring the implementation of your action is the most frequent—indeed constant—aspect of the learning process. This should involve periodic reports on production of outcomes, financial accounting and levels and nature of inputs (e.g., technical assistance, training, social production of habitat). The periodicity of the reporting could be quarterly, if the action is expected to proceed for a year or more. Alternatively, reporting could be more frequent, especially if it is a short-term action, or if it takes place in a fast-paced environment such as a threatened eviction or natural disaster situation, and particularly if extreme deprivation of human well-being is at stake.

The responsibility for monitoring is to be shared by a group of actors. Remembering that, like in the “Toolkit” guide for strategic planning, the more participation, the more-favorable the result (“more participation = more dignity”).

Reporting on the action, based on the monitoring of implementation progress, should be specifically assigned, most probably to the coordinator of the action or the chief executive officer of the principal body organizing the action. The audience of the reports should be both internal, for the benefit of those engaged, and external, depending on the obligations you have to supporters, members and/or funders. The assignment of duties, division of labor and timing of evaluation events should be completed also in the planning stage of your activity (see “[Strategic planning](#)” link above).

2. Formative Evaluation Indicators of Accomplishments

Midway in the process of your action, you should conduct an assessment of the *quality and adequacy* of the tasks undertaken by assessing the actual outcomes against the standard of expected results you already have set out for yourselves.

You should develop an evaluation plan and data collection instruments as part of the project implementation. That means, you should plan ahead to collect information that will verify your intended results, whether that be in the form of documents, press reports, opinion surveys, affidavits, water-quality test results, etc. The formative evaluation activities probably will require site visits, rapid assessment and low-cost data collection techniques such as

focus groups, interviews, training evaluation forms, and simple targeted studies to identify key issues for action management.

3. Development-impact Assessment and Indicators

Development-impact assessments that you and your organization/community undertake less frequently, perhaps on an annual basis, will track changes in the outcomes, in order to determine the degree to which the larger environment of the human right to adequate housing is improving—or deteriorating, as the case may be.

Your action could—and should—produce an initial baseline report at the initial stage that coincides with your first inventory, site visits and/or assessment arising from your first use of this “Toolkit.” That report should record what you consider to be the key assumptions going into the activity, and will serve you in the subsequent stages of your action, especially at the final stages, to test those assumptions and adjust strategies to incorporate the knowledge you have created.

For the purpose of your organization’s integrity and the tactical responses you may require in the future, your action should be seen critically in the light of the purposes and goals you set out in your planning process (see “**Strategic planning**” link above). Some sample questions to include in your evaluation include the following:

- How does the action relate to your purpose statement of your organization/ community?
- How does the action relate to the goals(s) of your organization/community?
- Was the action planned or spontaneous?
- What was the expected result?
- Was that result achieved? If not, why?
- Were unintended results achieved?
- What were the lessons learned from this activity?
- How did this activity build/strengthen/develop your organization? What gains did you and others realize?
- How did your organization/community record and report the experience?
- How did your organization/community share and exchange the experience and lessons learned with others? Who? When? Where? What was the result?
- Has there been follow-up? Why? What? Who? When? Where?
- Click on “Following up the situation” for guidance on the last point.

✓ **Following up the situation**

Each successful or unsuccessful action needs to be tested further for at least two reasons: (1) in order to determine if the achievement is real or merely theoretical and (2) to determine what your next move is going to be.

The now famous *Irene Grootboom and Others v. Oostenberg Municipality*⁵⁴⁷ case before the South African Constitutional Court (1999) found in favor of the plaintiffs by applying the principles of international law on the human right to adequate housing and the legal strictures on the practice of forced eviction. The Court ordered the Western Cape Provincial Government and the Oostenberg Municipality to grant housing and utilities to the 390 adults and 510 children wrongfully evicted community at Wallacedene their right to return and

⁵⁴⁷ Irene Grootboom and Others versus Oostenberg Municipality, Cape Metropolitan Council, the Premier of the Province of the Western Cape, National Housing Board, and Government of the Republic of South Africa, Constitutional Court of South Africa Case No: 6826/99..

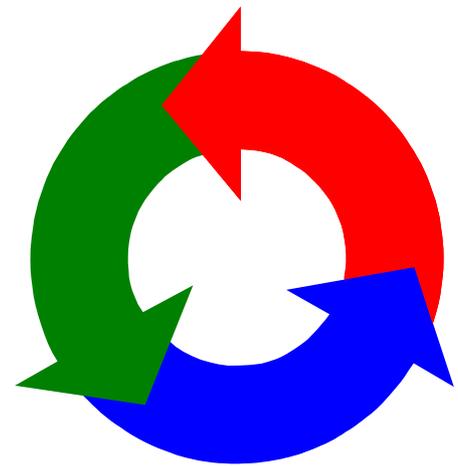
remain and to benefit from public services corresponding to that right. Until today, that decision has not been fully implemented.

Likewise, the landmark case of *Qa`dan v. Katzir*,⁵⁴⁸ in Israel, resulted in the 2000 High Court ruling that Katzir (a settlement built on Palestinian land, directed and funded in large part by the Jewish Agency) acted unlawfully when discriminating on the basis of “nationality” by excluding a non-Jewish from obtaining housing there. Until this day, that decision has not been honored, the indigenous Adil and Iman Qa`dan family of Arab citizens of Israel do not have their home in Katzir, and the Jewish Agency continues to provide land and housing benefits only to those holding “Jewish nationality,” and to the exclusion of others.

There are numerous examples of slum clearance and resettlement that result in the promised secure tenure of housing, but fail to comply with other elements of the human right in their implementation. [Note: HLRN and this “Toolkit” do not advocate slum clearance or resettlement.] Inhabitants in resettlement often lack access to public goods and services, suitable location, are denied compensation for losses and are subject to a process inconsistent with the over-riding principle of self-determination.⁵⁴⁹

All such gaps and shortcomings in the outcome of any housing rights defense effort remain to be addressed, even though some advocates and service-providing NGOs may consider these developments to be victorious at some level. The true test remains, however, to determine the tangibility of the results within the framework of the human right to adequate housing, and over the long term.

With all of its emphasis on the law, this “Toolkit” is intended to assist in the realization of the human right to adequate housing as a complement to the theoretical elaboration of the right in law. Implementation is the ultimate objective of human rights, as well as this “Toolkit.” Therefore, the tools provided here should serve also as the final evaluation criteria to examine whether or not the composite dimensions of the human rights are implemented and present or not.



You should use the elements (entitlements) of the human right to adequate housing here as your guide; these are also the binding criteria for all State parties and their representatives to apply as well. If you and your organization/community determine that certain criteria have been breached or neglected, then, alas, further remedial action will be required.

The bad news, perhaps, is that there may yet be more work to be done. However, even if one has to go back to the drawing board, at least the needed tools are available to the cyclical task. So, now, you can just do it.

⁵⁴⁸ Qa`adan versus Israel Lands Administration (ILA), Ministry of Construction and Housing, Tal-Iron Local Municipal Council, Jewish Agency for the Land of Israel (JA), KATZIR: Cooperative Association for Community Settlement in Samaria Ltd., and the Farmers Association; Case No. 6698/95 of the Israeli Supreme Court, sitting as the High Court of Justice.

⁵⁴⁹ See Housing and Land Rights Network, *Restructuring New Delhi's Urban Habitat: Building an Apartheid City?* (HIC-HLRN: New Delhi, 2002).

6. Accessibility (physical)

6.1. Concept and meaning

Disadvantaged communities and groups must be allowed full and sustainable access to adequate housing and resources, including land, infrastructure and sources of livelihood and the state must take account of special housing needs. Disadvantaged groups within communities must be guaranteed equality in respect of the conditions that constitute adequate housing and the state must ensure this equality of right and access.

6.2. Sources

In this section, your **Step 2**, the HLRN “Toolkit” provides the most important international legal basis and the popular claims that ground each element of the human right to adequate housing. This compilation attempts to be as comprehensive as possible; however, additional popular sources and legal developments will augment this inventory in the future.

It is vital to establish both the established sources in international law and the popular claims. The authority of the legal sources carries corresponding obligations on most States, and applies universally to all people on the planet as *human* rights. The popular sources advance claims that are “emerging” with human rights language eventually to be codified in the law. All legally established human rights norms originated as popular claims carried forth through various forms of historic struggle.

The Legal Authority

Please note that the legal instruments cited here carry differing levels of obligation, and they are organized for you accordingly. Customary law is made up of those norms and principles that legal opinion and interstate institutions consider so basic and so repeatedly affirmed as to be binding on all legal personalities. The Universal Declaration of Human Rights, the antecedent to all subsequent human rights treaties, is the most relevant example of customary law for our purposes, even though it does not establish a monitoring and enforcement mechanism to ensure compliance.

The ratified treaties (Covenants, Charters, Conventions, etc.) are binding on all their ratifying States parties, and each establishes an independent body to monitor and guide implementation. The treaty-monitoring process provides an opportunity for civil society, States and the international legal bodies each to play a role. These international treaties are also characterized as hard law (*lex lata*), because of their binding nature. Treaty law, by definition, is any agreement between two or more States. The treaties considered here are those of both international and regional nature.

The “soft-law” instruments (*lex feranda*) include the Declarations, Basic Principles, Minimum Rules, General Comments, etc., that are the multilateral commitments arising from international conferences, assemblies, summits, congresses and other specialised meetings. Also included in this category are the general and country-specific guidance that the treaty-monitoring bodies issue to guide and specify treaty obligations, as well as those instruments of inter-State agreement (decisions and resolutions) arising from the various political bodies of the international system (e.g., UN Commission on Human Rights, International Labour Organisation General Assembly, etc.). These instruments contain standards that are declaratory of already-binding international law, reflect the collective political will of States and provide specificity to the general Articles in the binding instruments. However, these form legal and policy guidance without the corresponding obligations of treaty law and without the corresponding legal monitoring mechanisms.

Thus, the list of legal sources in this section of the HLRN “Toolkit” maintains a corresponding priority order such that presents the binding instruments first (in chronological order of their adoption), and follows with the nonbinding, declaratory sources (in their chronological order):

- ***International Treaty Law***
- ***Regional Treaty Law***
- ***Declaratory Instruments and Jurisprudence***

The Moral Argument

The popular sources are useful especially in demonstrating ground-level recognition of the various elements of adequate housing as rights in and of themselves, but also provide a list of human rights that reflect common human needs, but await codification as *bona fide* rights. The “emerging rights” include elements inextricable from the human right to adequate housing: water, land and energy, among others. The popular sources are indicators of the ever-evolving specificity of human rights law and the legal and problem-solving horizons toward which social movements and the human rights community are heading.

The relevant excerpts from these collective moral are listed in the “Toolkit” Sources (Step 2) as *Popular Sources*. These are moral, rather than legal, in nature. However, as claims, they bear legal dimensions in the sense that they are the substance of future legal standards. We continue to include these claims in the HLRN “Toolkit” as they emerge from popular struggles, natural and social sciences, nongovernmental forums, social movements, campaigns and labour action (strikes), as well as other forms of popular and collective problem-solving initiatives.

In this “Toolkit,” *Popular Sources* are distinguished from the legal sources by their presentation in *italic* script.

Another source of the human right with a legal dimension is the jurisprudence of course-based decisions on cases involving housing and land rights. These also could provide the basis for legal argument even in distant jurisdictions. Examples include the case-specific—but internationally relevant—rulings in famous decisions in favor of housing rights claims such as those arising from legal struggles in Cyprus, Palestine/Israel and South Africa:

Qa’adan versus Israel Lands Administration (ILA), Ministry of Construction and Housing, Tal-Iron Local Municipal Council, Jewish Agency for the Land of Israel (JA), KATZIR: Cooperative Association for Community Settlement in Samaria Ltd., and the Farmers Association; Case No. 6698/95 of the Israeli Supreme Court, sitting as the High Court of Justice.

Irene Grootboom and Others versus Oostenberg Municipality, Cape Metropolitan Council, the Premier of the Province of the Western Cape, National Housing Board, and Government of the Republic of South Africa, Constitutional Court of South Africa Case No: 6826/99 (1999).

Loizidou versus Turkey (Article 50 and Merits), European Court of Human Rights Case 40/1993/435/514 (18 December 1996).

✓ Legal sources

International Treaty Law

Convention on the Rights of the Child (1989)

Article 27.3. 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 programmes, particularly with regard to nutrition, clothing and housing.”

International Convention on the Elimination of All Forms of Discrimination against Women (1979)

14.2(g) & (h) “States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right... to have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes; To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.”

International Convention on the Elimination of All Forms of Racial Discrimination (1965)

Article 5. “In compliance with the fundamental obligations laid down in Article 2 of this Convention, States parties undertake to prohibit and eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:... **(e)** Economic, Social and Cultural rights in particular:... **(iii)** The right to housing.”

Convention relating to the Status of Refugees (1951)

Article 21. “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 favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.”

Declaratory Instruments and Jurisprudence

Human Rights Committee (HRC) General Comment No. 28 (68), “Equality of rights between men and women” (2000)

3. “...The State party must not only adopt measures of protection, but also positive measures in all areas so as to achieve the effective and equal empowerment of women...”

4. “...States parties are responsible for ensuring the equal enjoyment of rights without any discrimination. Articles 2 and 3 [of ICCPR] mandate States parties to take all steps necessary, including the prohibition of discrimination on the ground of sex, to put an end to discriminatory actions, both in the public and the private sector, which impair the equal enjoyment of rights.”

19. “The right of everyone...to be recognized everywhere as a person before the law is particularly pertinent for women, who often see it curtailed by reason of sex or marital status. This right implies...the capacity of women to own property...”

Committee on Economic, Social and Cultural Rights (CESCR) General Comment No. 6, “The economic, social and cultural rights of older persons” (1996)

33. “Recommendations 19 to 24 of the Vienna International Plan of Action on Ageing emphasize that housing for the elderly must be viewed as more than mere shelter and that, in addition to the physical, it has psychological and social significance which should be taken into account. Accordingly, national policies should help elderly persons to continue to live in their own homes as long as possible, through the restoration, development and improvement of homes and their adaptation to the ability of those persons to gain access to and use them (recommendation 19). Recommendation 20 stresses the need for urban rebuilding and development planning and law to pay special attention to the problems of the ageing, assisting in securing their social integration, while recommendation 22 draws attention to the need to take account of the functional capacity of the elderly in order to provide them with a better living environment...”

Habitat Agenda, adopted by the second United Nations Conference on Human Settlements (Habitat II) (1996)

39. "We reaffirm our commitment to the full and progressive realization of the right to adequate housing, as provided for in international instruments. In this context, we recognize an obligation by Governments to enable people to obtain shelter and to protect and improve dwellings and neighbourhoods. We commit ourselves to the goal of improving living and working conditions on an equitable and sustainable basis, so that everyone will have adequate shelter that is...accessible..."

61(c) “Adopting policies aimed at making housing habitable, affordable and accessible, including for those who are unable to secure adequate housing through their own means”

Committee on Economic, Social and Cultural Rights (CESCR) General Comment No. 5, “Persons with disabilities” (1994)

33. “In addition to the need to ensure that persons with disabilities have access to adequate food, accessible housing and other basic material needs, it is also necessary to ensure that ‘support services, including assistive devices’ are available ‘for persons with disabilities, to assist them to increase their level of independence in their daily living and to exercise their rights’...Similarly, as already noted by the Committee in paragraph 8 of general comment No. 4 (Sixth session, 1991), the right to adequate housing includes the right to accessible housing for persons with disabilities.

Committee on Economic, Social and Cultural Rights (CESCR) General Comment No. 4, “The right to adequate housing” (1991)

8. (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.”

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol Of San Salvador" (1988) [not in force]

Article 18. Protection of the Handicapped

“Everyone affected by a diminution of his physical or mental capacities is entitled to receive special attention designed to help him achieve the greatest possible development of his personality. The States Parties agree to adopt such measures as may be necessary for this purpose and, especially, to:

a. Undertake programs specifically aimed at providing the handicapped with the resources and environment needed for attaining this goal...**c.** Include the consideration of solutions to specific requirements arising from needs of this group as a priority component of their urban development plans...”

Declaration on Race and Racial Prejudice (UNESCO, 1978)

Article 9.2. particular attention should be paid to racial or ethnic groups which are socially or economically disadvantaged, so as to afford them, on a completely equal footing and without discrimination or restriction, the protection of the laws and regulations and the advantages of the social measures in force, in particular in regard to housing [...].

Vancouver Declaration Human Settlements (1976)

III.8. "Adequate shelter and services are a basic human right which places an obligation on Governments to ensure their attainment by all people, beginning with direct assistance to the least advantaged through guided programmes of self-help and community action. Governments should endeavour to remove all impediments hindering attainment of these goals. Of special importance is the elimination of social and racial segregation, *inter alia*, through the creation of better balanced communities, which blend different social groups, occupations, housing and amenities".

Declaration on the Rights of Disabled Persons (1975)

Article 9. "Disabled persons have the right to live with their families or with foster parents and to participate in all social, creative or recreational activities. No disabled person shall be subjected, as far as his or her residence is concerned, to differential treatment other than that required by his or her condition or by the improvement which he or she may derive therefrom. If the stay of a disabled person in a specialized establishment is indispensable, the environment and living conditions therein shall be as close as possible to those of the normal life of a person of his or her age."

✓ **Popular sources**

WCaR NGO Forum Declaration (2001)

378. *“Indigenous Peoples freely express their own identity and exercise their inherent rights free from all forms of discrimination, which necessarily entails respect for their human rights and fundamental freedoms. Efforts are now being made to secure universal recognition for those rights in processes in the U.N. and the Organization of American States to elaborate declarations on the rights of Indigenous Peoples, which include the following...to manage and develop their lands and natural resources...”*

The European Charter for Human Rights in the City (2000)

Article IV. “Protection of Vulnerable Groups and Citizens 2. *Disabled individuals are the subject of specific municipal assistance. Their dwellings and places of work and leisure must be adapted for them. Public transport must be accessible to everyone.”*

Bangkok NGO Declaration on Human Rights (1995)

3.”...To provide women a life with dignity and self-determination, it is important that women have inalienable, equal economic rights (e.g. right to agricultural land, housing and other resources, and property). It is imperative for governments and the United Nations (UN) to fulfil these rights.

6.3. Over-riding principles

Principles found in the initial Articles common to all the major international human rights treaties affirm standards of justice arising from the major legal systems of the world. These include principles of immediate application, such as the inalienable rights to self-determination; non-discrimination, in general; gender equality; and the rule of law, including access to justice and domestic application of the human rights contained in each treaty, particularly by adopting legislative measures.

In the case of economic, social and cultural rights, the International Covenant on Economic, Social and Cultural Rights (ICESCR) is the principle source of these rights in treaty form. The Covenant also clarifies that the State party’s treaty obligation entails ensuring the “progressive realisation” of the rights “to the maximum of its available resources” (Article 2.1), including the human right to adequate housing (Article 11). Therefore, a process of realising the rights should not regress, but should ensure “the continuous improvement of living conditions” (Article 11).

The ICESCR’s Article 2.1 also requires States to undertake steps, individually and through international assistance and cooperation, especially economic and technical, progressively to achieve the full realization of the covenanted rights by all appropriate means. Thus, States party to the Covenant bear an obligation to apply these principles extraterritorially and in their international relations. Therefore, “international cooperation” forms an important practical aspect of ESC rights application and, therefore, one of the principles over-riding States’ duties to implement human rights.

Comprehensive monitoring of the human right to adequate housing requires assessing each entitlement (element) in light of the rights and corresponding obligations arising from these over-riding legal principles:

- **Self-determination**
- **Nondiscrimination**
- **Gender equality**
- **Rule of law**
- **Progressive realization (nonregressivity/nonretrogression)**
- **International cooperation**

The normative approach provided in the international human rights system prevails upon the monitor to pose a number of relevant questions related to implementation not only of the specific content of the particular right, but also these over-riding principles common to the principal human rights treaties and applicable to all rights. This section will guide the monitor in applying these six over-riding principles in the respect, defense, promotion and fulfilment of the human right to adequate housing and land.

✓ **Self-determination**

General description

The principle of equal rights and self-determination of peoples is considered to have been a general principle of international law arising from common State practice already at the founding of the League of Nations. However, self-determination was first codified in the Charter of the United Nations in 1945, which sets forth the purposes of the United Nations as:

2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace...⁵⁵⁰

The Charter's Article 55 stipulates further:

With a view to the creation of conditions of stability and well-being, which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

- a. higher standards of living, full employment, and conditions of economic and social progress and development;⁵⁵¹
- b. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and
- c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

Every State has the duty, therefore, through unilateral, bilateral and multilateral action to promote universal respect for, and observance of human rights and fundamental freedoms in accordance with the Charter. Its Article 2.2 clarifies the universal duty of State membership such that:

All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with the present Charter.

The principle of self-determination has been progressively reaffirmed and legally defined throughout the UN system since its founding.⁵⁵² The material significance of self-determination is further elaborated in the Covenants on human rights adopted in 1966.⁵⁵³ The common Article 1(2) of both the ICCPR and ICESCR sets forth that:

All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

⁵⁵⁰ Charter of the United Nations, 26 June 1945, Article 1(2).

⁵⁵¹ *Ibid.*, Chapter IX, "International Economic and Social Co-operation," Article 55.

⁵⁵² For example, see Declaration on the Granting of Independence to Colonial Countries and Peoples (1960), preamble and Article 7; "Permanent sovereignty over natural resources," General Assembly resolution 1803 (XVII) (1962), preamble and paras. 1–2, 5–7; International Convention on the Elimination of All Forms of Racism and Racial Discrimination (1965), Articles 1 and 5; Declaration on Social Progress and Development (1969), Articles 2, 3 and Part II; Declaration on Principles of International Law (1970), preamble and, esp., "The principle of equal rights and self-determination of peoples"; ECOSOC Declaration on Race and Racial Prejudice (1978), Articles 1, 3, 5 and 9 Declaration on the Right to Development (1986) preamble and Article 1, 6 and 8.

⁵⁵³ International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI), 16 December 1966 (entered into force 3 January 1976 in accordance with Article 27); Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI), 16 December 1966 (entered into force 23 March 1966 1976 in accordance with Article 49).

How concerned persons/communities exercise an effective role in determining the terms by which they realize the human right to adequate housing is also a subject of the inalienable right of self-determination. Self-determination is the right of peoples, not of States. It is the State, however, that is the legal personality obliged to ensure the protection, defense, promotion and fulfillment of self-determination as a duty under international public law, as well as the essential legitimizing factor of the State itself.⁵⁵⁴

The concept of, and right to self-determination manifest in a spectrum of types and expressions of effective local control over developments and relations within a community and territory may involve either external or internal self-determination; that is, national independence as in the formal distinction of a self-determination unit with its own internationally recognized borders, a self-determination unit within the internationally recognized borders of a unitary State, or a community's⁵⁵⁵ effective control over developments and relations affecting it as an independent State.⁵⁵⁶

In its General Comment No. 12 on "the right of self-determination of peoples" (1984), The UN Human Rights Committee (HRC) gave its guidance on the corresponding obligations of States, with the following:

1. In accordance with the purposes and principles of the Charter of the United Nations, Article 1 of the International Covenant on Civil and Political Rights recognizes that all peoples have the right of self-determination. The right of self-determination is of particular importance because its realization is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights. It is for that reason that States set forth the right of self-determination in a provision of positive law in both Covenants and placed this provision as Article 1 apart from and before all of the other rights in the two Covenants.

2. Article 1 [of ICCPR] enshrines an inalienable right of all peoples as described in its paragraphs 1 and 2. By virtue of that right they freely "determine their political status and freely pursue their economic, social and cultural development". The Article imposes on all States parties corresponding obligations. This right and the corresponding obligations concerning its implementation are interrelated with other provisions of the Covenant and rules of international law.

3. Although the reporting obligations of all States parties include Article 1, only some reports give detailed explanations regarding each of its paragraphs. The Committee has noted that many of them completely ignore Article 1, provide inadequate information in regard to it or confine themselves to a reference to election laws. The Committee considers it highly desirable that States parties' reports should contain information on each paragraph of Article 1.

⁵⁵⁴ Consistent with the principle of the Universal Declaration of Human Rights, Article 21, which states that "the will of the people shall be the basis of the authority of government."

⁵⁵⁵ While a standard legal definition of nation and people remains a subject of debate, the International Court of Justice has offered criteria for a community, having distinct rights as "a group of persons living in a given country or locality, having a race, religion, language and traditions of their own and united by the identity of race, religion, language and traditions in a sentiment of solidarity, with a view to preserving their traditions, maintaining their form of worship, insuring the instruction and upbringing of their children in accordance with the spirit and traditions of their race and rendering mutual assistance to each other," Permanent Court of International Justice, The Greco-Bulgarian "Communities" Advisory Opinion No. 17, 13 July 1939 (Leyden: Sijthoff, 1930), 21.

⁵⁵⁶ For a comprehensive consideration of the human right of self-determination and its applications, see Hurst Hannum. *Autonomy, Sovereignty, and Self-Determination: The Accommodation of Conflicting Rights* (Philadelphia: University of Pennsylvania Press, 1996).

4. With regard to paragraph 1 of Article 1, States parties should describe the constitutional and political processes which in practice allow the exercise of this right.

5. Paragraph 2 affirms a particular aspect of the economic content of the right of self-determination, namely the right of peoples, for their own ends, freely to "dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence." This right entails corresponding duties for all States and the international community. States should indicate any factors or difficulties which prevent the free disposal of their natural wealth and resources contrary to the provisions of this paragraph and to what extent that affects the enjoyment of other rights set forth in the Covenant.

6. Paragraph 3, in the Committee's opinion, is particularly important in that it imposes specific obligations on States parties, not only in relation to their own peoples but *vis-à-vis* all peoples which have not been able to exercise or have been deprived of the possibility of exercising their right to self-determination. The general nature of this paragraph is confirmed by its drafting history. It stipulates that "The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations". The obligations exist irrespective of whether a people entitled to self-determination depends on a State party to the Covenant or not. It follows that all States parties to the Covenant should take positive action to facilitate realization of and respect for the right of peoples to self-determination. Such positive action must be consistent with the States' obligations under the Charter of the United Nations and under international law: in particular, States must refrain from interfering in the internal affairs of other States and thereby adversely affecting the exercise of the right to self-determination. The reports should contain information on the performance of these obligations and the measures taken to that end.

7. In connection with Article 1 of the Covenant, the Committee refers to other international instruments concerning the right of all peoples to self-determination, in particular the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, adopted by the General Assembly on 24 October 1970 (General Assembly resolution 2625 (XXV)).

8. The Committee considers that history has proved that the realization of and respect for the right of self-determination of peoples contributes to the establishment of friendly relations and cooperation between States and to strengthening international peace and understanding.

Self-determination applied to communities

The over-riding principle of self-determination in this "Toolkit" is inspired by classic (customary and treaty) law criteria, as well as popular claims to the same. In both senses, the claim is legally fixed in the common Article 1 of the human rights treaties. Using the ICESCR as a basic and integrated instrument, the "ToolKit" especially applies this over-riding principle to Article 11, which guarantees the human right to housing.

In making the case for ultimate "self-determination" at the community level, this "Toolkit" draws on a number of popular instruments (mostly written and collectively endorsed statements, but also those rooted in oral traditions) asserting the "right" of communities to determine their own destiny. "Community" also enjoys a legal definition (see below).

Self-determination becomes as vital as any other need that grounds other human rights, including those other over-riding principles of rule of law, nondiscrimination, gender equality and international cooperation consistent with all human rights. In their collective dimension, these all become community "needs" and, consequently, "rights" insofar as their absence leads to erosion and violation of a bundle of individual, stand-alone rights and can lead to the deprivation or demise of a community as such.

It should be noted that States and others have recognized the real problem of "ethnocide" and "cultural genocide" resulting from assimilation policies so as to compel the rewriting of the International Labour Organisation (ILO) Convention No. 107 on Indigenous and Tribal Populations in Independent Countries (1956), eventually to adopt the Indigenous and Tribal Peoples Convention No. 169 (1989). Relevant to the practice of self-determination is the question of land tenure, which ILO Convention No. 169 treats in Articles 13–19, while at the same time disclaiming that the term "people" in the Convention does not convey implications as a term of international law (i.e., conferring the right of self-determination).

However, it is the human consequence of the deprivation, rather than the legal "peoplehood," that makes self-determination vital for any putative victims. Therefore, collective self-determination becomes the right of communities as necessary, even if they are not (or not yet) internationally recognized as a "people" or "nation," the category To avoid the horrendous consequences of demise and deprivation, and to ensure survival of communities as a "right"—especially marginal and otherwise vulnerable ones such as those facing ethnic cleansing and/or elimination through military, administrative, globalization, forced eviction or development measures—local self-determination is vital, no matter what assimilationist governments individually or jointly say. In human rights, it is the human who has the first and final subject of respect, protection, promotion and fulfillment.

That having been said, and recognizing that self-determination can be either internal or external, the international public law term of art "internal self-determination unit" applies in the case of group or community, and is subject to case-by-case interpretation. This could refer to the rightful place of a minority or an indigenous people. It could conceivably apply also to a community of urban poor, particularly if their survival and/or well-being is threatened and their self-determination then becomes a need/right and requisite to the realization of other rights (life, adequate housing, culture, health, etc.).

In any case, the claimant of self-determination, whether an external or internal type, must meet the challenge and legal test of asserting that the claim at any level does not conflict with—or at least is balanced with—the rights of others. That may mean, of course, ensuring that self-determination claims do not negate general ecological values, others' self-determination rights, the rights of women to gender equality, security of person, regional peace and security, etc.

What are the criteria for *bona fide* claimants to local self-determination in the terms of international law as developed? The criteria presented by Martinez-Cobo (*Study of Discrimination against Indigenous Peoples*, UN document E/CN.4/Sub.2/1986/7/Add.4) has grounded much of the self-determination thinking about indigenous peoplehood and the rights arising. Based on his criteria for indigenous "people," the characteristics constituting a

community with the right to claim external or internal self-determination could also be that the community (1) predate the influx of "others," (2) possess distinct cultural attributes, (3) occupy an identifiable territory and (4) identify itself as a people/community having the right to self-determination.

Legally defining the subjects of self-determination

Definitions of "people" or "nation," the legal self-determination rights holders, are generally unpopular with States and their sitting governments, unless the definition applies to an existing "nation-state." Of course, very few States can claim adherence to this definition, that is, to contain a single native people or nation (except, perhaps, Portugal, excluding immigrants). The General Assembly has assumed the task of defining self-determination (particularly in resolution 1514(XV), 14 December 1960). That has been construed typically as applying to cases of decolonization (Angola, Algeria, Namibia, Mozambique, Palestine, Puerto Rico, etc.). In its Advisory Opinion on Namibia, the International Court of Justice recognized Namibians as a "people" and "nation" in light of the value of, and for the purpose of decolonization. Despite this legal reference, the actual definition of "people" and "nation" remains under debate for political and practical reasons.

In addition to the guidance on "people," including indigenous peoples, as explicit self-determination rights holders, we have an international law definition of what constitutes a "community." The "community" definition does not deviate significantly from the four-part construct that Martínez-Cobo offered (above). It comes to us from the first International Court in a case sorting out criteria for transferring the ethnically Greek and Turkish communities between the Republic of Turkey and Greece after the First World War:

A group of persons living in a given country or locality having a race, religion, language and tradition of their own and united in the identity of race, religion, language and tradition in a sentiment of solidarity, with a view to preserving traditions, maintaining their form of worship, insuring the instruction and upbringing of their children in accordance with the spirit and traditions of their race and rendering mutual assistance to each other.⁵⁵⁷

Leaving aside the probability that the purpose of the Court's opinion (population transfer) would be legally impermissible today,⁵⁵⁸ the legal definition of "community" it provided is actually less ambiguous than that of "people" or "nation." The "people" definition remains elusive largely because some States find it a political Pandora's box that could challenge their jurisdiction and/or effective control over territory. Until now, some governments instead persist in proffering the legally vacuous term "indigenous populations," so that the legally more-significant term "people/s" would wane into disuse, as would also the corresponding rightful and self-preserving claims of its subjects to self-determination. However, if one is looking for a way to apply self-determination to "communities," one has this definition of the ICJ's predecessor as a reference.

Significant also is the fact that the Court's definitive Advisory Opinion was intended for a narrow and specific purpose. That was not to recognize an external self-determination right, but to rationalize a population transfer scheme that today would be considered a clear violation of international public law. That is not only because of the absence of consent and the obvious human suffering population transfer causes, but also because it deviates from

⁵⁵⁷ Permanent Court of International Justice, The Greco-Bulgarian "Communities," Advisory Opinion No. 17, 31 July 1930 (Leyden: Sijthoff, 1930), p. 21.

⁵⁵⁸ See report of the Special Rapporteurs Aun al-Khasawneh and Ribot Hatano, "The human rights dimensions of population transfer, including the implantation of settlers and settlements," E/CN.4/Sub.2/1993/17.

the most basic concept of contemporary statecraft and democratic governance, which is that the State administer—including by way of implementing the right to self-determination—for *all* of its citizens. Population transfers and external self-determination claims, therefore, serve as a seismograph of a government's failure at effective statecraft.

This dissertation on self-determination has admittedly merged concepts and definitions of communities with peoples/nations, as the Permanent Court of International Justice effectively has done. Nonetheless, the values that sustain them are akin, and so should the safeguards that promise to prevent the worst of consequences arising from human rights violations against any identifiable group. In summary, self-determination has a local and community-based expression and basis as a right. For the purposes of advancing human rights through the “Toolkit,” both “communities” as well as “nations/peoples” hold the right and responsibility to determine their own habitat, the essence of a people and/or community's survival and sustainability with dignity in its dwelling place.

Applied to accessibility

Applied to accessibility, self-determination means that every people and nation has the inalienable right to enjoy physical access to its housing and land in its administrative and territorial unit(s). The international standards on property rights stipulate that everyone has the right to own (derive peaceful and unrivaled enjoyment of) property privately and in association with others, and has a right not to be arbitrarily deprived of that property.⁵⁵⁹ Physical access is essential to the enjoyment of that right. The same prerogative applies to a people in determining its terms of that accessibility. This determination must be made according to local specificity, reflecting the consent of the people subject to self-determination, but also within the obligations provided in the ICESCR and the CESCR's General Comment No. 4 (cited above). Therefore, for peoples, as such, or for other affected persons and communities, a measure of self-determination, assured through “genuine consultation,” in matters affecting the physical accessibility of housing.

✓ Nondiscrimination

General description

Like self-determination, an inalienable human right common to the major legal systems throughout the world, a fundamental requisite of justice is the absence of discrimination on any arbitrary basis. Discrimination typically results in deprivation of human needs and rights.

Given its centrality, the principle of nondiscrimination, consequently, is an over-riding human rights principle embodied in the first Articles of each major human rights treaty. Nondiscrimination, and its corresponding State obligation to ensure nondiscrimination, are enshrined in the preamble of all international declarations and resolutions concerned with human rights matters, governance and the relations between and among States, nations and peoples.

Common to Article 2 in both the Covenants, nondiscrimination stands out as an over-riding principle with *immediate* application to all the rights contained in those instruments.⁵⁶⁰ The Covenants prohibit arbitrary preferential or punitive treatment and oblige States parties to undertake steps to ensure that rights be exercised without distinction or discrimination “of

⁵⁵⁹ As set forth in the Universal Declaration of Human Rights, Article 17.

⁵⁶⁰ For further guidance on the legal obligations to immediate implementation of the nondiscrimination principle applied to housing rights, see the report of the Special Rapporteur on Adequate Housing E/CN.4/2002/59.

any kind [as to] race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”⁵⁶¹

The International Convention on the Elimination of All Forms of Racial Discrimination (1965) defines discrimination as:

any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.⁵⁶²

Article 5 of that Convention actually offers the historic first codification of the human right to housing, with particular reference to the over-riding principle of nondiscrimination. It reads:

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

In the Convention and its negotiation history, an important distinction emerges: While it is the obligation of States’ parties and their governments to combat both “racism” and “racial discrimination,” the former is a state of mind that should be eradicated through measures including education and other efforts to bring about a cultural and social transformation toward antidiscrimination. The latter, “racial discrimination” is the actual activation of prejudice which, in its manifestation, is a material violation of the rights of others. Any official action or omission of practicing or condoning racial discrimination is a violation of an *immediate* obligation of the State, not subject to “progressive realization.”

This distinction between (1) theoretical racism and (2) racial discrimination in practice has historic roots. It is found also in moral systems, as reflected in the Holy Qur’an, which recognizes the existence of prejudice, but, nevertheless, entreats against putting that into practice:

O you who believe, be upright for God, bearers of witness with justice; and let not hatred of a people incite you not to act equitably. Be just, [for] that is nearer to the observance of duty [the nearest thing to piety].⁵⁶³

This moral distinction was found relevant nearly one millennium later, during the French Revolution. Then, the revolutionary slogan and moral call to the Human Rights of Man and Citizen was “*liberté, égalité, fraternité*.” While all three qualities were found desirable and necessary to build a new, democratic society, only liberty and equality could actually be legislated. Fraternity (or sorority) could be developed and encouraged by the State and civil society much more likely than it could be enforced. Nonetheless, a range of practical measures can be undertaken to nondiscrimination in actual practice.

⁵⁶¹ ICESCR, Article 2.2; ICCPR, Article 2.1.

⁵⁶² Article 1, International Convention on the Elimination of All Forms of Racial Discrimination, adopted by General Assembly resolution 2106 (XX) of 21 December 1965, entered into force, 4 January 1969.

⁵⁶³ Chapter 5: The Food [al-Ma’da], Section 2: “Duty of Uprightness,” verse 8. Maulana Muhammad Ali, transl. The Holy Qur’an (Lahore: Ahmadiyya Anjuman Isha’at Islam, 1963), p. 243.

Inherent in the principle of nondiscrimination is the understanding that programs formally providing advantages to persons and groups historically subject to discrimination are not considered to constitute unlawful discrimination. On the contrary, international public law calls upon States to provide additional assistance to those persons and groups subject to past and/or present discrimination, as in corrective/positive discrimination or affirmative action programs that redress foregoing patterns of deprivation.⁵⁶⁴

Applied to accessibility

Applied to accessibility, the nondiscrimination principle ensures that individuals and groups are not deprived of opportunities to access adequate housing in the physical sense, including by way of legal enforcement, protection and remedy, nor denied this entitlement on the basis of race, color, creed, gender, sex, sexual orientation, political opinion, social or economic status, language, physical ability/disability, property, form of legitimate work, descent, or any other origin or arbitrary criterion. Likewise, no State possesses the legal authority to practice or condone *de jure* or *de facto* discrimination that leads to the loss or denial of accessibility to housing of any member of any group, particularly to the unfair advantage of another. This applies to the practice of racial discrimination, nepotism and other forms of corruption that allow disproportionate benefits to family members or political partisans, as well as preferences given to groups such that ignite sectarian or intercommunal conflict. This also disallows negligence in planning and construction that leads to the effective denial of physical accessibility to adequate housing for a group of individuals (e.g., absence of adequate housing with physical access facilities for the handicapped). International public law calls States to provide special assistance to persons and groups who have been subject to past and/or present discrimination, as in affirmative action programs that redress foregoing patterns of deprivation.⁵⁶⁵

✓ Gender equality

General description

Despite the universal acceptance of the principle of gender equality in international law, many women are denied equal treatment and discriminated against in their housing on the basis of sex or gender. Approximately one-third of the world's women may be homeless, living in inadequate housing and own less than one percent of the world's property.⁵⁶⁶ The intersectionality of poverty or other factors (i.e., class, indigenous, refugee, migration, caste, sexual orientation, ethnic minority, age, disability, widowhood, citizenship or nationality status, etc.) further marginalize women. In the context of the increased feminization of poverty, decreased access to public services, and destruction of natural environments, all of which are accelerating with the process of globalization, women are increasingly placed in situations where they do not have adequate housing.

The denial of adequate housing for women is a violation of women's human rights. It can also result in the violation of women's other human rights such as rights to life, livelihood, adequate food, employment and political participation (e.g., voting rights). In particular, the lack of adequate housing also can make women more vulnerable to various forms of

⁵⁶⁴ See Marjorie Cohn, "Affirmative Action and the Equality Principle in Human Rights Treaties: United States' Violation of Its International Obligations," *Virginia Journal of International Law*, Vol. 43 (2002), 249–74.

⁵⁶⁵ For further guidance on the legal obligations to immediate implementation of the nondiscrimination principle applied to housing rights, see the report of the Special Rapporteur on Adequate Housing E/CN.4/2002/59.

⁵⁶⁶ COHRE Fact Sheet on Women's Right to Housing, Land and Property.

violence against women (e.g., domestic violence, trafficking, sexual and gender-based violence against migrant workers etc.).

The right to nondiscrimination in gender relations, as an over-riding principle in human rights implementation, is generally stated in UDHR, Article 2 (nondiscrimination) and throughout the Declaration in its language of human rights for “everyone” and “all are equal before the law.” More specifically, gender equality has emerged as a binding, over-riding principle in the two Covenants’ common Article 3:

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all... rights set forth in the present Covenant.

This principle is further elaborated in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).⁵⁶⁷ Article 13 obliges States parties to take all appropriate measures to eliminate discrimination against women in areas of economic and social life, and to ensure women's equal right to bank loans, mortgages, and other forms of social credit. In Article 14, paragraph 2, CEDAW specifically addresses women’s equal rights in human settlements as the right of women in rural areas to enjoy adequate standard of living conditions, particularly, in relation to housing sanitation, electricity and water supply, transportation, education, communications and access to credit. This extends explicitly to women’s “equal treatment in land and agrarian reform as well as in land resettlement schemes.” Article 15 also addresses women's equal right to conclude contracts and administer property; while Article 16, paragraph 1 (c) guarantees women's equal rights and responsibilities during marriage and its dissolution, including equal rights for both spouses in respect of ownership, acquisition, management, administration, enjoyment and disposition of property.

This legal norm is carried forward in the Beijing Platform for Action (BPFA), which calls on Governments to remove all obstacles for women in obtaining affordable housing and access to land.⁵⁶⁸ This remains standard in the subsequent multilateral agreements formulated in the Istanbul Declaration and the Habitat Agenda (1996)⁵⁶⁹ and the World Summit on Sustainable Development (WSSD) Plan of Implementation (2002).⁵⁷⁰

The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (1997), which were developed for understanding and determining violations of economic, social and cultural rights, affirmed that, in order to eliminate discrimination against women’s rights recognized in the Covenant, the State party should face the need and legal obligation to eliminate discrimination against women that arises out of social, cultural and other structural advantages.⁵⁷¹

Typically, for women the home is the single most important place in the world. Beyond shelter, it is a place for the vast majority of woman to generate income, care for children, and seek respite from violence and patriarchy in the community at large. For many still, it is the only place where women can participate fully in decisions and social activities.

⁵⁶⁷ Adopted and opened for signature, ratification and accession by General Assembly resolution 34/180, 18 December 1979; entered into force, 3 September 1981, in accordance with Article 27(1).

⁵⁶⁸ Para 58(m).

⁵⁶⁹ Para 40 (b), 78 (e) and (g).

⁵⁷⁰ Para 67 (b).

⁵⁷¹ Related sources of gender equality for women in human settlements can be found in CEDAW Articles 1, 2(f), 3 and 5 (a); UDHR, Articles 2, 16, 17 and 25; UDHR, Articles 5 (d) (v) and (vi), 5 (e) (iii); ICERD, Article 2, para 1, Articles 3, 9, 16, 17, Article 23, para 4, ICCPR, Article 26; ICESCR, Article 2, para 2, Article 3, and Article 11, para 1; and CRC, Article 1, 16, para 1 and Article 27.

Applied to accessibility

The intersectionality of poverty or other factors (i.e., class, indigenous, refugee, migration, caste, sexual orientation, ethnic minority, age, disability, widowhood, citizenship or nationality status, etc.) further prevent women from physically accessing available housing for reasons other than economic deprivation. In the current contexts of globalization, women are increasingly placed in situations where they do not have physical access to adequate housing, by being physically or socially prevented. Similar forms of gender discrimination are also common against some men and transgendered persons on the basis of their presumed sexual roles.

Freely exercising one's own culture (cultural adequacy) is understood to mean allowing for cultural choice and expression in order to implement human rights. Preserving or failing to address the practice of unequal rights to housing access, ostracism and physically preventing enjoyment of inheritance of the family home are not consistent with the present framework and likely would violate both the gender-equality provisions of the Covenant, as well as provisions of the Vienna Convention on the Law of Treaties (1969).⁵⁷²

✓ Rule of law

General description

In the over-riding principles pertaining to previously discussed forms of discrimination, human rights are, by their nature, equal, inalienable and universal. By this is meant that the criteria for applying the standards and norms are to be inconsistent in their application. One way to ensure that is through the formal and institutionalized rule of law.

As enshrined in UDHR, Article 6, "Everyone has the right to recognition everywhere as a person before the law." This right is codified in the ICCPR (Article 16), and is supported by regional instruments affirming the same.⁵⁷³ The equal inalienable and universal right to a fair trial, including the presumption of innocence, is enshrined in ICCPR,⁵⁷⁴ as well as the regional instruments.⁵⁷⁵

The law-abiding State and its officers must not withhold or impede remedies, apply the law inconsistently or arbitrarily, or exercise any form of discrimination that affects the human right to adequate housing. Inhabitants who have lost or undergone damage to their housing unjustly or illegally have the right to unobstructed access to legal remedy, including compensation for victims, which the State bears the corresponding obligation to respect, defend, promote and fulfill.

States are required to maintain the rule of law in order to ensure a consistent, predictable and accessible resolution of disputes with remedy and compensation for the victims. This covers the right of equal access to public services, such as law enforcement, public defense

⁵⁷² The Vienna Convention sets forth, in Article 27, that "[A] party may not invoke the provisions of its internal law as justification to perform a treaty," and the customary law principle, arising from Article 8 of the Universal Declaration of Human Rights, states that "everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him [her] by the constitution or by law."

⁵⁷³ African Convention on Human and Peoples' Rights, Article 5; Inter-American Convention on Human Rights, Article 3.

⁵⁷⁴ Article 10 reads: "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his[her] rights and obligations and of any criminal charge before him[her]." [Bracketed text added.] Article 14.2 sets forth that "Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to the law."

⁵⁷⁵ African Charter, Article 7; Inter-American Convention, Article 8; European Convention on Human Rights, Article 6.

and judicial services. The conduct of law enforcement officers, prosecutors and judges can determine whether or not the rule of law is respected or violated. Therefore, there is a tremendous need for the State to train, discipline and rehabilitate legal enforcers and practitioners. In the case of police services, the use of force is required to follow strictly the principle of presumed innocence and the criteria of necessity and proportionality in case where State force is used.⁵⁷⁶ Where local statutory law may be silent on housing rights safeguards, lawyers and judges bear an extra professional duty to apply the human rights norms to the extent possible.

The principles of remedy and reparation have been firmly established in instruments declaratory of the human right to access to justice. Culminating the development of international law derived from the major legal systems in the world, the revised Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law (2003) outline the right and corresponding State obligations as follows:

VII. Victim's Right to Remedy

Remedies for violations of international human rights and humanitarian law include the victim's right to:

- (a) Access justice;
- (b) Reparation for harm suffered; and
- (c) Access the factual information concerning the violations.

VIII. Victims' Right to Access Justice

A victim's right of access to justice includes all available judicial, administrative and other public proceedings, mechanisms and modalities that exist under domestic laws, as well as under international law. Obligations arising under international law to secure the individual or collective right to access justice and fair and impartial proceedings should be made available under domestic laws. To that end, States should:

Make known, through public and private mechanisms, all available remedies for violations of international human rights and humanitarian law;

Take measures to minimize the inconvenience to victims, protect their privacy as appropriate, and ensure their safety from intimidation and retaliation, as well as that of their families and witnesses, before, during, and after judicial, administrative, or other proceedings that affect the interests of victims;

Facilitate assistance to victims seeking access to justice.

Make available all appropriate diplomatic and legal means to ensure that victims can exercise their rights to a remedy and reparation for violations of international human rights or humanitarian law.

In addition to individual access to justice, adequate provisions should also be made to allow groups of victims to present collective claims for reparation and to receive reparation collectively.

The right to an adequate, effective and prompt remedy against a violation of international human rights or humanitarian law includes all available international

⁵⁷⁶ Code of Conduct for Law Enforcement Officials, adopted by General Assembly resolution 34/169, 17 December 1979, Article 3; Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted at the Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August–7 September 1990, preamble and Articles 1–11.

processes in which an individual may have legal standing and should be without prejudice to any other domestic remedies.⁵⁷⁷

The restitution of housing and property is one form of restitutive/restorative justice sought in the rule of law applied to housing rights violation victims. Efforts continue to develop these methods and disparate efforts, not least in the development of draft guidelines on restitution for refugees.⁵⁷⁸

Applied to accessibility

In the case of a dispute over physical access to adequate housing, the State bears an obligation to ensure that the rule of law is applied in a context of equality, inalienability and universality of rights, particularly with regard to the human right to adequate housing. In the case where the State (e.g., courts or police) assume a role in such a dispute, the State is required by treaty law to abide by its human rights obligations and refrain from violations of the right to housing, including accessibility, such as creating physical planning or other barriers in the way of inhabitants' adequate housing. The State also bears a covenanted duty to avoid use of violence or other punitive behavior inconsistent with the principles of (1) presumption of innocence until proven guilty and, in the use of force, (2) necessity and (3) proportionality.

The law-abiding State, its agents and offices must not obstruct accessibility to adequate housing arbitrarily or exercise any form of arbitrary discrimination against the tenure holder. Inhabitants who have lost their accessibility to adequate housing unjustly or illegally also are entitled to unobstructed access to legal remedy, including compensation for victims, for which the State bears the corresponding obligation.

✓ Nonretrogression/progressive realization

General description

ICESCR's Article 2 identifies the State party's obligation to ensure the "progressive realisation" of ESC rights. That is widely interpreted to mean that the State party breaches this provision if it tolerates or causes "regressivity" in the enjoyment of the right. The relevant jurisprudence has established that, even in the case of scarce resources, the State must exert good-faith efforts, including through international cooperation, to advance—and not derogate—the enjoyment of ESC rights, including adequate housing and its constituent entitlements.

The treaty bodies have clarified further that neither political processes, domestic legislation, scarcity of resources, or agreements with other parties can be invoked to justify nonimplementation of human rights treaty obligations.⁵⁷⁹ For example, the binding nature of a treaty obligation is further clarified in the Vienna Convention on the Law of Treaties (1969), clarifying in its Articles 27 and 46, that invoking an internal law is not admissible as a

⁵⁷⁷ As revised in accordance with UN Commission on Human Rights resolution E/CN.4/2003/34 (2003).

⁵⁷⁸ Progress report of the Special Rapporteur, Paulo Sérgio Pinheiro, "Housing and property restitution in the context of the return of refugees and internally displaced persons," E/CN.4/Sub.2/2004/22, 2 June 2004.

⁵⁷⁹ Letter of CESCR Chairperson Mme. Virginia Bonoan-Dandan to S.E. M. Yaakov Levy, Permanent Representative, Permanent Mission of Israel to the United Nations Office and Specialized Agencies at Geneva, 11 May 2001, annex to Letter by the Chairperson of the Committee on Economic, Social and Cultural Rights to the President of ECOSOC (11 May 2001).

justification for nonimplementation of a treaty obligation.⁵⁸⁰ To harmonize treaty obligations with local implementation, human rights obligations arising from the treaties and case law should guide policy formulation and decision-making processes in law-abiding States. Therefore, a process of realising the rights should not regress, but should ensure “the continuous improvement of living conditions” (Article 11).

This over-riding principle of “nonregressivity” has been reaffirmed in the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights (1986) and Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (1997),⁵⁸¹ as well as numerous cases of international jurisprudence through the monitoring functions of CESCR.

The many examples of globalization-era economic reforms demonstrate how the withdrawal of the State from its obligations to fulfill economic/social/cultural rights can lead to deprivation. The State nonetheless bears a covenanted obligation to ensure that economic policies do not make tenure more precarious and insecure, whether arising from domestic political change or pressures of an external actor, such as an international financial institution. In order to ensure “progressive realization,” therefore, it is vital to ensure that the human right to adequate housing forms a part of the overall human rights framework for development policy, especially guiding international cooperation arrangements. This civilizing process requires improved coordination among the relevant government bodies, such as ministries of Justice, Finance and Foreign Affairs. This is not only out of domestic duty toward citizens for States to ensure that development partnerships effect “progressive realization,” but also an extraterritorial obligation of the State party under ICESCR, Article 2.

The CESCR has commented also on the “core obligations” of States to implement the human right to adequate housing. It noted that, regardless of the state of development of any country, certain steps must be taken immediately, in addition to the over-riding principles of human rights law. These include abstaining from measures that would impinge upon the right, as well as to engage positively in practices to facilitate the people’s processes of groups seeking to improve their living conditions, in accordance with the specific elements outlined above.⁵⁸²

Applied to accessibility

The State’s offices and agents, as well as its guiding policies and legislation, should ensure physical accessibility of adequate housing. That means that new laws or policies, as well as trends in official behavior and practice should demonstrate an improvement in levels of justice for all and protection for those vulnerable or victim to losing their access to adequate housing (e.g., elderly, disabled and medically affected persons). It also means that those

⁵⁸⁰ Article 27 (Internal law and observance of treaties): “A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to Article 46.” Article 46 (Provisions of internal law regarding competence to conclude treaties) states that: 1. A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance. 2. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith.”

⁵⁸¹ Text available at <http://ip.aaas.org/escrdocs.nsf/>.

⁵⁸² “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.” General Comment No. 4, para. 10.

same parties should develop greater capacity for, and actually delivery of relief to those who have been denied physical accessibility of their home or shelter.

✓ International Cooperation

General description

States parties to both Covenants bear an obligation to implement human rights within a context of "international economic cooperation."⁵⁸³ The ICESCR's Article 2.1 requires States party to undertake steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

In the spirit of the numerous multilateral agreements on human rights and development, "progressive realization of ESC rights," as a borderless objective, logically engages "international cooperation" duties for States to conduct themselves accordingly through their relations with other States, nations and peoples:

In fraternity and solidarity
Domestically and extraterritorially
Individually, jointly and/or collectively.

The preamble of the United Nations Charter specifies the purposes of the world organization insofar as "we the peoples of the United Nations" are determined "to promote social progress and better standards of life in larger freedom." Article 1, para. 3 of the Charter sets out one of the UN's purposes as "to achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion."

Linking international cooperation and self-determination as essential to the peaceful order of the United Nations, the Charter's Article 55 reads:

With a view to the creation of conditions or stability and well-being[,] which are necessary for peace and friendly relations among nations based on respect for the principles of equal rights and self-determination of peoples, the United Nations shall promote universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

The Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations considers as essential:

the progressive development and codification of the following principles:... (d) the duty of States to cooperate with one another in accordance with the Charter;...(g) the principle that States shall fulfill in good faith the obligations assumed by them in accordance with the Charter, so as to secure their more-effective application within the international community would promote the realization of the purposes of the United Nations;...⁵⁸⁴

⁵⁸³ Common Article 1.2.

⁵⁸⁴ Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly in its resolution 2625 (XXV) of 24

The UN States members share a duty to cooperate with one another, irrespective of their differences, to maintain international peace and security and promote international economic stability and progress, the general welfare of nations and international cooperation free from discrimination. To this noble end, the Declaration embodied by UN members commitments such that:

(c) States shall conduct their international relations in the economic, social, cultural, technical and trade fields in accordance with the principles of sovereign equality and nonintervention;

(d) States Members of the United Nations have the duty to take joint and separate action in cooperation with the United Nations in accordance with the relevant provisions of the Charter.

States should cooperate in the economic, social and cultural fields as well as in the field of science and technology and to the promotion of international cultural and educational progress. States should cooperate in the promotion of economic growth throughout the world, especially that of the developing countries.⁵⁸⁵

In addition to its Article 2, ICESCR also sets out to identify the UN systems itself as a vehicle for international cooperation to uphold the Covenant. The Covenant empowers ECOSOC to raise the Covenant-monitoring reports as a guide for UN technical assistance.⁵⁸⁶

Other instruments of international public law are dedicated to specifying norms for international cooperation agreements between and among States. Consistent with human rights norms and other *jus cogens* principles of law, the Vienna Convention, Article 53, provides clarity:

A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

States parties adhering to the international law principles of international cooperation are required to behave extraterritorially consistent with the progressive realization of economic/social/cultural rights. For our purposes, this extends especially to the human right to adequate housing and land.

As a donor country, a State must ensure that the projects and programs it supports do not erode any of the entitlements contained in their right to adequate housing for inhabitants in beneficiary countries. That includes avoiding any action that leads to forced evictions, confiscation or demolition of housing. In the case of development assistance resulting in dislocation of inhabitants, all aspects of the undertaking are to be the subject of consultation

October 1970 Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly in its resolution 2625 (XXV) of 24 October 1970

⁵⁸⁵ Ibid.

⁵⁸⁶ Article 22 reads: "The Economic and Social Council may bring to the attention of other organs of the United Nations, their subsidiary organs and specialized agencies concerned with furnishing technical assistance any matters arising out of the reports referred to in this part of the present Covenant which [sic] may assist such bodies in deciding, each within its field of competence, on the advisability of international measures likely to contribute to the effective progressive implementation of the present Covenant."

with the affected persons, and the efforts should enhance legal security of tenure as a result within the covenanted human rights framework.

As a recipient country, structural adjustment, deregulated foreign investment, privatization and related measures typified by today's bilateral and multilateral arrangements assistance agreements and programs must be compatible with the human rights obligations of the affected State. Measures that deny or reduce tenure security would be illegal and unaccepted as a condition of the assistance. States parties to the human rights instruments have a self-preserving opportunity and responsibility to uphold their prior treaty obligations as a form of (moral, legal and practical) resistance to negotiation pressures or conditionalities that may derogate the terms of legal security of tenure for inhabitants.

As all human rights implementation ultimately is a local matter, regional instruments can be a source a greater specificity in determining of State obligations and practical measures needed to uphold economic, social and cultural rights. For example, the African Charter on Human and Peoples' Rights (1981) provides a broad agreement on the term of international cooperation in its Article 21: 1, which establishes that:

All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it. 2. In case of spoliation, the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation. 3. The free disposal of wealth and natural resources shall be exercised without prejudice to *the obligation of promoting international economic cooperation based on mutual respect, equitable exchange and the principles of international law*. 4. State Parties to the present Charter shall individually and collectively exercise the right to free disposal of their wealth and natural resources with a view to strengthening African Unity and solidarity. 5. *State Parties to the present Charter shall undertake to eliminate all forms of foreign exploitation particularly that practised by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources.* [Emphasis added.]

States Parties are required to review multilateral agreements on investment, trade-related intellectual property arrangements, poverty-reduction strategy papers (PRSPs), bilateral and multilateral relations in the World Trade Organization context, World Bank lending and assistance terms, and the International Monetary Fund programs operating in, or otherwise affecting the State, in order to ensure consistency with covenanted obligations and avoid either retrogressivity or violations of its citizens' ESC rights. The State party is obliged to apply the Covenant *a priori* to ensure that any such conditionality would be subject to the ESC rights safeguards for its own inhabitants, and for those of another State party.

Privatization programs may lead to deprivation of the housing rights entitlement to tenure security. In the event of workers living in administrative housing who become laid off as part of a privatization or State-enterprise sell-off arrangement may lose their tenure altogether. Even in cases where local legislation is silent, international treaty obligations remain for the State party to defend the workers' human right to adequate housing by legal and enforceable protection for their secure tenure and all other housing rights entitlements.

As an extreme example of international cooperation conducted in explicit violation of ESC rights applying to adequate housing and secure tenure would be a scenario wherein a State engaged in, or condoning third parties to engage in acts or omissions that would contribute to population transfer or any of its related international crimes, such as mass deportations,

ethnic cleansing, destruction of civilian or private property, implantation of settlers and settler colonies, or other forms of demographic manipulation of an internal or external self-determination unit. Duty prohibits States party from allowing public or private resources to accrue to settler colonies in an occupied territory, for example, or engage in any other acts or omissions that would facilitate another State party's violations of the Covenant or Convention in this way. There are numerous examples today in countries where these forms of violation continues unaddressed with the accomplice and collaboration of other States. Impunity still characterizes the conduct of many of these crimes, as the perpetrators have not yet been prosecuted at any level, including at the International Criminal Court.

A State's participation in international economic sanctions or blockades that lead to violations of the ESC rights of persons other than the State Party's own residents, citizens and nationals may lead to conditions that undermine housing rights. CESCR has provided guidance to States parties of the Covenant on ESCRs affected by sanctions regimes and subject to protection measures to avoid regressivity and violation.⁵⁸⁷

Direct provision, or participation in multilateral programs of development and financial assistance actually may lead to violations of rights embodied in the Covenant (e.g., stagnation, deterioration or denial of work, education, health or housing rights, forced eviction, etc.) and constitute a breach of treaty obligations. Specifically, ICESCR and its enshrined rights should guide and govern a State's policies and conduct in any multilateral institution that imposes economic conditionalities on other States or their agents that bring about a negative consequences effect inhabitants housing rights conditions. The legacy of development banks' support for forced evictions of all possible scales and levels of deprivation has become notorious, and States that promote, finance or engage directly or indirectly in making decisions or executing these policies may be in breach of their human rights treaty obligations.

Applied to accessibility

Physical accessibility of adequate housing also should improve as a result of international development cooperation, whether that be in the enhancement of policy making, physical planning, service delivery, technical cooperation or assistance of a material nature. Any cross-border cooperation and investment in human settlements and/or in other sector should seek to ensure physical accessibility of adequate housing, especially for those persons and groups with special needs.

✓ Other principles of application

The principles discussed above are those explicitly stated in the major international human rights treaties. At the same time, we can consider additional principles and concepts that also guide the application of the human right to adequate housing. These arise from the international jurisprudence of individual State party reviews by the treaty-monitoring bodies, as well as from their General Comments and General Recommendations. They also come to us from popular claims of people's movements, from the political resolutions of the multilateral organizations, from expert opinions found in the legal literature, and from the evolving experience at implementing human rights. Three such principles of application for us to consider are known as the "indivisibility of rights," "minimum core obligations" and "universality."

⁵⁸⁷ See CESCR General Comment No. 8, "the relationship between economic sanctions and respect for ESC rights."

Indivisibility

The concept of all human rights as indivisible is as practical as it is theoretical. It arises from the realization that, when we unpack the contents of a right, we encounter aspects of the other rights as well.

Take, for example, the “habitability” entitlement contained in the human right to adequate housing. The deterioration of the structural features of the home leaving the inhabitants exposed to the elements, or pollution in the immediate vicinity of the housing surely effect the enjoyment of the human right to “a standard of living adequate for the health and well-being of himself and of his family,” as recognized in Article 25 of the 1948 Universal Declaration of Human Rights (UDHR), and codified as the “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health” in Article 12 of the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR).

Likewise, homelessness is a status synonymous with the denial of voting rights in most States, where registration and voting require a *domicile fixe*. Thus, the human right to adequate housing is linked with everyone’s “right to take part in the government of his [sic] country, directly or through freely chosen representatives,” as promised in UDHR (Article 21), and codified in the Covenant on Civil and Political Rights (ICCPR), in 1966, as everyone’s “right to take part in public life, directly or through freely chosen representatives” (Article 25). Incorporating the experience of HIC members and others around the globe, it has become clear that our monitoring methodology calls our attention also to the “congruent” human right to participation and self-expression among the constituent entitlements of the human right to adequate housing.

Sorting, categorizing and distinguishing subjects of any kind can be a useful exercise that makes manageable order out of complexity and facilitates understanding. Human rights are no exception. However, in practice, we find that human rights are interdependent, and categorical separation can become artificial and actually impede understanding. One example is in the division of human rights found in the UDHR into the two, separate Covenants. The reason for adopting two basic Covenants, instead of one, is largely attributed to the divergent Cold War ideologies that dominated the General Assembly when it adopted the Covenants in 1966. Ideology is also the reason that one of the largest and wealthiest industrialized States has failed to ratify the ICESCR until today, and ideology also prevailed to exclude a “human right to own property” from that Covenant, although that right is included in the UDHR (Article 17). Despite the false impression left by the Covenants dividing human rights into two instruments camps, the ICCPR’s nonetheless recognizes, in its preamble, that:

... in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights.

Without appreciating the over-riding principle of indivisibility, other distortions can arise. With civil and political rights traditionally gaining from more attention and specificity than economic/social/cultural rights (consistent with some Western Bloc preferences), some authors have proposed that we consider “generations” of rights.^{588[1]} Presenting distinct rights

^{588[1]} French jurist Karel Vasak is attributed with first proposing the division of human rights into three generations, while at the International Institute of Human Rights (Strasbourg), in 1979. His division adapted the French Revolution’s slogan of

in such a priority order perpetuates the historic neglect of economic/social/cultural rights and promotes a logic that may culminate in violations. Nominating civil and political rights in a hierarchical order as “first generation” rights classifies economic/social/cultural rights as secondary: the “second generation” of rights. Group rights, as distinct from individual rights, environmental rights and, in certain cases, self-determination thus become degraded as “third generation.” This view is kept alive by a simple misunderstanding of “progressive” realization, required in ICESCR, such that slow realization of economic/social/cultural rights is acceptable and that all aspects of economic/social/cultural rights, as such, are subject to gradual implementation. The indivisibility of human rights belies such gradualist or generational notions. Therefore, this toolkit cannot accommodate the divisive, generational approach to human rights not for ideological reasons, but for the fact that theories neatly segregating rights are not sustained in practice.

It is with this recognition of the indivisibility of rights that CESCR commented:

...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....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.^{589[2]}

Core obligations

Alone, the very general reference to the human rights in treaty texts does not provide the specific guidance needed for States parties around the world to know their precise obligations. ICESCR’s English-language version requires States to “take steps.” The French texts calls on States “to act” (*s’engage à agir*) and, in Spanish, the Covenant requires States “to adopt measures” (*a adoptar medidas*), but offers little about what those steps/actions/measures should be, except to say that these should be “appropriate,” “progressive” (nonregressive/ nonretrogressive), nondiscriminatory (nondiscrimination), involve international cooperation and include legislative measures (rule of law). Therefore,

Liberté, Égalité, Fraternité as ordinal categories. The three generations are subsequently reflected in some of the rubrics of the European Charter of Fundamental Rights.

First-generation human rights deal essentially with liberty. In Vasak’s view, these are seen as fundamentally civil and political in nature and serve to protect the individual from excesses of the State. First-generation rights include, inter alia, freedom of speech, the right to a fair trial, and freedom of religion, as enshrined in Articles 3–21 of UDHR and ICCPR.

Second-generation human rights would be those related to equality, and are supposedly the social, economic, and cultural rights. This theory sees these essentially as positive rights; that is, actions that the State is required to provide to the people under its jurisdiction, as opposed to actions from which the State should refrain—e.g., forced eviction—in order to realize rights.

Third-generation human rights correspond with fraternity, or involving “solidarity.” They include group and collective rights, such as self-determination, economic and social development, sovereignty over natural resources, and the right to participate in the common heritage of mankind. Treated as third generation, the generational theory of rights presumes that these rights are not yet binding and dubiously judicial.

In an alternative explanation for the three-generational approach rests on the political divisions of the Cold War, where the West promoted allegedly first-generation (civil and political) rights, and the East promoted second-generation (economic, social and cultural) rights. The Third World (i.e., third priority in the putative hierarchy) promoted (third-generation), solidarity rights, as in the decolonization struggles of the 1970s, including decolonization processes delayed until today.

^{589[2]} General Comment No. 4: “the right to adequate housing” (1991), para. 9.

the treaty-monitoring bodies bear the task of issuing General Comments and General Recommendations to supply the needed specificity, based on international public law and the implementation experience of all States parties.

In its General Comment No. 3: “The nature of States parties’ obligations,”^{590[3]} CESCR addressed the principle of “minimum core obligations”:

...a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party. Thus, for example, a State party in which any significant number of individuals is deprived of ...basic shelter and housing...is, *prima facie*, failing to discharge its obligations under the Covenant. If the Covenant were to be read in such a way as not to establish such a minimum core obligation, it would be largely deprived of its *raison d'être*.^{591[4]}

The General Comment, like the Covenant, takes into consideration material limits of States. However, the Covenant’s Article 2 (1) obligates each State party to take the necessary steps “to the maximum of its available resources,” and the treaty body has determined that the nature of treaty obligations are such that a State bears a heavy burden of proof to demonstrate that “every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations.”^{592[5]}

The “minimum core obligations” also include those appropriate steps to respect, defend, promote and fulfill the human right to adequate housing, like other economic/social/cultural rights, as a matter of immediate application. Among the appropriate measures, in addition to harmonizing domestic legislation with the covenanted rights, is to provide judicial remedies to victims within the national legal system. That would be among the most effective measures to ensure compliance with obligations to implement certain aspects of economic/social/cultural rights *immediately*, such as by ensuring nondiscrimination. The Committee has determined that it is “difficult to sustain” any suggestion that these immediate obligations are inherently non-self-executing. This legal authority is consistent also with the terms of the Vienna Convention on the Law of Treaties (1969), which provides that “A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.”^{593[6]} The treaty bodies have clarified further that neither political processes, domestic legislation, scarcity of resources, nor agreements with other parties could be invoked to justify nonimplementation of human rights treaty obligations.^{594[7]}

Nondiscrimination is perhaps the most obvious and urgent of the immediate principles in implementing the human right to adequate housing. CESCR has provided specific guidance such that, among other things, “States parties must give due priority to those social groups living in unfavourable conditions by giving them particular consideration. Policies and

^{590[3]} Adopted by the CESCR in its fifth session (1990), E/1991/23.

^{591[4]} *Ibid.*, para. 10.

^{592[5]} *Ibid.*

^{593[6]} Vienna Convention on the Law of Treaties, signed at Vienna, 23 May 1969; entered into force, 27 January 1980, Article 27: “Internal law and observance of treaties.” The Article also goes on to state that “this rule is without prejudice to Article 46.” Article 46: “Provisions of internal law regarding competence to conclude treaties” states that “1. A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance. 2. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith.”

^{594[7]} Letter of CESCR Chairperson Mme. Virginia Bonoan-Dandan to S.E. M. Yaakov Levy, Permanent Representative, Permanent Mission of Israel to the United Nations Office and Specialized Agencies at Geneva, 11 May 2001, annex to Letter by the Chairperson of the Committee on Economic, Social and Cultural Rights to the President of ECOSOC (11 May 2001).

legislation should correspondingly not be designed to benefit already advantaged social groups at the expense of others.”^{595[8]}

The measures needed for States parties to comply with obligations of immediate application include negative obligations. That is, many of the measures to realize the human right to adequate housing would require little more than the State and its agents to refrain from certain harmful practices, such as arbitrary house demolitions and forced eviction, or a meaningful commitment to enabling “self-help” or “social production of habitat” by affected groups. Such changes in State behavior would not require significant expenditure of public resources.

Universality

The principle of human rights’ “universality” is simply expressed in the UDHR’s recognition that “All human beings are born free and equal in dignity and rights” (Article 1). Everyone, without exception, is entitled to human rights by virtue of belonging to the human family. From a moral point of view, the universality of human rights is an essential principle if the human civilization is to advance for the better. In international law, the text of ICESCR also speaks consistently of right of “everyone,” which obliges States not to discriminate in adherence to minimum core obligations. In the field of housing, in particular, States are not permitted to interpret its minimum core obligations to apply selectively, that is, only to citizens, or only certain citizens, but also to ensure the human right to adequate housing is realized also for “everyone,” including residents, immigrants and migrant workers, etc. The only conditionality permitted in law is that the subjects of human rights qualify as members of the human family.

Before the Universal Declaration, the social movements, revolutions, antislavery struggles and intellectual contributions of the past have served as vehicles for the promotion of human rights that eventually have been incorporated into local and international law and practice. However, many of these famous accomplishments were limited in their substance or application, geographically or socially, or were subject to reversal. Social science and philosophy have contributed greatly to the recognition of human rights, but have not carried the force of law. The recognition of the universality of human rights overcomes the shortcomings left by these otherwise-significant accomplishments:

Limits in scope of application:

- The rights and ethics delivered through the world’s moral systems, especially those found in the religions, also are limited in scope by the fact that they apply to adherents to a particular faith group, not applying universally;
- The Magna Carta of 1215 imposed limits on royal impunity that equate as new rights for citizens, especially property-owning citizens. However, this historical achievement had only local application in the geographical realm of the English king.

Exclusion of social sectors and substantive rights:

^{595[8]} General Comment No. 3: “The nature of States parties’ obligations,”^{595[8]} CESCR addressed the principle of “minimum core obligations,” adopted by the CESCR in its fifth session (1990), E/1991/23, para. 11.

^{595[9]} The Vienna Convention sets forth, in Article 27, that “[A] party may not invoke the provisions of its internal law as justification to perform a treaty,” and the customary law principle, arising from Article 8 of the Universal Declaration of Human Rights, states that “everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him [her] by the constitution or by law.”

- The “American Revolution,” in the English colonies that eventually became the original United States of America, realized the right to self-determination as a legal right and *raison d'état*. However, the right to self-determination, as inalienable as it is, applied in the American Revolution case as a right limited only to the white colonizers who identified themselves as a distinct people. The remaining indigenous peoples—whom the settlers mostly largely and replaced—have yet to achieve their self-determination to this day;
- The French Revolution, for all its achievements, realized rights for individuals. French farmers and workers sought recognition of their group rights in the context of the revolution; however, its leadership rejected those expansive notions of rights and insisted on *liberté, égalité and fraternité* with an individual focus;
- The results of the Bolshevik Revolution institutionalized recognition of group rights for workers, etc.; however, rejected a right to property ownership. However ethically grounded the rationale for that omission, the denial of property rights also has emerged as a common tool for depriving persons, communities and entire peoples of their means of subsistence, thereby demonstrating, by its violations, the importance of that neglected human right.

Retgression:

- The antislavery movement in Haiti at the end of the 18th Century resulted in a democratic regime and Constitution under the leadership of former slave and eventual General Toussaint Louverture. However, the same France that produced the world-changing Revolution only 12 years before saw the French General Napoleon I crush the new democracy in 1801 for reasons of imperial interest, reversing the accomplishments of Haitian antislavery democracy, with consequences extending to this day.

Despite their shortcomings, these episodes in the gradual achievement of rights through local struggle all have contributed to the accumulation of human rights recognition as universally applicable. Human rights law today embodies that cumulative recognition into an international and universal code that seeks to leave no human group, geographical region or human need without mutual protection in the multilateral legal regime.

Universality of human rights now means that it is impermissible to neglect certain rights as if they were intended selectively for certain cultures, as if and people of other cultures deserve an inferior standard. Universality also means that no State or government is exempt from its obligations, either for reasons of specificity of local law, as the Vienna Convention has addressed, or to uphold traditional practices that violate rights or their over-riding principles of application.

Interpreting rights consistent with one's own culture (as in the cultural adequacy of housing) means applying locally specific options and idiomatic expressions consistent with the human rights framework. However, practices that preserve or condone unequal rights to secure tenure, inheritance or other entitlements of the human right to adequate housing are not consistent with the present framework and likely to violate both the gender-equality provisions of the Covenant, as well as essential provisions of the Vienna Convention on the Law of Treaties (1969).^{596[9]}

While local experience of application and struggle continue to provide specificity on how to realize human rights, reveal a variety of possible strategies and define emerging rights (such

as the rights to water, land and energy), cultural specificity does not mean allowance for the derogation of rights to something short of the over-riding principles and entitlements reflected in this toolkit. As affirmed by moral arguments and legal authority, adequate housing is the right of everyone, everywhere.

Conclusion

The over-riding principles featured in the monitoring steps of this toolkit are those explicitly mentioned in the major human rights treaties. The “Other principles of application” are implied in the human rights instruments or recognized in international jurisprudence, but are not less important to keep in mind.

The HLRN toolkit attempts to go further than merely encouraging the monitor to keep these additional principles in mind, however. The toolkit’s design actually incorporates all of these three principles, but without culling them out as additional steps in the monitoring process.

The indivisibility of rights is already present in the 12 entitlements; whereas, the first eight derive directly from the CESCR’s General Comment No. 4 specifically on the right to housing. The “Congruent rights” derive from rights whose sources and concepts arise from the ICCPR, Refugee Convention and other instruments. Therefore, the housing rights entitlements themselves embody the indivisibility concept in a practical form.

The core minimum obligations applying in the case of the human right to adequate housing also are consistent with those entitlements outlined in the General Comment No. 4, which are embedded in this methodology (human right to adequate housing entitlements A–H). Naturally, the local specificity as to the nature and level of effort required to realize the human right to adequate housing is precisely your contribution through your monitoring effort, your critical process and by posing your solutions to problems in the field.

The universality of the human right to adequate housing is also inherent to this toolkit, by design. That is manifest in the wide range of international and regional instruments guaranteeing the right and incorporated into the Step 2 presentation of both the Sources in international law and Popular sources.

The good news is that, with these principles integrated in the design of the toolkit, you are able to apply them as a matter of course. Therefore, it would be unnecessary and redundant to create corresponding, additional tasks. By applying the methodology in this Housing and Land Rights Monitoring Toolkit, you will be putting all of these inter-related and interdependent principles into living practice.

6.4. Guarantees

Guarantees of the Human Right to Adequate Housing

We will now determine the existing assets guaranteeing the entitlements of the human right to adequate housing in your country situation. We can begin by making our assessment at the general and international level, then proceeding to the more instrumental and local level. The “guarantees” do not mean only legal provisions, but also institutional, policy and other assets that function to ensure, or at least contribute to implementation of the various contents of our human right to adequate housing.

Therefore, one should assess first the State’s current obligations by its ratification of

international (and then regional) treaties recognizing the human right to adequate housing, its over-riding principles and its specific entitlements. Then this method would have us determine any similar guarantees in the national constitution (or equivalent). At the more-specific level of legislation, the inquiry should have us identify which statutes, regulations and even municipal ordinances actually guarantee the right or any entitlement within the right. Presumably, public policies, programs, institutions and budgets in place should form the practical implementation counterparts to complement these legal criteria and the respect, defense, promotion and fulfillment of the human right at the most-localized operational level.

Inquiry Begins Here

Following this logic, our line of inquiry on “guarantees” poses a number of questions for the monitor to provide the answer. Now your role will become more active. Accordingly, we will follow the method of assessing the guarantees in your country situation for implementation of the human right to adequate housing from general to specific, thus, focusing on:

- Ratifications and multilateral commitments:** Obligations arising from multilateral (international and regional) ratification of relevant treaties;
- Constitutional provisions** relevant to the human right to adequate housing and land;
- National legal system:** Legislation and other local law;
- Institutions:** both binding and bonding institutions, whether as a formal structure, or a more-customary, social character;
- Policies:** having nationwide application;
- Programs:** long-term, policy-based and systematic efforts;
- Projects:** having more temporary and localized application; and
- Budgets** of public institutions.



In that order, our line of inquiry will explore these guarantees for each of the twelve entitlements of the human right to adequate housing and land. You will likely find that you may already have the answers to many of these questions from the previous sections on “Sources” and “Over-riding Principles.” For instance, you have already learned about, and identified many multilateral treaty instruments guaranteeing the human right to adequate housing. Now, you will be able to fill in the rest of the guarantees to complete the picture of how these norms translate into legal and functional assurances locally for this and every entitlement of our human right that you choose to monitor and assess.

This method ensures that the monitor take into consideration also the guarantees of the over-riding human rights principles (as explained above in “Over-riding principles applied to legal security of tenure and freedom from dispossession” in Step 3 of this toolkit). These principles, found in the first Articles of all the major human rights treaties, are to be generally and universally applied in order to ensure a context for the realization of all rights, not least the human right to adequate housing and land. Since these principles over-ride, or sit on top of the human rights framework applied to housing and land, they appear first in the list of questions in our line of inquiry. These questions include a list of legal instruments and commitments by States to guarantee these over-riding principles. (Please note that these are illustrative lists; they are not exclusive lists. You may know of other such guarantees, and you may find that some listed do not apply to your country situation.)

In the same way that we proceed from the general to the specific, the inquiry about the guarantees of the over-riding principles is followed by the more precise, practical guarantees that ensure the human right to adequate housing and land is made real in practice. Therefore, the systematic questions here include a test of (1) the present (general and contextual) guarantees for applying the over-riding principles of international human rights law in the case of the entitlement legal security of tenure and freedom from dispossession (i.e., self-determination, nondiscrimination, gender equality, rule of law, nonregressivity/nonretrogression and international cooperation), as well as (2) the (functional and specific) local guarantees of legal security of tenure and freedom from dispossession deriving from the guarantees listed above.

✓ Guarantees of the over-riding principles

Self-determination

- Which international treaties has the State ratified, acceded to or succeeded to that guarantee that the principle of self-determination be applied, including in the housing context?
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention on the Elimination of All Forms of Racial Discrimination (1965)
- Convention on the Rights of the Child (1989)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- ILO No. 107 concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (1957)
- ILO Convention No. 169 concerning Indigenous Peoples in Independent Countries (1989)
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee that the principle of self-determination be applied, including in the housing context?

- Declaration on the Right to Development (1986)
- Declaration on Social Progress and Development (1969)
- Habitat II Agenda (1996)
- Istanbul Declaration (1996)
- Social Summit Declaration and Programme of Action (1995)
- Universal Declaration of Human Rights (1948)
- United Nations Commission on Human Rights resolutions
- UN General Assembly resolutions [various]
- Vienna Declaration and Programme of Action (1993)
- Durban Declaration and Programme of Action [of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] (2002)
- Johannesburg Declaration of the World Summit on Sustainable Development and Plan of Implementation (2001)

Which regional treaties has the State ratified, acceded to or succeeded to that guarantee that the principle of self-determination be applied, including in the housing context?

- African Charter on Human and Peoples Rights (1981)
- American Convention on Human Rights (1969)
- American Declaration of Human Rights (1948)
- Arab Charter on Human Rights (1994)
- (European) Convention for Protection of Human Rights and Fundamental Freedoms (1950)
- European Social Charter (1961)

Has the State participated in the adoption of multilateral agreements in the form of regional conferences, summits, or congresses, etc., or voted in favor of resolutions in regional organizations that guarantee that the principle of self-determination be applied, including in the housing context?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (2000)
- Rabat Declaration (1995)

Nondiscrimination

Which international treaties has the State ratified, acceded to or succeeded to that guarantee that the over-riding principle and human right to freedom from discrimination be applied, including also in the housing context?

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention on the Elimination of All Forms of Racial Discrimination (1965)
- Convention on the Rights of the Child (1989)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- International Labour Organisation Convention No. 107 concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (1957)
- International Labour Organisation Convention No. 117 *on Social Policy (Basic Aims and Standards)* (1962)
- ILO Convention No. 169 concerning Indigenous Peoples in Independent Countries (1989)
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)
- Refugee Convention (1951)
- Convention relating to the Status of Stateless Persons (1954)
- Convention on the Reduction of Statelessness (1961)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international

organizations that guarantee that the over-riding principle and human right to freedom from discrimination be applied, including also in the housing context?

- Declaration on Asylum (1967)
- Declaration on the Right to Development (1986)
- Declaration on Social Progress and Development (1969)
- Declaration on the Elimination of Violence against Women (1993)
- Habitat II Agenda (1996)
- Declaration on Cities and Other Human Settlements in the New Millennium [Habitat II+5 UNGAR S-25/2] (2001)
- UN Guidelines on Internally Displaced Persons (1998) [vote in favor of adoption in UNHRCR E/CN.4/1998/53/Add.2, dated 11 February 1998]
- International Labour Organisation Recommendation No. 162 concerning Older Workers (1980)
- Istanbul Declaration (1996)
- Rio Declaration and Agenda 21 (1992)
- Social Summit Declaration and Programme of Action (1995)
- Universal Declaration of Human Rights (1948)
- UN General Assembly resolutions [various]
- United Nations Commission on Human Rights resolutions [various]
- Vancouver Declaration Human Settlements (1976)
- Vienna Declaration and Programme of Action (1993)
- Durban Declaration and Programme of Action [of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] (2002)
- Johannesburg Declaration of the World Summit on Sustainable Development Plan of Implementation (2001)

Which regional treaties has the State ratified, acceded to or succeeded to that guarantee that the over-riding principle and human right to freedom from discrimination be applied, including also in the housing context?

- African Charter on Human and Peoples Rights (1981)
- American Convention on Human Rights (1969)
- Arab Charter on Human Rights (1994)
- (European) Convention for Protection of Human Rights and Fundamental Freedoms (1950)
- European Social Charter (1961)

Has the State participated in the adoption of multilateral agreements in the form of regional-level conferences, summits, or congresses, etc., or voted in favor of resolutions in regional organizations that guarantee application of the over-riding principle and human right to freedom from discrimination, including also in the housing context?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (2000)
- Rabat Declaration (1995)

Gender equality

Which international treaties has the State ratified, acceded to or succeeded to that guarantee the application of the over-riding principle of gender equality be applied, including also in the housing context?

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention on the Rights of the Child (1989)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- International Labour Organisation Convention No. 117 *on Social Policy (Basic Aims and Standards)* (1962)
- International Labour Organisation Convention No. 131 Concerning Minimum Wage Fixing, with Special Reference to Developing Countries (1970)
- International Labour Organisation Convention Recommendation No. 115 concerning Workers' Housing (1961)
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee the application of the over-riding principle of gender equality be applied, including also in the housing context?

- Declaration on Asylum (1967)
- Declaration on the Right to Development (1986)
- Declaration on Social Progress and Development (1969)
- Habitat II Agenda (1996)
- Declaration on Cities and Other Human Settlements in the New Millennium [Habitat II+5 UNGAR S-25/2] (2001)
- International Labour Organisation Recommendation No. 162 concerning Older Workers (1980)
- Istanbul Declaration (1996)
- Rio Declaration and Agenda 21 (1992)
- Social Summit Declaration and Programme of Action (1995)
- Universal Declaration of Human Rights (1948)
- United Nations Commission on Human Rights resolutions
- Vienna Declaration and Programme of Action (1993)
- Durban Declaration and Programme of Action [of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] (2002)
- Johannesburg Declaration of the World Summit on Sustainable Development and Plan of Implementation (2001)

Which regional treaties has the State ratified, acceded to or succeeded to that guarantee the application of the over-riding principle of gender equality be applied, including also in the housing context?

- African Charter on Human and Peoples Rights (1981)
- American Convention on Human Rights (1969)
- American Declaration of Human Rights (1948)

- Arab Charter on Human Rights (1994)
- (European) Convention for Protection of Human Rights and Fundamental Freedoms (1950)
- European Social Charter (1961)

Has the State participated in the adoption of multilateral agreements in the form of regional conferences, summits, or congresses, etc., or voted in favor of resolutions in regional organizations that guarantee the application of the over-riding principle of gender equality be applied, including also in the housing context?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (2000)
- Rabat Declaration (1995)

Rule of law

Which international treaties has the State ratified, acceded to or succeeded to that guarantee the State's application of the over-riding principle of the rule of law, which also extends to the housing sphere?

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention on the Elimination of All Forms of Racial Discrimination (1965)
- Convention on the Rights of the Child (1989)
- Rome Statute on the Establishment of the International Criminal Court (1998)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- International Labour Organisation Convention No. 107 concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (1957)
- International Labour Organisation Convention No. 117 *on Social Policy (Basic Aims and Standards)* (1962)
- International Labour Organisation Convention No. 131 Concerning Minimum Wage Fixing, with Special Reference to Developing Countries (1970)
- ILO Convention No. 169 concerning Indigenous Peoples in Independent Countries (1989)
- International Labour Organisation Convention Recommendation No. 115 concerning Workers' Housing (1961)
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)
- Refugee Convention (1951)
- Convention relating to the Status of Stateless Persons (1954)
- Convention on the Reduction of Statelessness (1961)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international

organizations that guarantee the State's application of the over-riding principle of the rule of law, which also extends to the housing sphere?

- Declaration on Asylum (1967)
- Declaration on the Right to Development (1986)
- Declaration on Social Progress and Development (1969)
- Habitat II Agenda (1996)
- Declaration on Cities and Other Human Settlements in the New Millennium [Habitat II+5 UNGAR S-25/2] (2001)
- International Labour Organisation Recommendation No. 162 concerning Older Workers (1980)
- Istanbul Declaration (1996)
- Rio Declaration and Agenda 21 (1992)
- Social Summit Declaration and Programme of Action (1995)
- Universal Declaration of Human Rights (1948)
- United Nations Commission on Human Rights resolutions
- Vancouver Declaration Human Settlements (1976)
- Vienna Declaration and Programme of Action (1993)
- Durban Declaration and Programme of Action [of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] (2002)
- Johannesburg Declaration of the World Summit on Sustainable Development and Plan of Implementation (2001)

Which regional treaties has the State ratified, acceded to or succeeded to that guarantee the State's application of the over-riding principle of the rule of law, which also extends to the housing sphere?

- African Charter on Human and Peoples Rights (1981)
- American Convention on Human Rights (1969)
- American Declaration of Human Rights (1948)
- Arab Charter on Human Rights (1994)
- (European) Convention for Protection of Human Rights and Fundamental Freedoms (1950)
- European Social Charter (1961)

Has the State participated in the adoption of multilateral agreements in the form of regional conferences, summits, or congresses, etc., or voted in favor of resolutions in regional organizations that guarantee the State's application of the over-riding principle of the rule of law, which also extends to the housing sphere?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (2000)
- Rabat Declaration (1995)

Nonregressivity/nonretrogression

Which international treaties has the State ratified, acceded to or succeeded to that guarantee the State's implementation of the principle of nonregressivity/nonretrogression in the respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human right to adequate housing and land?

- Convention on the Elimination of All Forms of Racial Discrimination (1965)
- Convention on the Rights of the Child (1989)
- International Covenant on Economic, Social and Cultural Rights (1966)
- International Labour Organisation Convention No. 117 *on Social Policy (Basic Aims and Standards)* (1962)
- International Labour Organisation Convention Recommendation No. 115 concerning Workers' Housing (1961)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee the State's implementation of the principle of nonregressivity/nonretrogression in the respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human right to adequate housing and land?

- Declaration on the Right to Development (1986)
- Declaration on Social Progress and Development (1969)
- Habitat II Agenda (1996)
- Declaration on Cities and Other Human Settlements in the New Millennium [Habitat II+5 UNGAR S-25/2] (2001)
- Istanbul Declaration (1996)
- Rio Declaration and Agenda 21 (1992)
- Social Summit Declaration and Programme of Action (1995)
- Universal Declaration of Human Rights (1948)
- United Nations Commission on Human Rights resolutions
- Vancouver Declaration Human Settlements (1976)
- Vienna Declaration and Programme of Action (1993)
- Durban Declaration and Programme of Action [of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] (2002)
- Johannesburg Declaration of the World Summit on Sustainable Development and Plan of Implementation (2001)

Which regional treaties has the State ratified, acceded to or succeeded to that guarantee the State's implementation of the principle of nonregressivity/nonretrogression in the respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human right to adequate housing and land?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (200)
- Rabat Declaration (1995)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee the State's implementation of the principle of nonregressivity/nonretrogression in the respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human right to adequate housing and land?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (2000)
- Rabat Declaration (1995)

International Cooperation

Which international treaties has the State ratified, acceded to or succeeded to that guarantee the State's implementation of the principle of international cooperation to ensure respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human rights to adequate housing and land?

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention on the Elimination of All Forms of Racial Discrimination (1965)
- Convention on the Rights of the Child (1989)
- Rome Statute on the Establishment of the International Criminal Court (1998)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- International Labour Organisation Convention No. 107 concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (1957)
- International Labour Organisation Convention No. 117 *on Social Policy (Basic Aims and Standards)* (1962)
- International Labour Organisation Convention No. 131 Concerning Minimum Wage Fixing, with Special Reference to Developing Countries (1970)
- ILO Convention No. 169 concerning Indigenous Peoples in Independent Countries (1989)
- International Labour Organisation Convention Recommendation No. 115 concerning Workers' Housing (1961)
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)
- Refugee Convention (1951)
- Convention relating to the Status of Stateless Persons (1954)
- Convention on the Reduction of Statelessness (1961)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee the State's implementation of the principle of international cooperation to ensure respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human rights to adequate housing and land?

- Agenda 21 (1992)
- Declaration on Environment and Development (1992)
- Declaration on Asylum (1967)
- Declaration on the Right to Development (1986)
- Declaration on Social Progress and Development (1969)
- Habitat II Agenda (1996)
- Declaration on Cities and Other Human Settlements in the New Millennium [Habitat II+5 UNGAR S-25/2] (2001)
- International Labour Organisation Recommendation No. 162 concerning Older Workers (1980)
- Istanbul Declaration (1996)
- Rio Declaration and Agenda 21 (1992)
- Social Summit Declaration and Programme of Action (1995)
- Universal Declaration of Human Rights (1948)
- United Nations Commission on Human Rights resolutions
- Vancouver Declaration Human Settlements (1976)
- Vienna Declaration and Programme of Action (1993)
- Durban Declaration and Programme of Action [of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] (2002)
- Johannesburg Declaration of the World Summit on Sustainable Development and Plan of Implementation (2001)

Which regional treaties has the State ratified, acceded to or succeeded to that guarantee the State's implementation of the principle of international cooperation to ensure respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human rights to adequate housing and land?

- African Charter on Human and Peoples Rights (1981)
- American Convention on Human Rights (1969)
- American Declaration of Human Rights (1948)
- Arab Charter on Human Rights (1994)
- (European) Convention for Protection of Human Rights and Fundamental Freedoms (1950)
- European Social Charter (1961)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee the State's implementation of the principle of international cooperation to ensure respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human rights to adequate housing and land?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (2000)
- Rabat Declaration (1995)

What additional multilateral commitments has the State made to guarantee nondiscrimination in the respect, protection, promotion and fulfillment of the human right to adequate housing and, by extension, physical accessibility?

Do not forget that the body of the binding international treaties that the State already has ratified contains binding human rights obligations that take precedence over nonbinding declarations of mere intent or political will. Monitoring these obligations is the covenanted task of the treaty parties [ratifying States], which has been delegated to neutral treaty-monitoring bodies that are supported in their task by government and civil-society monitors. Keep in mind also that some multilateral declarations and many agreements with international financial and development institutions may contain standards less protective of human rights and freedoms than those of a binding nature under human rights treaties. Those agreements may even impede the enjoyment of economic/social/cultural rights. Such agreements are to be evaluated subject to prior human rights treaty obligations—not vice versa.

✓ Local guarantees

Ratifications and international commitments

Which international treaties has the State ratified (acceded or succeeded to) that guarantee the human right to adequate housing, in particular physical accessibility?

Constitutional provisions

- Does the State have a Constitution, or equivalent, guaranteeing the right to human right to housing and land, including physical accessibility?
- Does the State have a Constitution, or equivalent, guaranteeing the right to local self-determination?
- Does the State have a Constitution, or equivalent, guaranteeing the right to freedom from discrimination?
- Does the State have a Constitution, or equivalent, guaranteeing gender equality?
- Does the State have a Constitution, or equivalent, guaranteeing the rule of law, including access to justice and democratic participation and representation?
- Does the State have a Constitution, or equivalent, guaranteeing the right to the continuous improvement of living conditions?
- Does the State have a Constitution, or equivalent, providing that international relations be conducted within the framework and objectives of human rights, including economic, social and cultural rights?

National legal system

- Is the right to adequate housing, including physical accessibility recognized as a distinct right in the country's legal system?

- Is national and local legislation consistent with the human rights right to housing and land, including physical accessibility?
- Is national and local legislation consistent with the principle of local self-determination?
- Is national and local legislation consistent with the right to freedom from discrimination? What statutes has the State/government legislated, and are in force, to ensure nondiscrimination in the respect, defense, promotion and implementation of the human right to adequate housing, in particular, physical accessibility?
- Do the concerned persons or community have the sense that the terms of their entitlement to physical accessibility of adequate housing are equal and consistent with others'?
- Does national and local law maintain the principle of gender equality, particular as it relates to housing, land and physical accessibility?
- Do local and national laws and regulations uphold the rule of law, including access to justice and democratic participation and representation in matters related to housing, land and physical accessibility?
- Does the State's legal system maintain the right to the continuous improvement of living conditions?
- Are the laws and regulations of the State consistent with the principle that international relations, including international entities operating locally, conduct themselves within the framework and objectives of human rights, including economic, social and cultural rights, in particular, the human right to adequate housing and land, including physical accessibility?
- Does the performance of the law-enforcement services guarantee the practice and enforcement of the respect, defense, promotion and implementation of the human right to adequate housing, including physical accessibility?
- Are judges and lawyers performing sufficiently and consistently to uphold the human right to adequate housing, including the entitlement of physical accessibility? What are some examples?

Institutions

- Is there a sense in the community that the State and government institutions represent their aspirations to self-determination?
- What State and public institutions exist as a guarantee of nondiscrimination in the respect, defense, promotion and implementation of the human right to adequate housing, in particular, physical accessibility?
- Do the concerned persons or community have the possibility to exercise an effective role in determining the terms and conditions of physical accessibility of adequate housing?

- What State and public institutions exist as a guarantee of gender equality in the defense, promotion and implementation of the human right to adequate housing, in particular, physical accessibility?
- What private and nongovernmental institutions exist as a guarantee of gender equality in the defense, promotion and implementation of the human right to adequate housing, in particular, physical accessibility?
- What informal institutions (including social norms) function so as to help implement the human right to adequate housing and, in particular, physical accessibility?⁵⁹⁷
- What social institutions and consistent social practices exist as a guarantee of gender equality in the defense, promotion and implementation of the human right to adequate housing, in particular, physical accessibility?
- How have these institutions actually improved capacity to protect, or actual protection of physical accessibility of adequate housing for those in need?

Policies

- What statewide policies are in place and implemented to guarantee of the human right to adequate housing and, in particular, physical accessibility?

Keep in mind that the body of the binding international treaties that the State has ratified contain provisions that call for human rights to be implemented in the presence of the over-riding principles of self-determination, nondiscrimination, gender equality, the rule of law, international cooperation in the implementation of human rights, and progressive realization (nonregressivity/ nonretrogression) and the continuous improvement of living conditions.

- How have national policies enhanced local self-determination so as to ensure acceptable levels of physical accessibility of adequate housing?
- How have national policies to ensure nondiscrimination positively affected physical accessibility of adequate housing in the country?
- How have national gender policies led to improvements in the conditions of physical accessibility in the housing sphere, especially for those in need?
- How have the State's policies on access to justice enhanced conditions of physical accessibility of adequate housing, especially for those in need?
- How have national housing policies ensured the continuous improvement of living conditions, in particular the housing rights entitlement of physical accessibility, especially for those in need?

⁵⁹⁷ The operative concept of institutions here encompasses both bonding and bridging institutions. "Institutions," in this sense, involve the rules of the game under which formal and informal activity is conducted, and include public institutions, private institutions, collective practices and norms, as well as changing norms (e.g., brought about through the youth, technology, economic or demographic shifts, and other emerging behaviours). According to Douglas C. North, 1993 Nobel economics laureate, institutions are "humanly devised constraints that shape human interaction."

- In what ways have national housing policies ensured that international relations and international entities operating within the country respect, defend, promote and fulfil the human right to housing, in particular the entitlement of physical accessibility for those in need?
- To what extent have external parties positively influenced your country's official policies or practices in guaranteeing the entitlement to physical accessibility of adequate housing?

Programs

- What progressive steps has the State made on a national scale in the past period (year[s], or since your last assessment) to improve housing rights, especially the entitlement of physical accessibility? (These may include: law reforms, improved infrastructure, more effective implementation methods, population registry programs, programs to consider ratification of international covenants, and evaluations of housing rights implementation, etc.)

Keep in mind that the body of binding international treaties that the State has ratified contain provisions that call for human rights to be implemented in the presence of the over-riding principles of self-determination, nondiscrimination, gender equality, the rule of law, international cooperation in the implementation of human rights, and progressive realization (nonregressivity/ nonretrogression) and the continuous improvement of living conditions.

- What private-sector or NGO programs are in place and implemented to guarantee the human right to adequate housing and, in particular, physical accessibility?
- How have these national programs enhanced local self-determination in a way that has improved the conditions of physical accessibility of adequate housing?
- What national programs are completed, ongoing, or planned to ensure nondiscrimination positively affected physical accessibility of adequate housing in the country?
- Are there any national gender programs completed, ongoing or planned with the purpose and effect of improving the conditions of physical accessibility in the housing sphere, especially for those in need? Do they cover land rights and inheritance issues?
- What are have the State's recent, present or future programs to enhance access to justice that are intended to improve housing and living conditions, especially for those in need? How have those programs implemented to date succeeded in enhancing physical accessibility of housing?
- How have national housing programs ensured the continuous improvement of living conditions, in particular the housing rights entitlement of physical accessibility, especially for those in need?
- In what ways have national housing programs ensured that international relations and international entities operating within the country respect, defend, promote and fulfil the human right to housing, in particular the entitlement of physical accessibility for those in need?

- Has the government in the concerned State cooperated with other State or non-State parties to find identify and adapt good practices locally to improve physical accessibility of adequate housing for all those living there?

Projects

- What progressive actions has the State undertaken in the way of limited-scale or pilot projects in the past period (year[s], or since your last assessment) to improve housing rights, especially the entitlement of physical accessibility?
- What private-sector or NGO projects are in place and implemented to guarantee the human right to adequate housing and, in particular, physical accessibility?
- How have such local projects enhanced local self-determination in a way that has improved the conditions of physical accessibility of adequate housing?
- What projects completed, ongoing, or planned to ensure nondiscrimination positively affected physical accessibility of adequate housing in the country?
- Are there any gender-based projects completed, ongoing or planned with the purpose and effect of improving the conditions of physical accessibility in the housing sphere, especially for those in need? Do they cover land rights and inheritance issues?
- What are have the State's recent, present or future projects to enhance access to justice that are intended to improve housing and living conditions, especially for those in need? How have those programs implemented to date succeeded in enhancing physical accessibility of housing?
- How have these projects ensured the continuous improvement of living conditions, in particular the housing rights entitlement of physical accessibility, especially for those in need?
- In what ways have public or private projects ensured that international relations and international entities operating within the country respect, defend, promote and fulfil the human right to housing, in particular the entitlement of physical accessibility for those in need?
- Has the government in the concerned State cooperated with other State or non-State parties to find identify and adapt good practices locally through projects that actually improve physical accessibility of adequate housing for all those living affected?
- Are there foreign State or foreign private interests operating projects affecting the housing and human settlements sector in the country and affecting the situation under review? Are their roles positively affecting the enjoyment of physical accessibility of adequate housing?

Budgets

- What public budgets are in place to guarantee the human right to adequate housing and, in particular, physical accessibility? How does the budget correspond to actual spending and implementation targets?

- Is the necessary public budget information available to conduct a multiyear assessment of the financial performance of policies, programs and projects affecting housing and living conditions of those vulnerable and needy inhabitants of the country?
- Does the public have access to the budgets of private companies and organizations operating in the housing sphere and having an effect on the housing rights entitlement of physical accessibility?
- Does the reliable budget information support the public claims of those responsible for the budgets intended for improvement of living conditions of the needy, particularly in the housing rights entitlement of physical accessibility?
- What international obligations and commitments affect the public budget with ramifications on the housing sector, including the entitlement of physical accessibility?
- What national obligations and commitments affect the public budget with ramifications on the housing sector, including the entitlement of physical accessibility?
- What financial policies affect the public budget with ramifications on the housing sector, including the entitlement of physical accessibility?

6.5. Obstacles, impediments, barriers

At the present stage in the monitoring process, you have well identified the elements arising from the human right and legal concept of adequate housing. You have completed the necessary review of international minimum standards that codify the right, along with the corresponding obligations on the ratifying State. Your process has taken you through the moral arguments of social movements and others, who are the very source of human rights throughout history. Those sources fill legal gaps and provide specificity to local human rights priorities and application. In your context, you also have identified which of the binding instruments and other theoretical guarantees apply to the case at hand.

At this point, you are advancing beyond the theoretical dimensions of the human right to adequate housing, its constituent elements and its guarantees. As a housing-and-land-rights monitor, you will now enter the practical dimension and assess the most difficult challenge in the field of human rights: implementation. The following sample questions guide the monitor to prepare needed data and arguments by detailing the present obstacles, impediments, barriers, threats and constraints that have brought about, or threaten to bring about a violation or deprivation of the right and the element of physical accessibility of housing, which you are currently addressing.

When monitoring documenting any stage of this toolkit inquiry, or assessing the conditions affecting any right, it is essential to ensure the highest quality of information possible. It has been said often that information is power. In our case, this is especially true, but the degree of that power will depend largely on the following qualities of your information:

- Completeness
- Level of detail and specificity
- Date (freshness) of the information
- Integrity of the information (i.e., lack of contradictions)
- Effective (articulate, concise, understandable and correct) use of language

- Relevance: linkage to the question of housing and land rights implementation
- Credibility of source (reputation, effective presentation, link to issue and community)

In order to begin assessing the compatibility of the theoretical affirmations of the human right to housing and land with the local reality, you will determine now whether, and to what extent barriers, contradictions, obstacles, and impediments contribute to actual and/or potential violations of the entitlement to physical accessibility of housing. This process is aided with the following battery of questions:

✓ **Obstacles to the over-riding principles**

Self-determination

- Are the people dissatisfied with the terms of their physical accessibility of housing?
- Do the concerned persons or community lack the possibility to exercise an effective role in determining the terms of physical accessibility of housing?

Nondiscrimination

- To what extent is discrimination an issue in realizing the entitlement to physical accessibility of housing?
- Is there (does the affected community report) any type of discrimination practiced randomly, occasionally or on the social level, or institutionalized in some form, affecting physical accessibility of housing?
- What are the nature of the discrimination and its effects of the entitlement of physical accessibility of housing?

Gender equality

- Is there any gender-based discrimination applied in realizing the entitlement to physical accessibility of housing?
- Is the discrimination practiced randomly, occasionally or on the social level, or is it institutionalized in some form such that affects physical accessibility of housing?
- Does local law on inheritance, divorce or other specialization fail to provide equal rights to males and females of all ages? How?

Rule of law

- Has the State failed to ratify any of the relevant international or regional treaties guaranteeing the human right to adequate housing?
- Has the State issued any reservations, declarations or understandings to international or regional treaties that possibly limit the affect of human right to adequate housing guarantees, particularly so as to affect the entitlement of physical accessibility of housing?

- Has the State government failed to conduct a legal evaluation of housing rights implementation?
- Has the State government failed to present timely reports to the relevant treaty-monitoring bodies covering the human right to adequate housing?
- Has the State and its government failed to implement in good faith the Concluding Observations of the various treaty bodies concerning implementation of the human right to adequate housing?
- Do the three branches of government (judiciary, legislative and executive) operate with autonomous authority?
- Do the three branches of government coordinate to uphold and enforce a single system of law?
- Does the State lack a Constitution, or equivalent, guaranteeing gender equality?
- Does the State lack a Constitution, or equivalent, guaranteeing the rule of law, including access to justice and democratic participation and representation?
- Does the State lack a Constitution, or equivalent, guaranteeing the right to the continuous improvement of living conditions?
- Does the State lack a Constitution, or equivalent, providing that international relations be conducted within the framework and objectives of human rights, including economic, social and cultural rights?
- Does the country's legal system lack recognition of the human right to adequate housing, including physical accessibility of housing?
- Is there a lack of strong and consistently enforced planning and building laws that are equipped with facilities to ensure adequate physical access to public building for those with special access needs, such as ramps and elevators for the physically challenged and the elderly?
- Do legal or procedural shortcomings impede the admissibility of claims invoking international treaty obligations in the defense of human right to adequate housing, in particular, the entitlement to physical accessibility?
- Has the State failed to ratify the Rome Statute on the International Criminal Court, limiting the options to seek justice and remedy for gross violations of the human right to adequate housing?
- Does the political system in the country lack coordination among branches of executive, legislative and judicial government?
- Does the State lack a Constitution, or equivalent, guaranteeing the rule of law, including access to justice and democratic participation and representation?
- Are there contradictions in the national law affecting physical accessibility of housing?

- Is there insufficient enforcement of laws and/or policies against arbitrary eviction enforced, including safeguards for vulnerable groups, such as: women, children, orphans, etc.?
- Do local authorities fail to recognize explicitly the application of the international human rights treaties that the State has signed and/or ratified and that guarantee the human right to adequate housing, including the entitlement of physical accessibility of housing?
- Has the legislature failed to harmonize national laws with international human rights treaty obligations in the formulation of policies affecting the human right to adequate housing, in particular, with affect on physical accessibility?
- Is national and local legislation inconsistent with the human rights right to housing and land, including physical accessibility of housing?
- Is law enforcement inadequate to ensure enjoyment of the entitlement of physical accessibility of housing?
- Are law enforcement officers in need of training in, and information about the human right to adequate housing in order to uphold the entitlement of physical accessibility of housing?
- Do lawyers, prosecutors and/or judges lack awareness and training in the housing and land rights law in order to uphold and defend the entitlement of physical accessibility of housing?
- Has the national court system failed in any way to admit claims of housing and land rights victims, including those whose entitlement to physical accessibility of housing has been violated?
- Does the rule-of-law, regulations, or their enforcement fail to govern market forces effectively to ensure the respect, protection, promotion and fulfilment of the right to adequate housing (e.g., governing monopolies, procedures for legal redress)? How does fact affect the enjoyment of the housing rights entitlement to physical accessibility of housing?
- Does local law restrict civil society associations from advocating rights or providing services that would advance the respect, defense, promotion and fulfillment of the human right to housing, including physical accessibility?

Nonregressivity / nonretrogression

- Has the State failed to take steps to improve housing rights, especially affecting physical accessibility of housing, in the past period (year[s], or since your last assessment)?
- Have new laws degraded protection of human right to adequate housing in the recent period, particularly affecting physical accessibility of housing?
- Have new policies degraded protection or enjoyment of human right to adequate housing in the recent period, particularly affecting physical accessibility of housing?

- Have national programs led to a decline in the enjoyment of human right to adequate housing in the recent period, particularly affecting physical accessibility of housing?
- Have infrastructure or physical features of the built or natural environment led to a decline in the enjoyment of human right to adequate housing, particularly affecting physical accessibility of housing?
- Have nationwide programs failed to improve, or led to a decline in, the enjoyment of human right to adequate housing, in particular the terms of physical accessibility of housing?
- Have local projects supported by State or local authorities failed to improve, or led to a decline in, the enjoyment of human right to adequate housing, in particular the terms of physical accessibility of housing?
- Have public budget allocations failed to improve, or led to a decline in, the enjoyment of human right to adequate housing, in particular the terms of physical accessibility of housing?
- To what extent has the State government's efforts fallen short in the improvement the terms of physical accessibility of housing, especially of the poor, vulnerable and minorities?

International cooperation

- Are foreign State or non-State interests operating in the housing and human settlements sector in the country and affecting the entitlement of physical accessibility of housing? Are their roles negatively affecting the enjoyment of physical accessibility of housing?
- To what extent have external parties (States, or international financial institutions) negatively influenced your country's official policies or practices in guaranteeing the right to physical accessibility of housing?
- Has the State neglected to take steps, "individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources" and capacities to ensure (especially poor and vulnerable) people's physical accessibility of housing?



✓ Local obstacles

Institutions

- As far as human right to adequate housing and physical accessibility of housing are concerned, are there gaps or shortcomings in the State, government and other public institutions positioned to improve living conditions, including the housing-rights entitlement of physical accessibility of housing?

- What public institutions lack policies, or fail enforce building regulations ensuring adequate physical access to public building for those with special access needs, such as ramps and elevators for the physically challenged and the elderly?
- Has there been a recent decrease in the quantity or quality of civil society institutions upon which the community now relies, particularly those providing advocacy and services for the elderly, physically challenged, HIV/AIDS patients and other groups with special physical access needs.
- Do the concerned private and nongovernmental institutions fail to guarantee gender equality in the defense, promotion and implementation of the human right to adequate housing, in particular, physical accessibility of housing?
- What informal institutions (including social norms) function so as to impede the enjoyment of the human right to adequate housing and, in particular, physical accessibility of housing?⁵⁹⁸
- Do these institutions actually lack the will or capacity to protect legal physical accessibility of housing for those in need?
- Do these institutions actually lack the will, knowledge or capacity to use the relevant treaty body Concluding Observations in work of monitoring and lobbying officials

Policies

- Do the relevant ministries omit to incorporate international human rights treaty obligations in the formulation of policies affecting the human right to adequate housing, in particular, with affect on physical accessibility?
- What statewide policies are still needed to guarantee of the human right to adequate housing and, in particular, physical accessibility of housing?
- Does the State housing policy fail to ensure the provision of adequate availability of housing in the market that are equipped with facilities for physical access by those with special access needs, such as ramps and elevators for the physically or medically challenged persons and the elderly?
- Have the relevant national policies neglected to ensure acceptable levels of self-determination in determining the terms and conditions of physical accessibility of housing? How and why?
- Have national policies failed to reach their targets (even despite announcements of official intent) positively to affect physical accessibility of housing? How and why?
- Have national gender policies led to improvements in the conditions of legal physical accessibility of housing in the housing sphere, especially for those in need? How and why?

⁵⁹⁸ The operative concept of institutions here encompasses both bonding and bridging institutions. "Institutions," in this sense, involve the rules of the game under which formal and informal activity is conducted, and include public institutions, private institutions, collective practices and norms, as well as changing norms (e.g., brought about through the youth, technology, economic or demographic shifts, and other emerging behaviours). According to Douglas C. North, 1993 Nobel economics laureate, institutions are "humanly devised constraints that shape human interaction."

- Have the State's policies on access to justice failed to improve conditions of legal physical accessibility of housing, especially for those in need?
- Have national housing policies failed to ensure the continuous improvement of living conditions, in particular, by stagnating or degrading the housing rights entitlement of physical accessibility of housing, especially for those in need? How and why?
- Do national housing policies lack consideration of, and/or reference to the international human rights instruments relevant to the human right to adequate housing and physical accessibility of housing, and to which the State is bound?
- To what extent have external parties negatively influenced your country's official policies or practices in guaranteeing the physical accessibility of housing?
- Have State housing-policy implementing institutions omitted to seek international cooperation in the human right framework by conditioning international entities operating within the country also to respect, defend, promote and fulfil the human right to housing, in particular the entitlement of physical accessibility of housing?

Programs

- What negative steps has the State taken on a national scale in the past period (year[s], or since your last assessment) to improve housing rights, especially the entitlement of physical accessibility of housing? These may include declining legal assistance laws, deteriorating infrastructure without repair, declining implementation efforts?
- What related private-sector or NGO programs have failed to enhance the enjoyment of the human right to adequate housing, in particular, physical accessibility of housing?
- Is there a lack of, and need for national gender programs completed, ongoing or planned with the purpose and effect of improving the conditions of legal physical accessibility of housing in the housing sphere, especially for those in need?
- Do existing programs omit to cover land and inheritance rights?
- Have the intergovernmental relations declined between your State and others leading to a decline on options for international cooperation in advancing the respect, defense, promotion and/or fulfilment of the human right to adequate housing, in particular physical accessibility of housing?
- Has the government in the concerned State declined to cooperate with other States, intergovernmental agencies, or foreign non-State parties to identify and adapt good practices locally to improve the entitlement to physical accessibility of housing?

Projects

- What relevant State actions or omissions have led to the failure of limited-scale or pilot projects in the past period (year[s], or since your last assessment) to improve housing rights, especially the entitlement of physical accessibility of housing?

- What private-sector or NGO projects have failed to seek, or fallen short of their intended goal to guarantee the human right to adequate housing and, in particular, physical accessibility of housing?
- Have such local projects undermined local self-determination with negative effect on the conditions of physical accessibility of housing? How and why?
- Are foreign State or foreign private interests operating projects negatively affecting the housing and human settlements sector in the country and affecting the entitlement of physical accessibility of housing? How and why?
- Have projects conducted by local or international entities in the country privatized the provision of housing or public services replaced the role and responsibility of the State and local authorities to fulfil the human right to adequate housing, in particular the entitlement of physical accessibility of housing for those in need?

Budgets

- Are there obstacles to obtaining adequate information about public expenditures in the housing sector, or in areas affecting the enjoyment of the human right to adequate housing, including physical accessibility of housing?
- Is there a lack of legal and actual protection of the right to information, including information and documentation on public budget expenditures in the housing sphere related to the entitlement of physical accessibility of housing?
- Are public budgets inadequate to guarantee the human right to adequate housing and, in particular, physical accessibility of housing?
- Is there underspending of the budget such that impedes the achievement of policy, program or project implementation targets, affecting physical accessibility of housing?
- Do public budget items and actual financial performance reflect a lack of sufficient priority given to implementing policies, programs and projects to improve housing and living conditions, affecting also physical accessibility of housing, of those vulnerable and needy inhabitants of the country?
- Does the public have access to the budgets and financial performance data of private companies and organizations operating in the housing sphere and having an effect on the housing rights entitlement of physical accessibility of housing?
- Does the reliable budget information contradict the public claims of officials and institutions responsible for the continuous improvement of living conditions of the needy, particularly in the housing rights entitlement of physical accessibility of housing?
- Do international obligations and commitments negatively affect the public budget with ramifications on the housing sector, including with negative affect on the entitlement of physical accessibility of housing?
- What national obligations and commitments affect the public budget with ramifications on the housing sector, including the entitlement of physical accessibility of housing?

- What financial policies constrain the public budget with negative consequences on the housing sector, including the entitlement of physical accessibility of housing?
- Is the achievement of physical accessibility of housing accompanied by an inordinate economic burden?
- Is the State failing to regulate effectively the terms and conditions of housing market, so as to avoid corruption, collusion, fraud, discrimination, nepotism and any arbitrary criteria? How is this affecting the entitlement of physical accessibility of housing?
- Is the State prohibiting or impeding individual and community initiatives toward obtaining physical accessibility of housing, individually as well as collectively?
- Are State authorities permitting other parties to interfere with community efforts toward obtaining physical accessibility of housing, individually as well as collectively?
- Are present government mechanisms and structures inefficient at assisting the needy population from gaining access to physical accessibility of housing?
- Does the State lack needed resources to ensure physical accessibility of housing, especially for the poor, vulnerable and needy?
- Does national political disharmony impede enjoyment of the human right to adequate housing and physical accessibility of housing?
- Is there armed conflict in the country impeding the private and/or public institutions from carrying out development and delivering services that safeguard and improve physical accessibility of housing conditions?
- Has a natural disaster inflicted parts of the country, creating conditions that negatively affect the human right to adequate housing, including the entitlement to physical accessibility of housing? Do these conditions impede relief or reconstruction assistance by public and private actors?

6.6. The victims and vulnerable persons: the actors

At this step in the housing and land rights monitoring process, you will have to provide relevant facts and figures concerning the people who already have been affected and those who remain vulnerable. You should also identify and describe precisely which part of the population is affected.

Those affected (victims or vulnerable) individuals and groups could be, for example, an indigenous community historically undergoing discriminatory treatment and land confiscation. It is essential to report the number of affected people, among them proportions of children, women and other groups having special needs, such as the elderly, who may be particularly affected.

In your inquiry into the identities of the victims and the vulnerable inhabitants, it is vital that you determine the place and time, as well as the characteristics of the affected persons in the case. The numbers and any demographic data of the composition of the affected population are critical to understanding the case and characterizing the type of violations. The violation or vulnerability may be multidimensional (or intersectional), involving more than

one form of discrimination. Knowing the victims and vulnerable persons can help determine which combinations of housing rights elements are simultaneously affected. In describing the population, knowing the particular vulnerabilities and special needs of the affected persons or community (whether arising from historical factors, gender, age or other demographics) complete the picture that you eventually will present to your intended audience.

✓ Distinguishing between the victims and vulnerable

It is also important for the monitor to distinguish between those victims, whom already have been violated, and those who are vulnerable to future violation or deprivation. Of course, this distinction will be strategically important later in the process, when the housing and land rights monitors and defenders choose an action in response to the violation. You will have to determine then if your intervention is to be remedial or preventive. In any case, an eye to those who remain vulnerable even after the principal violation, as well as after a particular solution to a case, will maintain the monitors focus—as necessary—on the further interventions needed toward the ultimate realization of the human right to adequate housing and land.

The following sample questions guide the monitor to prepare needed data and arguments, in the case of any present obstacles, but focusing on the human dimension in the case of a violation of the housing rights entitlement of physical accessibility of housing.

Victims

- Identify the type and form of violation of the entitlement to physical accessibility of housing:
 - Homelessness
 - Forced eviction
 - Arbitrary demolition
 - Denial of equal inheritance rights
 - Confiscation of property by public officials and bodies
 - Confiscation by private actors (criminal gang, settlers, armed groups)
- Who has been affected by the violation of the entitlement of physical accessibility of housing?
- How many people have been affected in the same way in the last year (any time period)? Does it demonstrate a pattern?
- Identify and provide demographic details of the victims:
 - Numbers and proportions of refugees
 - Numbers and proportions of migrant workers
 - Numbers and proportions of minority persons
 - Numbers and proportions of males and females
 - Numbers and proportions of indigenous and/or tribal and semitribal people
 - Numbers and proportions of elderly, disabled, medically challenged persons with special needs
 - Numbers and proportions of members of groups subject to (current and historic) discrimination
 - Numbers and proportions of impoverished inhabitants, including those subject to discrimination on the basis of their economic status or work (e.g., Dalits)

- Numbers and proportions of any other relevant group identity of victims
- Where does the violation of this right mostly occur (i.e., rural, urban, slums)?
- When does this violation mostly occur? Day or night? Weekend? Certain times of the year? Why does the violator choose this timing?

Vulnerable individuals and groups

- Identify the type and form of vulnerability to future violation of the entitlement to physical accessibility of housing:
 - Homelessness
 - Forced eviction
 - Arbitrary demolition
 - Denial of equal inheritance rights
 - Confiscation of property by public officials and bodies
 - Confiscation by private actors (criminal gang, settlers, armed groups)
- Who are the populations most likely to experience the violation of the right to physical accessibility of housing? Why are they vulnerable?
- Identify and provide demographic details of the concerned vulnerable persons or groups:
 - Numbers and proportions of refugees
 - Numbers and proportions of migrant workers
 - Numbers and proportions of minority persons
 - Numbers and proportions of males and females
 - Numbers and proportions of indigenous and/or tribal and semitribal people
 - Numbers and proportions of elderly, disabled, medically challenged persons with special needs
 - Numbers and proportions of members of groups subject to (current and historic) discrimination
 - Numbers and proportions of impoverished inhabitants, including those subject to discrimination on the basis of their economic status or work (e.g., Dalits)
 - Numbers and proportions of any other relevant group identity of vulnerable persons
- Explain the insecurity of their situation and give details about the naturally vulnerable populations (women, children, indigenous, slum dwellers, refugees, workers/migrant workers, farmers, etc.).

Focus on multidimensional / intersectional affects

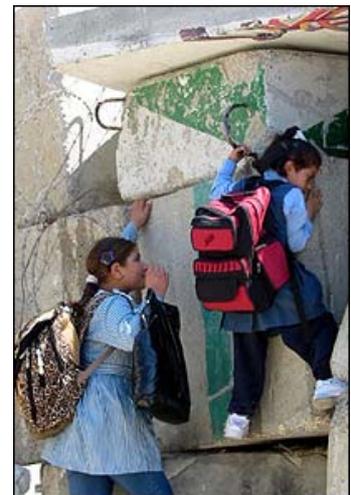
Your case will be enhanced when your information includes emphasis on the particular types of victimization or vulnerability by focusing on the social groups typically subject to multidimensional, or intersectional types of deprivation. The monitor should identify such multiple forms of deprivation for each of the groups already identified in this section (above). This step allows you to identify the nature and causes of the particular affects on certain groups who may be made vulnerable already in addition to, or in advance of the specific housing land rights violation, or anticipated violation. The following sample questions will lead you to clarify this point.

Women

- Are women in the given community or case subject to deprivation of their entitlement to physical accessibility of housing?
- What are the reasons for this condition? Is it by some custom, religion or other ideological motivation?
- Does the practice of domestic or social violence against women somehow impede women's enjoyment of their entitlement to physical accessibility of housing?
- Are the formal or informal terms of inheritance already biased against women in a way that negatively affects the enjoyment of the entitlement to physical accessibility of housing?

Children

- Do housing conditions impede acceptable access to public goods and services as an element of the RAH, so as to obviate violence and abuse, including psychological & sexual abuse, within the home or community?
- Are housing conditions, in particular, the rights element of physical accessibility of housing, suitable for children to carry out their studies?
- Are housing conditions, including physical accessibility of housing, conducive to achieving the highest attainable standard of physical and mental health?



Racial, ethnic or other groups

- Who are the victims or vulnerable persons or community subject to discrimination that includes denial of physical accessibility of housing?
- Have the affected persons or groups (either the vulnerable or the victims) been denied their right to suitable housing, and particularly to physical accessibility of housing, because they belong to a specific minority, ethnic or indigenous group?
- How has historic discrimination, if any, affected the current situation?

✓ Victims' case documentation form

6.7. Losses/consequences

✓ Quantification methodology

Quantifying violations to the right to adequate housing: a tool for evaluating the effects of demolitions, confiscations and forced evictions

The purpose of this tool is to help determine the value of costs and losses that victims incur as a consequence of the violation their housing rights. Using this tool will aid in the various necessary stages of proper monitoring of specific violations of the right to housing, including:

1. Documentation and recording
2. Monitoring and reporting
3. Quantifying/evaluating
4. Identifying and solving problems
5. Follow-up assessments
6. Fact-finding missions
7. Public information and campaigns
8. Social mobilization
9. Media work
10. Compensation efforts
11. Legal defense and prosecution
12. Monitoring international obligations

The quantification methodology and “Loss Matrix” are designed to aid human rights workers responsible for each stage in the monitoring process, including interventions that are both preventive and remedial. These stages may involve the same individual human rights worker at each stage, or may involve a division of team labor. In either case, this tool also can serve as a vehicle for organizing tasks in a coordinated and complementary way, when more than one individual or organization is involved in the process. For instance, if different teams or organizations are specializing in respective geographical areas, applying this tool commonly aids the process to avoid duplication and the discrediting contradiction of facts.

Whether or not your monitoring objective is legal defense, policy analysis, compensation or public information, the quantification of the effects of the violation strengthen your argument and, consequently, help mobilize support for the movement to end, redress and compensate/obtain restitution for the violations. In particular, your findings will substantiate the assertion that many housing rights violations actually widen and deepen poverty, having a de-development effect on the community and country.

The material and otherwise-calculable costs resulting from the violation are determined for each unit (household) affected and then totaling them. Alternatively, in the case of multiple units affected, a representative sample should be obtained to determine the average values, which then are to be multiplied by actual numbers of units affected.

Other incalculable losses still have to be recorded and reported in narrative terms. Such narrative explanation and analysis will be useful as an accompaniment to this quantification table.

Both short-term and long-term values are to be assessed.(You can follow examples of traffic dispute jurisprudence, or the law pertaining to insurance or divorce cases in your country to come up with a methodology of determining personal injury and pain-and-suffering damages claims for compensation purposes.) Accurate and thorough quantification of costs and losses calls for both a great deal of cooperation between the monitor and the affected community, and a continuous relationship over time.In order to capture many of the values, sustained monitoring and calculation are required over time. It is, therefore, recommended that such monitoring effort be undertaken or coordinated by those who maintain a program and commitment to the affected community over the long term.

This tool seeks to quantify the costs of victims, as well as public, or social costs. For our purposes, the principal victim(s) would be those persons whose property and lives are directly affected by the act, be it a demolition, confiscation and/or eviction, etc. (This tool would be used for any and all categories of violation.) Ancillary or indirect victims would be those who undergo the cost or other harm as a result of an act intended or directed at others. The indirect victims' losses and damage should be included in the overall assessment of the violation's effects.

The middle column, entitled "Methodology," in the quantification table found at the "**Loss Matrix**" link contains commentary on the contents of the calculated costs/losses and provides guidance on how to calculate them. It is there where you will record in your applied version of the "Loss Matrix" the type of items or values totaled under the particular type of cost/loss. There, too, you could cite whether or not the values are losses/costs to the principal victims only, or include those of indirect victims, such as those enduring collateral damage from a house demolition. The "Methodology" description should be as complete but concise as possible, within a short line or two.

It is possible to modify "Loss Matrix" to the user's discretion. (However, we emphasize that any modifications be shared among the community of monitors to ensure compatibility of findings.) For example, certain direct and indirect victims' losses may need to be separately calculated for some reason. In that case, an additional column can be added. In any case, however, it is important to arrive at a global cost figure for the violations under review. The column at the far right under each category of cost should be totaled using the imbedded Excel formula.

Follow the links to access the details of the quantification methodology and "**Loss Matrix**."

- Victim's material losses
- Victim's nonmaterial losses
- Other than victim's material losses (public costs)
- Other than victim's nonmaterial losses (including social costs)

Contents and methodology for determining each category of loss/costs

Victims' Material Losses

The Structure

The fair market value of the house, shelter or other structure(s). This is probably greater than the cost, as indicated in official records of the most recent tax assessment, for example. That price may be a guide, but is likely to be out of date with the value that would be obtained if the property were to be sold on the market. The market value would also likely be less than the "speculative value," which is considered to be that value (price) that a speculator, investor or other interested party would anticipate after the demolition/eviction and after converting the structure—if partially retained—for eventual exchange or reassessment. The reference for determining the market value would be reliable real estate agents, banks, or other parties involved in the sale and exchange of such properties. The standard methodology would involve collecting three quotes/estimates and selecting the average, or taking the middle quote as the fair market value.

In the likely event that no such property market is actively issuing quotes on the value of the affected property. The remaining alternative method for determining market value would be the estimated cost of replacing the property at current market values.

Note that the victim incurring the loss in this case would be the owner(s) and or title holder(s), including those owning the property individually, or collectively, under formal title, or by traditional tenure systems.

Plot

The plot and the structure are considered separately in this methodology to accommodate systems where the two aspects of property value are determined separately, or by different methods. For example, a cooperative arrangement may provide for outright title to the structure, but a “share” of the land area under it. It also allows for disaggregating these values in the event of a dispute over one and not the other. In the event that the structure and the land are both held in title by the same owner and the values are customarily assessed in combination, the structure and plot values could be combined in the matrix.

The eviction and/or demolition may not involve the dispossession of land title or ownership of the plot on which the structure stands. In that case, the evaluator would proceed to the next categories and not enter a value for the plot. However, in some cases, such as in Israel, the land plot under a demolished structure may, perforce, be assumed by, or “revert to” the state as “state land” or “national land.” The evaluator must be familiar with the local laws and regulations to determine if that is the case in the event of an eviction or demolition. That may determine whether or not a value is entered in this category of the matrix or not.

In the case of a housing plot being confiscated by the state, determining the value of that plot may be difficult if, again, no market value can be determined for the affected area. In that case, the methodology would involve determining the cost at current market value of a comparable site in another location.

Contents

Each affected party should cooperate with the field workers to provide an inventory of the actual contents lost and damaged in the demolition. The value of those contents for this quantification purpose is the **replacement value** of the items, not the market value. The contents (furniture, clothing, foodstuffs, electronics, housewares items, etc.) would be subject to depreciation and the resale or fair-exchange values would not be sufficient to cover the cost of replacement. The replacement value represents the actual cost of repurchasing items comparable in quality to those lost or damaged by the demolition. (For heirlooms and other items sentimental value, a replacement cost should be included in this category; however, the nonmaterial loss or irreplaceability should be expressed in the “Victims’ Nonmaterial Losses” section of the matrix, with a narrative either included in the matrix or attached to it.

Collateral damage

This section of the matrix allows for inclusion of the material losses to the indirect victims in particular, including neighbors’ and public property that are affected by the act. In cases of violent eviction or demolition, using bulldozer or explosives, for example, nearby property can be damaged in various degrees, or destroyed.

Infrastructure

This section refers to services and other infrastructure lost in the demolition/eviction/confiscation that would have to be replaced after the event. For example, electricity provided at the original site may have to be replaced by a generator or purchasing energy from an alternate source. Water, previously available from installed or nearby facilities may have to be replaced by purchasing water or hauling it from another source. The resulting added cost—including the relative cost of labor at the going rate of such work for hire, which is beyond the existing regular costs of obtaining same—is the value to be calculated here.

Business losses

If the demolition/eviction/confiscation results in the loss of a business, or a portion of business, that cost is to be included here. Those losses are the subject of subcategories to be detailed below.

Equipment/inventory

This includes the value of machinery and equipment, other installations, such as furnishings and built ins, as well as all stock and supplies. This should include also the property belonging to others lost or damaged in the event. For example, a laundry or repair service would hold clients' property to be processed and returned. The values of those items are also to be included in this figure.

Prospective income

The loss resulting from inability to deliver goods and services, and the anticipate profit from existing stores, orders, contracts, etc. that would be unfulfilled due to the event. The short-term and long-term affects are to be calculated by different methods. This category of loss follows the method developed locally for determining "goodwill" as an asset, which would include the projected income from a pattern of business developed through the lifetime of the enterprise. [Refer to insurance law methods.]

Mortgage, other debts and penalties

The demolition/eviction/confiscation removes the owner's relationship with the land and/or structure, contents, livestock, inventory and other matters of material value, such as materials and work performed for physical improvement to the property. However, the event does not relieve the owner from responsibility to repay for those values obtained on a credit basis. Those values, including any penalties and increased interest resulting from the event, are to be included here for both the short-term and long-term. If a situation prevails, as in many legal systems, that a debtor relinquishes claims (as in a natural disaster, for example), then that cost should nonetheless be calculated and listed under the category of "Other than Victim's Losses."

Livestock

The value of livestock lost and the treatment of those injured by the event is calculated here. This would include also the labor costs for time spent in rounding up dispersed livestock at the rate of pay for such work for hire. The calculus for these values includes the loss of anticipated returns from normal sale of, and/or produce from the animals, including their normally anticipated progeny over the short-term and long-term. In the case of the animals'

value as beasts of burden, the returns on their labor are to be included in the figures provided under lost revenue, increased transportation costs, returns from crop loss, or other appropriate category.

Land

The landed property not associated with the affected structure itself is to be calculated on the basis of fair market value, as with the structure and its plot entered above. This could be land adjacent to the dwelling or other affected structure, or land confiscated separately. This land could be lost entirely through confiscation, or its value could be reduced as a result of the eviction or demolition. In the case of eviction, land title might not be lost outright, but the conditions created by the eviction may prevent the owner(s) from returning to or reclaiming their land. In that case, the land in question would be calculated as an outright loss.

Trees/crops

The value of a lost or damaged nonfruit-bearing, or otherwise unharvestable tree or other vegetation would be determined by the cost of purchasing and replanting a comparable replacement. The nonmaterial, aesthetic, or sentimental value of the tree or other vegetation would be included by narrative in the Victim's Nonmaterial Losses item under Environment or Heritage, as appropriate. The value of harvestable trees and crops would include the value of the replacement itself for fruit-bearing trees and crops, as well as the (short-term and long-term) value of the harvest. The loss of timber would be calculated accordingly also, with the value being the anticipated return from the harvesting or sale of the tree itself.

The ecological loss of vegetation, depending on the nature of the event—if by demolition were by fire or other destructive means—also carries a value. Ecological damage is calculated on the basis of the restoration costs entailed. Collateral damage to wildlife and other natural assets, owing to the damage and the time required to restore it, may be of both a calculable and incalculable loss. Where possible, such calculable values should be included here. Otherwise, those losses are to be recorded in the narrative section of both the Victim's and Nonvictim's Nonmaterial Losses, for those losses would be of a more public nature.

Lost/decreased wages/income

The loss of a home, including subsequent short-term or long-term resettlement, may involve the loss of livelihood, whether that livelihood is linked to the dwelling and/or land lost. In any event, wages would inevitably be lost (to victim or her/his employer) for nonproductive time attending to the event and its aftermath. Resettlement can lead to loss of a job or jobs altogether, or necessitate securing alternative employment, especially if temporary or long-term resettlement is far from the regular workplace. To calculate that value, one would subtract the short-term and long-term wages and other income of affected persons from the normal, anticipated wages and other income before the event. Since obtaining new employment and other income involves a loss of certain benefits, such as accumulated vacation leave, seniority and other benefits, the relative loss of those values should be included here if calculable. Job seniority may not be calculable value in monetary terms if it involves merely standing vis-à-vis colleagues. However, if that seniority arguably would have led to promotion with material effect in the short or long terms, that value is to be factored here as well.

Health care

The event itself or its aftermath may have negative health consequences. Social science has recorded the effects of eviction and resettlement upon the increased mortality and morbidity rates of the affected communities. While these notable consequences belong among the Victim's Nonmaterial Losses, the care for these consequences has clearly calculable values. The loss of life, limb and other health effects are the subject of the laws of states for the purposes of calculating victim compensation in insurance and other cases involving law suits. A sample of such methods taken from such statutes could form a composite methodology for calculating victims' health losses here.

The overcrowding, such as in interim or alternative housing arrangements, often leads to negative health consequences for those evicted, as well as for those providing the alternative shelter in their own quarters. The care and treatment of these health consequences (such as influenza, scabies, malnutrition, etc.) are an additional value added to these health care costs.

Interim housing

Eviction, confiscation and demolition victims often seek alternative housing with relatives or friends, either within the community or elsewhere. This housing has a value, which is to be calculated on the basis of fair rental rates for such shelter, whether rent is paid or not. It remains a cost and value that is subsidized in one form or another. It also can lead to an actual expanded definition of what constitutes the victim, for persons and groups offering assistance in various forms can be counted as second tier victims by virtue of the loss—voluntary or otherwise—incurred as a result of servicing the persons directly affected by the eviction, confiscation or demolition.

Bureaucratic and legal fees

While under threat of a violation, such as eviction, demolition and confiscation, the eventual victim would likely undergo costs related to both time spent and out-of-pocket costs in order to restrain or defend against the impending violation (if the threat is known in advance). Both the time and monetary costs incurred by both bureaucratic processes and legal advice and defense work should be quantified. Even if the legal advice given is free of charge to the affected person(s), those rendering the advice (NGO, CBO, other *pro bono* service) should put a value on that service for the purposes of this costing exercise. (The costs of bureaucratic efforts by public personnel is determined below under "Other than Victims' Nonmaterial Costs.")

Before the victim(s) can restore their proper housing, s/he conventionally undergoes a procedure and cost toward obtaining a license to rebuild or otherwise restore a dwelling. The costs incurred in this process, including fees, legal service, bribes and other out-of-pocket expenses should be included as a category in its own right.

Alternative/replacement housing

The cost of securing comparable housing on a permanent basis is represented here. (Temporary lodging costs are treated above under "Interim housing.") The comparable housing is meant to include a dwelling with similar spatial dimensions, infrastructure, location and services as the home lost in the violation. This may involve calculation of the

replaceable features of the original dwelling with some adjustments, depending on circumstances. For instance, a comparable dwelling space may be found near the source of livelihood, but may be in a differently priced market, and the adjusted figure would account for that. That dwelling may be comparable in most aspects, but lack services or infrastructure. In that case, the cost of obtaining the replacement services or infrastructure at the local rate would have to be added. Likewise, if the replacement housing is comparable to the original dwelling lost, but its location is less convenient for commuting to one's source of livelihood or family and original community members, that additional transportation cost would be included in the "Transportation" item below.

Since this category of cost is of a more-or-less permanent nature, it should be cited in the "Long-term" cost column of the matrix. Typically, obtaining permanent replacement housing is a lengthy process; therefore, calculating this costs would be a subject for, and a further argument for follow up monitoring of violation cases.

Resettlement

The expenses of traveling and transport of goods to both interim and replacement housing sites form part of the resettlement cost. This, too, would likely involve the efforts and time on the part of several persons—with equivalent values—in order to locate and secure the short-term and long-term housing alternatives. All related costs should be calculated as much as possible.

Transportation costs

This category is the amount of difference between the amounts spent on transportation as a result of the eviction, demolition or confiscation and the amounts spent (if any) on transportation in the normal conduct of life at the original place of residence. Such values include expenses *and* time spent commuting to and from the source of livelihood, visiting family and community members, going to market, carrying out cultural and religious activities, visiting grave sites, conducting other official or private business, etc.

Victims' nonmaterial losses

Health

In addition to the cost of medical treatment, the loss of health has a value seldom calculated in monetary terms. Methods for calculating the values of losses of life and limb can be found in local legal practice concerning divorce, traffic and insurance. This loss will have to be described in some detail in order to make your case.

Living space

A reduction in living space can have negative physical and emotional effects, as when an evicted family takes refuge with friends and relatives in small, temporary quarters. Consequences may include nervousness, loss of sleep or skin ailments. Be sure to describe this situation as part of the victim's experience.

Reconstruction licensing

Long waiting and frustration may result from the search for a license to rebuild after demolition, eviction or confiscation. This loss can be measured in time and stress, and should be included here.

Psychological harm

The victims may suffer mental stress and psychological harm, especially in the context of violence during eviction, or the trauma that accompanies homelessness after the violation. Children are particularly susceptible. Their story needs to be told. You may find criteria for quantifying the value of pain and suffering from the specialized practice of local law on traffic and insurance.

Disintegration of family

Displacement and other violations of adequate housing could lead to separation of family members and the deterioration of family relationships. With the psychological depression arising from housing and land loss, some victims may engage in antisocial behavior, such as violence or substance abuse that harms family relations.

Loss of community

Eviction, resettlement or land loss can fragment communities and reduce social capital built up over time. It can separate people from support systems (including child-care arrangements, domestic division of labor, etc.) upon which they depend for livelihood and social activities, while women bear an extra burden of maintaining an uprooted home.

Investment in infrastructure

Even—and especially—the most-impooverished communities have to invest in local infrastructure (e.g., electricity, water, transport, roads), particularly if the municipal institutions exclude them. Separation from these facilities by forced eviction, confiscation or demolition means a total loss of that investment, which may not be quantified, partly because they are the product of volunteer labor.

Investment in sanitation and waste-management systems

A community may provide its own waste-management solutions, however simple it may be, especially in the absence of public services. The vital functions of waste management may no longer be possible because of the separation, causing a loss of labor divisions or disposal options and spell a deterioration in the quality of life, including entitlements to environmental health as a result of the violation.

Investment in security protection systems

Informal communities are typically forced to seek their own security arrangements, since civil police may fail to serve them, or deteriorating living conditions may coincide with increased social violence.

Investment in educational infrastructure

Local communities' arrangements for popular education may be curtailed with eviction, leading also to the disruption of formal education (e.g., lost school days). Each home also is a locus of educational infrastructure, especially where children carry out their homework.

Heritage

For heirlooms and other items of sentimental value, as for land-based identity and culture, a replacement cost should be included in this category. However, the incalculable nonmaterial dimension, or irreplaceability should be expressed in the "Victims' Nonmaterial Losses" section of the matrix, with a narrative either included in the matrix or attached to it.

Victims' nonmaterial costs

Environment/ecology

Various forms of housing rights violation can spell the loss of environmental safety, health and recreation. Displacement and eviction sever the relationship between the inhabitants and their habitat. It may also force them to live in precarious or unsafe environments as a consequence.

Standing/seniority

A home owner who loses her/his housing also loses the status that comes with the property and securely tenured lifestyle. The formerly real or perceived capacity of the victims to advise and support others dissipates with the violation of their right to adequate housing, especially through land loss.

Relocating long-standing communities to new areas makes them low-status newcomers in competition with new, indigenous neighbors. Environmental degradation or rezoning may affect the status of a community negatively, leading to intangible—but sometimes also quantifiable—losses.

Political marginalization

Homeless people in many States are denied the right to vote for lack of a fixed address. Resettlement renders inhabitants politically weak vis-à-vis new neighbors, especially without the benefit of local connections and established relationships.

Social marginalization

Losing one's home and place to live often means losing also the social integration once enjoyed in the former residence. Spatial marginalization to the outskirts of the city may be synonymous with exclusion from social services and infrastructure.

Further vulnerabilities

The loss of home, land and social capital (i.e., productive relations within the community) can leave the victim(s) without protection from the natural elements, and/or without livelihood and sources of income. The homeless woman becomes further vulnerable to threats against her personal security and integrity long after the housing-rights violation.

Other-than-victims' material costs (public costs)

Police

The law enforcement officials engaged in either committing or remedying a housing and land rights violation, for example, represent a cost to the public purse. You can calculate their number, multiplied by the hours/days engaged and by corresponding wages and benefits to derive an estimate of the public costs incurred.

Bulldozers

In some cases (e.g., in Israel), courts issue orders to targeted inhabitants and communities to demolish their own homes. If they do not comply, the State carries out the deed and charges the victim for the service. In other cases, the housing rights monitor would have to calculate the cost of using the equipment and the wages of the operator to determine the public expenditure in carrying out that part of the violation.

Legal practitioners

Lawyers, either arguing against or defending housing and land rights, as well as judges, prosecutors and court staff dedicate time and materials that are covered from public budgets. Their level of effort and cost per unit of time (hours or days) could form a method of calculating these public costs.

Army

Military personnel and equipment used in the violation (or defense against a violation) also represent a cost. Quantifying these costs may be a more-elusive exercise, but it may be useful to pose estimates for your public's consideration.

Other forces

The public bodies may subcontract tasks and functions to private parties; however, those expenditures related to the case at hand would factor among the nonvictim's material costs.

Bureaucratic and personnel costs

The inspection, administrative processing, clerical and other desk work in public institutions may be carried out in connection with your case and paid by the tax payer. Your educated estimate of these values forms part of the public cost scenario.

Other-than-victims' nonmaterial costs

Social costs

Housing rights violations can be a cause or consequence of social unrest in a country. Depressed living conditions within a community often coincide with increased social violence, and dislocation often generates new adversary relations among inhabitants competing over territory and property, either at the original site, or in resettlement. Squalid

living conditions also could give rise to practices and pathogens that bear a social cost in the form of declining public health.

Civic order

Linked to adequate housing and other economic and social rights, civic order typically deteriorates commensurate with the deprivation of living conditions. Resistance to eviction and forced relocation, demolitions and dispossession by any party is the natural response to a breakdown in civic order, including that characterized by the State omitting to implement its obligation to respect, defend, promote and fulfill the human right to adequate housing and land.

Political legitimacy

Depending on the facts and scale of a particular situation, a housing and land rights violation could undermine the legitimacy of the political party, government or even State in whose name the violation is committed. Alternatively, resolving and remedying a violation could have the opposite effect of recovering the loss of official credibility and legitimacy.

✓ **Loss matrix**

✓ **Housing contents inventory**

6.8. Duty holders

The professional monitor of the human right to adequate housing should provide a list as complete as possible of the duty holders both legally and morally responsible. This legal duty holder (i.e., the State and its agents) may be operating in conjunction with others in either the violation or the potential solution. The audience of your eventual action, whether they are the general public, journalists, or a prosecutor or judge, will need a clear and complete picture of the legal personalities, those who are responsible for their acts of commission and/or acts of omission, and who does what to whom, from the beginning to the present.

As borne out in the foregoing sections on sources of law and guarantees, the concerned State is always the principal duty holder. The State is the legal personality that is treaty bound by the obligation to respect, protect, promote and fulfil human rights, but also to aid those who have been deprived of them. The State's duties are threefold:

- To avoid deprivation,
- To protect and defend those facing deprivation,
- To provide remedy in the forms of assistance and justice to those deprived.

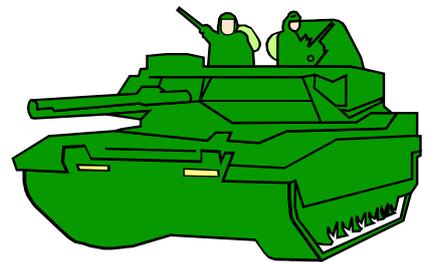
You may find that the State, as duty holder, has committed acts that cause deprivation, or omitted to protect or remedy a deprivation through the obstacles identified above. One might also find that the duty holder is constrained by other actors or factors, such as natural disaster, or global economic recession.

Identifiable institutions and man-made forces, either internal or external, may be known to contribute to a violation. These may include actors such as the International Monetary Fund (IMF), the World Bank, a multinational corporation or national planners. You may find that

these parties are either directly or indirectly responsible for the deprivation, or conditions leading up to it. So, too, are factors such as debt or traditional social practices. Especially when the role of the State is passive (i.e., by denial or failure to protect and ensure remedy to the victims), other actors may come to the fore. Private companies, including multinational corporations, for instance, regularly acquire assets and carry out projects that involve forced evictions and land confiscation. In some cases, the regional and international development banks have their well-articulated policies on compensation/relocation. However, these companies may be the right hand of State policies, or implementers of international public projects. That is why it can be crucial to record the relations between the different actors forming a whole chain of duty holders.

One must not overlook the possibility that duty holders, particularly as violators owing remedy and restitution to victims, might also be members of the community, or even family members of the victim(s). Where does the State duty lie in such a situation?

As the legal personality obliged to respect, defend, promote and fulfil the human right to adequate housing, the State's duty lies squarely in the execution of its human rights obligations to regulate behavior of legal persons within its jurisdiction (and areas where it exercises effective control) in order to uphold rights. The human rights treaties and other instruments provide the guidance on how States—and statecraft—should address human rights violations by third parties not only as matters of civil or criminal law, but also as means to ensure the legitimacy of the concerned government, or even State itself.



To have a full outline of questions for identifying the duty holders and the applicable legal obligations, you can use this "Toolkit" very effectively, since each element of the right to adequate housing that you have identified as relevant to your case has corresponding duty holders.

Primary duty holders: State authorities

- Has the State failed to take to prevent the violation of housing rights, especially physical accessibility of housing? What are those neglected steps?
- Has the State protected the impoverished and vulnerable inhabitants and aided the victims (e.g., by prosecution, return, compensation, etc.) in the violation of housing rights, especially physical accessibility of housing? Which are the particular bodies responsible for these preventive and remedial steps?
- Has the State taken sufficient measures to promote the entitlement of physical accessibility of housing (e.g., human rights education, campaigns, public-service announcements, awareness-raising publications, etc)? Which are the specific bodies responsible for those measures?
- What is the State's relationship with other duties holders regarding the assessed violations? Explain the nature of that relationship. Is it a contract, foreign aid package, nepotism, political patronage, etc.?

Secondary: Have other actors affected the denial of physical accessibility of adequate housing?

- Are other local, non-State actors somehow engaged in the denial of physical accessibility of housing? Who are they and what is their role?
- What role do international financial institutions (IFIs) such as the World Bank, IMF, a regional development bank, or the World Trade Organisation have in determining the policies or conditions affecting physical accessibility of housing in the affected community/country?
- What role and influence do multinational corporations or international development agencies have in determining the policies or conditions of physical accessibility of housing in the affected community/country?
- How are these secondary duty holders responsible for the violation of the right to physical accessibility of housing? To what extent do they influence State policies, programs, and laws having an effect on the violation?
- Do the secondary duty holders have internal policies/codes of conduct regarding housing rights, especially affecting the entitlement to physical accessibility of housing? If so, are they publicly accessible?
- What are the relevant details of those policies or codes? How do they protect the human right to adequate housing and the entitlement of physical accessibility of housing?
- Are these conditions part of an implementation contract or other cooperative agreement with State bodies or other partners?
- Before implementation, do they study the impact the projects will have or consider the possible unintended consequences?
- If there are several secondary duty holders, what is their relationship to each other, and how do they share responsibility for the assessed violation of the entitlement to physical accessibility of housing? What is the relationship between each of them and the State?
- Do local authorities lack sufficient autonomy in housing and community development to apply locally relevant options to ensure the human right to adequate housing, especially physical accessibility of housing?
- Do local authorities use their autonomy to protect and influence the central authorities of the State in a positive way, or do they participate in the violation and denial of the State's obligations and national policies?

Assessment

- To what extent is the State responsible for the vulnerability or violation of the housing rights entitlement to physical accessibility of housing?
- To what extent are non-State actors responsible for the vulnerability or violation of the housing rights entitlement to physical accessibility of housing?

6.9. Actions

The following table of actions (comprised of both preparation and implementation tasks) arranges a variety of possible problem-solving options for you by categorizing them for organizational and selective decision-making purposes. It is not an exhaustive set of options, but merely part of an array of possibilities for you to undertake with the affected community, depending on the present strengths (assets), weaknesses (liabilities), opportunities and threats.

Before selecting your actions, you should conduct a strategic planning exercise. For guidance click [here](#).

Footnotes shown here refer to relevant manuals, training materials, expertise, trainers, recorded experiences and/or methodologies already available to guide your chosen action toward a desired goal/result/solution. Toolkit users are encouraged to consult the HIC-HLRN website regularly for updates and further reference (www.hlrn.org) on constantly evolving updates, including strategies and practices arising from experiences throughout the global HIC and HIC-HLRN community.

Action		Solution
Preparation	Implementation	
Alternative tenure options		
Gather information for community to consider tenure options	Develop "limited equity cooperatives" ⁵⁹⁹	Legal secure tenure in adequate housing and sustainable land
	Inform and train community in pursuing land-tenure options ⁶⁰⁰	
Community capacity building		
Conduct training for community on their human right to adequate housing ⁶⁰¹	Mobilize community in local and national human rights campaigns	Greater community participation in projects, programs and policy formulation with well-defined human rights orientations
Legal service organizations and centers provide legal	Organize popular resistance to HRAH	Community blocks housing rights violations by State and non-State entities

⁵⁹⁹ The limited-equity cooperative is a form of housing tenure in which shareholder residents manage their buildings, within limits imposed by a charter, and have the right to get back what they have paid for their shares plus an allowance for improvements, if and when they decide to leave. See Duncan Kennedy, "The Limited Equity Coop as a Vehicle for Affordable Housing in a Race and Class Divided Society," 46 Howard Law Journal 85-125, 85 (Fall 2002).

⁶⁰⁰ Luanne Warnock, *Sharing the Cost of Land Tenure and Stewardship* (Davis CA: Sustainable Agriculture Research and Education Program, University of California, 1996).

⁶⁰¹ See Circle of Rights (Washington: 2000); Jules N. Pretty, Irene Guijt, John Thompson and Ian Scoones, *Participatory Learning and Action, A Trainer's Guide* (London: International Institute for Environment and Development, 1995), available from Earthprint at www.earthprint.com; also materials of Peoples' Movement for Human Rights Education, <http://www.pdhre.org>.

advice and representation to disadvantaged individuals and communities ⁶⁰²	violations (demonstrations, petitions, sit-ins, street theater, etc.) ⁶⁰³	
<i>Pro bono</i> (volunteer) lawyers provide legal advice and representation to disadvantaged individuals and communities	Organize national campaign on RAH ⁶⁰⁴	Coordinated community action and reaction to influence State authorities on housing policies
Build capacity of community-based and other civil society organizations to manage projects and campaigns ⁶⁰⁵		CBOs and NGOs more capable to support the affected people in responding rapidly and effectively to crises/violations
Train communities (in HRAH, strategic planning, technical skills, etc.) ⁶⁰⁶	Public agencies provide adequate technical, marketing and research assistance to disadvantaged community on an affirmative-action basis	Community better able to mount specific alternatives to official plans
Raise public awareness toward social mobilization through public education ⁶⁰⁷	Mobilize peaceful public protests to housing rights violations	Prevent forced evictions
Enhance monitoring-and-documentation skills and methods (e.g., archiving, statistics, multimedia, etc.)	Urgent Action appeals (organize regional and/or international mobilization) ⁶⁰⁹	Convince public of violations and need for resolution

⁶⁰² Gridley Hall and Burton Fretz, "Legal Services in the Third World," Clearinghouse Review (December 1990); Jose Diokno, Developmental Legal Aid in Rural Asean: Problems and Prospects (Washington: 1981); Richard J. Wilson and Jennifer Rasmussen, Promoting Justice: A Practical Guide to Strategic Human Rights Lawyering (Washington: Human Rights Law Group: 2001).

⁶⁰³ Morjane Baba, Guérilla Kit (Paris: La Découverte, 2003) ; Mike Prokosh and Laura Raymond, The Global Activist's Manual: Local Ways to Change the World (New York: Nation Books, 2002).

⁶⁰⁴ "Global Struggle and National Focus Note" (Geneva: HIC, 1996).

⁶⁰⁵ Kaplan, Allan, The Development of Capacity (Geneva: UN Nongovernmental Liaison Service, 1999); Goggey, Shirley, Rural Community Resource Centers: A Guide for Developing Countries (London and Basingstoke: MacMillan, 1988).

⁶⁰⁶ Barrameda, Teresita V. and Lea I. Espallardo, Learning, Reflecting and Acting for a Human Rights Future: A Training Manual for the Education of the Human Right to Housing in Urban Communities (Quezon City: Process, Inc. and New York: PDHRE, 2000).

⁶⁰⁷ Writing for change: An interactive guide to effective writing, writing for science, writing for advocacy [CD and user's guide] (Oxford: fahamu and IDRC, 2000); International Human Rights Internship Program, Ripple in Still Water: Reflections by Activists on Local- and National- Level Work on Economic, Social and Cultural Rights (Washington: University of Minnesota Human Rights Resource Center, 1997), Chapter 6, online at <http://www1.umn.edu/humanrts/edumat/IHRIP/ripple/toc.html>; Allan McChesney, Promoting and Defending Economic, Social and Cultural Rights: A Handbook (Washington: AAAS and HURIDOCS, 2000) Chapter 7 online at: <http://shr.aaas.org/escr/handbook/>.

to build strong argumentation ⁶⁰⁸	Public-information campaigns ⁶¹⁰	
Design and implement alternative planning (community generated techniques in the people's initiative to design their own living environment) ⁶¹¹		Participatory alternative housing projects adapted to the community's needs
Conduct an inventory (enumeration) of community human resources and social capital ⁶¹²	Organize and divide volunteer labor of affected communities; and to areas to develop alternative plans	Community housing and built environment upgraded on-site as alternative to relocation.
	Community representatives lobby officials and legislators to cooperate with/approve community-proposed alternatives	Obtain adequate relocation site with suitable location, environmental conditions and livelihood options
Community organizing		
Consult with community representatives and conduct an inventory (enumeration) of community human resources and social capital	Establish a tenants union ⁶¹³	Community presents a common position in defense of its rights and interests
Identify and locate absentee landlord ⁶¹⁴		
Cooperate and negotiate⁶¹⁵		

⁶⁰⁸ For guidance and methodology in documenting housing rights cases, see HLRN, Urgent Action! HLRN Guide to Practical Solidarity for Defending the Human Right to Adequate Housing [Arabic, English, French and Spanish versions] (Cairo: HLRN, 2003); and HIC Housing and Land Rights Network website: www.hlrn.org.

⁶⁰⁹ For guidance and methodology in building housing rights cases argumentation and mobilise solidarity, see HLRN, Urgent Action! HLRN Guide to Practical Solidarity for Defending the Human Right to Adequate Housing [Arabic, English, French and Spanish versions] (Cairo: HLRN, 2003); and HIC Housing and Land Rights Network website: www.hlrn.org.

⁶¹⁰ Strategic Campaigning (London: Amnesty International, 2003).

⁶¹¹ Youth in Unity for Voluntary Action--YUVA and University of Tasmania, "Settlement Upgrading Manual) [Sakkardara alterantive plan] (October 2000); UNCHS, Human Settlements Development through Community Participation (Nairobi, UNCHS, 1991); Nick Waters, The Community Planning Handbook: How People Can Shape Their Cities, Towns and Villages in Any Part of the World (London: Earthscan, 2001).

⁶¹² Ibid.

⁶¹³ Tenant organizing resources" on the National Alliance of HUD Tenants website: <http://www.saveourhomes.org/>. Practical steps for forming a tenants union can be found on http://www.radio4all.org/aia/pro_tenant.html.

⁶¹⁴ "Who is my landlord anyway?" (Seattle: The Tenants Union, 2004), go to <http://www.tenantsunion.org/research.html>.

⁶¹⁵ For a collection of popular experiences in government-nongovernment cooperation in the field of human settlements, see Habitat International Coalition, Building the City with the People: New Trends in Community Initiatives with Local Governments (Mexico City: Habitat International Coalition, 1997), contents also available on line at HIC General Secretariat website, at <http://www.hic-net.org/library.asp>.

Learn/use conflict resolution techniques and, including alternative dispute resolution ⁶¹⁶	Decriminalize actions taken to obtain elements of HRAH	Administrative recognition of tenure and the human right to adequate housing of people without economic access
Mobilize inhabitants	Organize squatter actions and squatter-empowerment interventions ⁶¹⁷	
Cooperate with National Human Rights Institutions ⁶¹⁸	Propose and lobby for the implementation of National Plans of Action for Human Rights ⁶¹⁹	National housing shortage, upgrading needs and land conflicts addressed in a National Plan of Action with provision for law and policy reform
Negotiate with municipal authorities to include the community/civil society as a partner ⁶²⁰	Increase community participation in design, planning, implementation and maintenance of housing ⁶²¹	Maintained and upgraded social housing
Train in negotiation and mediation skills ⁶²²	Negotiation toward reconciling evictions/removals and land grabbing ⁶²³	Indigenous peoples regain historic land claims

⁶¹⁶ American Arbitration Association (AAA), *Grievance Mediation Procedures* (New York: AAA, 1992); AAA, *Resolving Your Disputes* (New York: AAA, 1993); American Bar Association, *Alternative Dispute Resolution: An ADR Primer* (Washington: Standing Committee on Dispute Resolution, 1989); Carpenter, Susan L. and W.J.D. Kennedy, *Managing Public Disputes: A Practical Guide to Handling and Reaching Agreements* (San Francisco: Jossey-Bass Publisher, 1988); Cochrane, Michael G. ed., *Attorneys General and New Methods of Dispute Resolution* (Washington: American Bar Association, 1990); Costantino, Cathy, A. and Merchant, Christina, S. *Designing Conflict Management Systems* (San Francisco: Josey-Bass Publisher, 1996); Edelman, Lester, Frank Carr, and James L. Creighton, *The MiniTrial* (Ft. Belvoir VA: U.S. Army Corps of Engineers Institute for Water Resources, 1989); Edelman, Lester, Frank Carr, Charles Lancaster, and James L. Creighton, *Non-Binding Arbitration* (Ft. Belvoir VA: U.S. Army Corps of Engineers Institute for Water Resources, 1990); Fine, Erika S. and Elizabeth S. Plapinger, eds. for the CPR legal Program, *Containing Legal Costs: ADR Strategies for Corporation, Law Firms, and Government* (Butterworth Legal Publishers, 1988); ; Folberg, Jay and Alison Taylor, *Mediation: A Comprehensive Guide to Resolving Conflicts without Litigation* (San Francisco: Jossey-Bass Publishers, 1984). For a bibliography and resources guide on alternative dispute resolution, see Office of Personnel Management website: <http://www.opm.gov/er/adrguide/Section7.asp>.

⁶¹⁷ Diana Mitlin and David Satterthwaite eds., *Empowering Squatter Citizen: Local Government, Civil Society and Urban Poverty Reduction* (London: International Institute for Environment and Development, 2004), available from Earthprint at www.earthprint.com.

⁶¹⁸ OHCHR, *National Institutions for the Promotion and Protection of Human Rights* [Human Rights Series No. 19] (Geneva: OHCHR, undated), at <http://www.unhcr.ch/html/menu6/2/fs19.htm>.

⁶¹⁹ Office of the High Commissioner for Human Rights, *Handbook on National Human Rights Plans of Action* [Professional Training Series No. 10] (Geneva and New York: OHCHR, 2002), at: <http://www.ohchr.org/english/about/publications/docs/nhrap.pdf>.

⁶²⁰ Janelle Plummer, *Municipalities and Community Participation: A Sourcebook for Capacity Building* (London: Earthscan, 2001); Janelle Plummer, ed., *Focusing Partnership: A Sourcebook for Municipal Capacity Building in Public-Private Partnerships* (London: Earthscan, 2002); Diane Warburton, ed., *Community and Sustainable Development: Participation in the Future* (London: Earthscan, 200X).

⁶²¹ UNCHS, *Human Settlements Development through Community Participation* (Nairobi, UNCHS, 1991).

⁶²² Scott Beattie, "Is Mediation a Real Alternative to Law? Pitfalls for Aboriginal Participants," *Australian Dispute Resolution Journal* 8 (1997) 57; Larissa Behrendt, *Aboriginal Dispute Resolution: A Step towards Self-Determination and Community Autonomy*. (Sydney: Federation Press, 1995).

⁶²³ Michael Asch and Norman Zlotkin, "Affirming Aboriginal Title: A New Basis for Comprehensive Claims Negotiations," in Michael Asch, ed., *Aboriginal and Treaty Rights in Canada: Essays on Law, Equality, and Respect for Difference* (Vancouver: University of British Columbia Press, 1997).

Develop community/local government cooperation	Monitor transparency in decision-making processes	Obtain social housing (provided by government), based on need, with amortization based on minimum wage level (affordability)
	Design infrastructure projects	
	Reform public policy toward providing affordable housing	
	Propose and implement National Shelter Strategy ⁶²⁴	
	Design national (comprehensive) development plans	
Develop the cooperative sector	Promote cooperative sector initiatives to provide affordable housing	
Use/lobby/cooperate with the international human rights system (interventions with factual, legal and political mechanisms of the UN and regional human rights systems) ⁶²⁵	Undertake negotiations at international/ multilateral level (whereby negotiators representing the State assert their prior obligations under international human rights treaty law against IFI [Word Bank, regional development bank, IMF, etc.] and WTO conditionalities leading to housing rights regressive / retrogressive violations) ⁶²⁶	Obtain/ensure continuous regulation of housing market practices (e.g., to ensure tenure security, accessibility of housing, building materials, direct investment, etc.)
		End to practices of land confiscation through foreclosure, adverse possession and eminent domain without adequate, consensual alternatives
Develop / reform / enforce law⁶²⁷		

⁶²⁴ UNCHS, Developing a National Shelter Strategy: Lessons from Four Countries (Nairobi: UNCHS, 1990); OHCHR, Handbook on National Human Rights Plans of Action (Geneva: OHCHR, 2001)

⁶²⁵ See "NGO participation in the activities of the Committee on Economic, Social and Cultural Rights," UN doc. E/C.12/2000/6, 7 July 2000, website: <http://www.hchr.un.ch>; and "Revised general guidelines regarding the form and contents of reports to be submitted by states parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights," UN doc. E/C.12/1991/1, 17 June 1991.

⁶²⁶ INCHRITI, Trade, Investment, Finance and Human Rights: Essential Documents (Geneva: INCHRITI, 2001).

⁶²⁷ Mario Rosário, "[Action "Tsimba Ga Ku Aka" to build together](#)" (1996); Janeth López, "[Asesoría en vivienda para el proceso de reinserción en Colombia](#)" (1996); K.A. Jayaratne, "[Collaborative Partnership to Improve the Low Income Neighbourhoods](#)," (1996); Michael Shapcott, "[Rupert Pilot Project. A self-Help and Community Rehabilitation Project in Canada](#)" (1996); Leopold Mutembei, "[Struggles of the urban poor to improve their living conditions](#)" (1996); Leonard Chileshe Mulenga, "[The case of Bauleni Upgrading](#)" (1995); Johan Silas, "[The Improvement of Low Cost Housing and Environment](#)" (1996); in Habitat International Coalition, Building the City with the People: New Trends in Community Initiatives with Local Governments (Mexico City: Habitat International Coalition, 1997), contents also available on line at HIC General Secretariat website, at <http://www.hic-net.org/library.asp>.

Initiate/reform legislation and regulatory processes in compliance with the human-right-to-adequate - housing framework	Undertake class action suits (with minimum of [e.g., at least 15] physical or legal persons undertaking a litigation action, generally in the name of a whole group of the population), or public-interest litigation (e.g., India) ⁶²⁸	Law and policy enforced to respect, defend, promote and fulfill housing rights
		Law enforcement officers protect population from and implied protection
Collect sufficient data to determine material and nonmaterial losses to victims of housing and land rights violations		Violators prosecuted and punished
		Victims receive restitution and full compensation for violation and material and nonmaterial losses
Conduct national housing and land rights assessment ⁶²⁹	Lobby parliament	Law promotes housing and land acquisition and retention in disadvantaged communities consistent with international commitments to promote just patterns of land distribution
	Raise test cases, constitutional challenges through court system	
	Develop laws on properties left without will and testate in order to narrow the class of heirs and prevent fractionation of the ownership	
	Nationwide constitutional review campaign	Constitutional reform ⁶³⁰
Institutional reform		
Establish and maintain an effective Land Trust to support communities subject to discrimination and dispossession		Land ownership expanded for disadvantaged communities on an affirmative-action basis

⁶²⁸ "Public interest litigation" (PIL) is a form of litigation filed in a court of law, for the protection of "public interest." Most prominently used in the Indian context, it is not defined in any statute or act. It has been interpreted by judges to consider the intent of public at large. Although, the main and only focus of such litigation is public interest, PIL can be filed in cases involving, e.g., such issues as pollution, "terrorism," road safety, constructional hazards, violated human rights of the poor, the content or conduct of government policy, to compel municipal authorities to perform a public duty, etc. See, for example: Upendra Baxi, "Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India" [revised], in Upendra Baxi, ed., Law and Poverty: Critical Essays (Bombay: Tripathi 1988); Mario Gomez, In the Public Interest: Essays on Public Interest Litigation and Participatory Justice (Colombo: Legal Aid Centre, University of Colombo, 1993); Sampat Jain, Public Interest Legislation (New Delhi, Deep & Deep, 2002); Shri. V.S.Vadivel, "Public Interest Litigation (PIL) A Boon or Bane?" (Legal Services India, 2004),

<http://www.legalserviceindia.com/articles/pil.htm>; see also Help Line Law website:

<http://www.helpline.law.com/docs/main.php3?id=PIL11>.

⁶²⁹ Apply this HIC-HLRN Housing and Land Rights Monitoring Toolkit on a national scale to all elements of the human right to adequate housing.

⁶³⁰ See, for example, "The history of constitutional reform in Kenya," World History Archives (2004), <http://www.hartford-hwp.com/archives/36/index-bbh.html>.

Monitor and survey practices of public and private lending institutions for discrimination practices and patterns	Lobby for disciplinary action and rehabilitation of institutions to end discriminatory practices	Institutions apply uniform criteria in housing and community development programs, policies and transactions
International human rights system interventions		
Prepare and present collective parallel report to human rights treaty bodies (or submit cases under individual complaints procedures under Optional Protocols)		UN treaty body Concluding Observations coincide with community's evaluation of housing rights conditions and proposals for solutions
Raise cases and submit briefs before regional human rights courts and commissions ⁶³¹		State compelled to implement its treaty obligations to respect, defend, promote and fulfill the human right to adequate housing and land
Use Concluding Observations in public information and media campaigns, litigation		
Submit cases to UN Commission on Human Rights 1503 Procedure		States intervene to resolve impasse in housing rights violation case
Submit question/case to UNESCO complaints procedure		States intervene to resolve impasse in housing rights violation case
Legal defense		
Develop and deliver legal literacy and litigation strategy training ⁶³²	Provide legal-aid services to defend individual and community housing and land rights	Judicial rulings include legal precedents for future litigation and law reform to ensure individual and group rights to adequate housing and land
Collect detailed data on violations, perpetrators,	Present admissible evidence in litigation on	

⁶³¹ Litigating Economic, Social and Cultural Rights: Achievements, Challenges and Strategies (Geneva: COHRE, 2004), available at <http://www.cohre.org/library/Litigating%20ESCR%20Report.pdf>; Amicus Curiae in Grupo Interdisciplinario por los Derechos Humanos v. Colombia [submitted by COHRE to Inter-American Commission on Human Rights on case of housing destruction by paramilitary groups in Ituango and El Aro, Colombia], on line at <http://www.cohre.org/downloads/amicuscolombia1.doc>; Amicus Curiae in Justiça Global, et al. v. Government of Brazil, Inter-American Commission on Human Rights [submitted by COHRE on actual and threatened violations of housing rights, including forced evictions, with the planned Alcântara Spaceport expansion, in Brazil] available at <http://www.cohre.org/downloads/amicusbrazil1.doc>; Amicus Curiae in CELS & CEJII v Argentina, Inter-American Commission on Human Rights [submitted by COHRE to Inter-American Commission on Human Rights on case local authorities conducting forced evictions in Barrio Ejército de los Andes, Provincia de Buenos Aires, Argentina], available at <http://www.cohre.org/downloads/amicusargentina1.doc>. See also COHRE Case Law Database on line at <http://www.cohre.org/iframe.htm>; Case law database for economic, social and cultural rights available on the ESCR-Net website at <http://www.escr-net.org/>; found in "Case Law" at http://www.escr-net.org/EngGeneral/Case_law.asp, or "Jurisprudencia" at http://www.escr-net.org/EspGeneral/Case_law.asp.

⁶³² Margaret Schuler and Sakuntala Kadirgamar-Rajasingham, Legal Literacy: A Tool for Women's Empowerment (Washington: Women, Law and Development, OEF International, 1992).

values of losses and other consequences ⁶³³	behalf of victims ⁶³⁴	Crimes and perpetrators prosecuted and punished
		Judicial remedies, including legal precedents for future litigation and law reform to ensure gender equality
Develop gender-awareness and gender-justice training for communities, police, lawyers, prosecutors and judges ⁶³⁵	Provide legal-aid services to defend equal rights to housing and land for women and gender-discrimination victims	Victims receive restitution and full compensation for violation and material and nonmaterial losses ⁶³⁶
Develop judicial procedures and expertise to provide for land-consolidation courts	Consolidate and reduce unstable “in-common” tenancy to maintain family and community land retention, especially to uphold land base for minority groups and indigenous peoples	Communities restore and retain their land base
Media cooperation and campaigns		
Conduct training for media professional in the human right to adequate, corresponding obligations, interviewing victims, quantifying victims’ losses and community follow-up ⁶³⁷	Meet journalists and media professionals to follow-up on training and present new documentation and information on developments	Informed public supports community alternative-development and/or anti-eviction proposals
Provide media outlets with economic analyses of various possible alternatives (on-site upgrading v. relocation)		
Provide media outlets with alternative plans and community proposals for their development		

⁶³³ See “Housing and Land Rights Violation Case Documentation Form” in this toolkit.

⁶³⁴ Domestic Implementation of International Human Rights: Litigating Economic, Social and Cultural Rights, on Human Rights Internet website at http://www.hri.ca/forthecanada/vol1/guide-part_11.htm; Case Law Database for Economic, Social and Cultural Rights available on the ESCR-Net website at <http://www.escr-net.org/>; found in “Case Law” at http://www.escr-net.org/EngGeneral/Case_law.asp, or “Jurisprudencia” at http://www.escr-net.org/EspGeneral/Case_law.asp.

⁶³⁵ Shelter Rights Initiative, Gender Specific Rights Litigation and Protection Strategies (Lagos: SRI, 1998); SRI, Manual on Judicial Protection of Economic, Social and Cultural Rights (Lagos: SRI, 2000).

⁶³⁶ “Seminar on the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms,” Netherlands Quarterly on Human Rights Special Issue (1993); S. Nadasen, “Restitution, Reconstruction, Reconciliation and Restitution: Land Reform—Balancing the Interests of the Dispossessed, the Homeless and Development,” Stellenbosch Law Review (1997), 360–77. For a bibliography of global restitution and compensation experience, go to: <http://userpage.fu-berlin.de/~theissen/biblio/>.

⁶³⁷ HIC-HLRN training module on “Housing and Land Rights for Media Professionals.”

Policy reform		
Reverse and prosecute discriminatory practices toward disadvantages individuals and communities by both public and private lending institutions		Fairness-in-lending policy formulated and enforced for housing and land purchase, rehabilitation and sustainability
Expand public-private initiatives to stimulate investment and multipurpose development communities		Integrated development with low-cost housing on public and donated lands
Provide housing and relief		
Exchange expertise in temporary housing and relief provision	Organize emergency relief (immediate provision of housing and/or housing resources at no cost to those denied: water, medical services, economic relief, housing resources and building materials, etc.)	Eviction and displacement victims receive emergency (temporary) housing
Resource mobilization		
Conduct an inventory (accounting) of community (human and material) resources	Design, adapt and implement alternative-finance schemes; (e.g., small savings toward common projects) and self-financing for needy inhabitants (with freehold tenure options) ⁶³⁸	Upgrading and generally improved living conditions on site, as alternative to relocation
	Establish and operate nonbank institutions as lenders and builder of adequate, low-income housing ⁶³⁹	

⁶³⁸ Alternative Financing Models: Hybrids of Homeownership Mutual Housing (The Enterprise Foundation, 2003); "Capitalizing on Collaboratives: New Partners for Comm. Dev. Finance" (Washington: Center for Policy Alternatives, July 1996); Enrique Ortíz, FONHAPO: The Experience of the National Fund for Low Income Housing in Mexico (London: International Institute for Environment and Development, 1998), available from Earthprint at www.earthprint.com.

⁶³⁹ Jeffrey Carmichael and Michael Pomerleano, The Development and Regulation of Non-Bank Financial Institutions (Washington: World Bank, 2002); Indonesia: Housing Finance for the Urban Poor (Manila: Asia Development Bank, 2001); Peer Smet, "Indian Housing Finance Alliances and the Urban Poor," Global Built Environment Review Vol. 2, No. 1, 58–66, <http://www.edgehill.ac.uk/qber/pdf/vol2/issue1/Eight.pdf>.

	Organize self-help cooperation through rotating community credit (building & upgrading infrastructure, social production of housing ⁶⁴⁰)	
	Immediate, diligent and effective increase in advice-and-lending services, on an affirmative-action basis within public lending institutions	
	Develop microcredit schemes (for upgrading and construction, but with social and legal components providing HRAH content) ⁶⁴¹	
Analyze economic costs of the various possible alternatives (on-site upgrading v. relocation)		
Raise material support (raise funds) from private, public and intergovernmental donors), including microcredit ⁶⁴²		
Plan/undertake reconstruction, ⁶⁴³ upgrading and general improvement of living conditions (with multiple parties cooperating)		
Restoration and increase housing subsidy programs for low-income people, including by tax reform (e.g., reversal of tax cuts for the wealthiest tax payers)		Low-income people pay no more than 30% of monthly incomes for adequate housing

⁶⁴⁰ Joseph Schechla, ed., [Anatomies of a Social Movement](#) (Cairo: HIC-HLRN, 2004); Habitat International Coalition, [Building the City With the People. New Trends in Community Initiatives in Cooperation with Local Governments](#) (Mexico City: Habitat International Coalition, 1997); Prem Pangora, [Citizen's Initiatives for environmental improvements: The case of River Sabarmati, Ahmedabad, India](#) (Mexico City: Habitat International Coalition, 1997); Joël Audefroy, [Construyendo la Ciudad con la Gente. Nuevas tendencias en la colaboración entre las iniciativas comunitarias y los gobiernos locales](#) (Mexico City: Coalitón Internacional para el Habitat, 1998); Gustavo Romero, La producción social del hábitat: reflexiones sobre su historia, concepciones y propuestas (2000), available on line at http://www.hic-net.org/online/Romero_PSH-intro.pdf; Eike Jacob, [Social Production of Habitat in Latin America](#) (2003); Habitat International Coalition-América Latina, "Social Production of Habitat. Conceptual framework" (2003); Enrique Ortíz, Social Production of Habitat: Marginal option or reality-transforming strategy? (2003), available on line at http://www.hic-net.org/online/Ortiz_SPH.pdf; Enrique Ortíz, [Vivitos y Coleando. 40 años trabajando por el hábitat popular en América Latina](#) (2002).

⁶⁴¹ Nazrul Islam, [Grameen Bank Bangladesh. A credit institution for housing](#) (1996); Jaffer Murtaza, [The Tanzania-Bondeni Community Lands Trust](#) (1996).

⁶⁴² Nazrul Islam, [Grameen Bank Bangladesh. A credit institution for housing](#) (1996); Jaffer Murtaza, [The Tanzania-Bondeni Community Lands Trust](#) (1996).

⁶⁴³ See York University Postwar Reconstruction and Development Unit, website: <http://www.york.ac.uk/depts/poli/prdu>.

Conduct an inventory of community financial and material resources	Develop community savings schemes	Social production of habitat: Community/self-financed upgrading of housing and improvement of living conditions
Conduct public budget analysis from the housing rights perspective ⁶⁴⁴	Develop participatory budgeting ⁶⁴⁵ (ensuring that necessary programs and projects are budgeting according to housing rights obligations)	Public budgets comply with State's housing rights obligations to ensure "progressive realization" with "maximum of available resources"
Training other actors (outside community)		
Train civil servants in HRAH (including international treaty obligations upon the State and local authorities)	Reform urban/land planning criteria, procedures and objectives to harmonize with local community needs and criteria ⁶⁴⁶	Physical planning integrates human rights obligations, language and priorities directed to needy and vulnerable communities
Train lawyers in HRAH, (including international treaty obligations upon the	Legal argument, litigation and judicial decisions invoke international norms and treaty obligations	Legal recognition of traditional legal and tenure systems and provision of secure title ⁶⁴⁸

⁶⁴⁴ Ravikant Joshi, *A Case for Reform: how municipal budgets can change our cities* (Mumbai: YUVA Books, 2001); Maria Socorro I. Diokno, "A Rights-based Approach towards Budget Analysis" (Washington: International Human Rights Internship Program, 1999); Institute for Development Policy Analysis and Advocacy—IDPAA (Atiur Rahman et al.), *Alternative Budget Analysis: A Series of Studies on the National Budget for the Perspective of Poverty Eradication* [three volumes: Budget and the Poor, The Budget-making Process, People's Budget: An Alternative Exercise Using Participatory Tools] (Dhaka: University Press Ltd., 2002).

⁶⁴⁵ Rebecca Abers, 1998, "From clientelism to cooperation: Local government, participatory policy, and civic organizing in Porto Alegre, Brazil"; *Politics and Society*. 26(4)c 511–37; Rebecca Abers, *Inventing Local Democracy: Grassroots Politics in Brazil* (Boulder: Lynne Rynner, 2000); Baierle, Sergio, 1998, "The Explosion of Citizenship: The Emergence of a New Ethical-Political Principal in Popular Movement in Porto Alegre, Brazil," in Sonia E. Alvarez, Evelina Dagnino and Arturo Escobar, *Cultures of Politics/Politics of Cultures: Revisioning Latin America Social Movements* (Boulder: Westview Press, 1998); Sousa Boaventura de Santos, "Participatory Budgeting in Porto Alegre: Toward a Redistributive Democracy." *Politics and Society* 26(4) (1998), 461-509; *Quem é o público do Orçamento Participativo: se perfil, porque participa, e o que pensa do processo* (Porto Alegre: Cidade de Porto Alegre, 1999); Luciano Fedozzi, *Orçamento Participativo: Reflexões sobre a experiência de Porto Alegre* (Porto Alegre: Tomo Editorial, 1998); Pedro Jacobi and Macro Antonio Carvalho Teixeira, "Orçamento Participativo: co-responsabilidade na gestão das cidades," *São Paulo em Perspectiva*, 10 (3) (1996) 119–28; Brian Wampler, "Orçamento Participativo: Os paradoxos da participação e governo no Recife," *Cadernos de Estudos Sociais*, 15(2) (1999), 343–73; Brian Wampler, *A Guide to Participatory Budgeting* (October 2000). Internet sources: Participatory budget: The Case of Porto Alegre (Brazil) at:

<http://www.goethe.de/br/poa/buerg/en/framebag.htm> (2004);

World Bank: http://www.worldbank.org/html/fpd/urban/urb_age/porto.htm,

<http://www.worldbank.org/wbiep/decentralization/Topics13.7.htm>, <http://www.worldbank.org/participation/>; Inter-American Development Bank: <http://www.iadb.org/exr/IDB/stories/2000/eng/JAN00E/c200c1.htm>,

<http://www.iadb.org/exr/idb/sidebars/2000/eng/c200c4.htm>; Conference Proceedings on Participatory Budgeting:

<http://www.idre.ca/lacro/docs/conferencias/stren.html>, <http://www.ssc.wisc.edu/~wright/deliberative.html>,

<http://www.pqualc.org>.

⁶⁴⁶ UNCHS, *Developing a National Shelter Strategy: Lessons from Four Countries* (Nairobi: UNCHS, 1990); OHCHR, *Handbook on National Human Rights Plans of Action* (Geneva: OHCHR, revised draft May 2001).

⁶⁴⁷ Shelter Rights Initiative, *Gender Specific Rights Litigation and Protection Strategies* (Lagos: SRI, 1998); SRI, *Manual on Judicial Protection of Economic, Social and Cultural Rights* (Lagos: SRI, 2000).

⁶⁴⁸ Peter R. Grose, "An Indigenous Imperative: The Rationale for the Recognition of Aboriginal Dispute Resolution Mechanisms." *Mediation Quarterly* 12 (4) (summer 1995), 327–38.

State, as well as litigation strategies) ⁶⁴⁷		Legal recognition of tenure and the human right to adequate housing of people without economic access
Train judges in HRAH (including international treaty obligations upon the State) ⁶⁴⁹		Judge issues restraining orders halting forced evictions and removals, land confiscation, property destruction and other housing and land rights
Train law enforcement officials in the human right to adequate housing (including international treaty obligations upon the State)	Quantify losses/costs of housing rights violations	Judicial decision orders return, restitution and compensation for evictees, IDPs, refugees ⁶⁵⁰
Transitional justice (post conflict)⁶⁵²		Victims compensated for losses ⁶⁵¹

⁶⁴⁹ Shelter Rights Initiative, Manual on Housing Rights Protection Strategies for Lower Court Judges (Lagos: SRI, 2000).

⁶⁵⁰ UNCHS, Housing and Property Rights in Kosovo (Pristina: UNCHS, March 2000).

⁶⁵¹ For elaboration of the principles of compensation to victims of human rights violations, see Theo Van Boven, "Basic Principles and Guidelines on the Right to Reparation for Victims of Gross Violations of Human Rights and Humanitarian Law, Appendix 8 ("The van Boven Principles"), Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, E/CN.4/Sub.2/1996/17; also E/CN.4/1997/104, annex and subsequently revised as "Basic principles and guidelines on the right to a remedy and reparation for victims of violations of international human rights and humanitarian law," by Cherif Bassiouni, independent expert, Commission on Human Rights (E/CN.4/2000/62, annex). John Dugard, "Is the Truth and Reconciliation Process Compatible with International Law? An Unanswered Question," South African Journal on Human Rights Vol. 13, 258–68. For quantification methodology, see HIC-HLRN Loss Matrix in this Housing and Land Rights Monitoring Toolkit, or go to www.hlrn.org; for implementation, see to UNCHS, Housing and Property Rights in Kosovo (Pristina: UNCHS, 2000).

⁶⁵² For a general bibliography on transitional justice, go to <http://www.peacemakers.ca/bibliography/bib26reconciliation.html> or <http://userpage.fu-berlin.de/~theissen/biblio/> (on experiences of Germany and South Africa).

Document details on violations, perpetrators, values of losses and other consequences ⁶⁵³	Present evidence to truth (and reconciliation) commission ⁶⁵⁴	Public aware of population transfer, mass dispossessions and other crimes committed during conflict
	Issue amnesty for past crimes and perpetrators of forced evictions/removals ⁶⁵⁵	Social reconciliation
	Present evidence to Truth and Justice Commission	Social reconciliation
		Crimes and perpetrators prosecuted and punished
Present evidence to “mixed courts”	Return, restitution and compensation for evictees, IDPs, refugees ⁶⁵⁶	

Of course, an illustrative list of potential interventions does not sufficiently convey the wealth of local governmental and nongovernmental experience available for review and exchange. Moreover, it is, as always, at the local level of implementation where human rights, including the human right to adequate housing, are transformed from moral suasion and legal theory to implementable reality. Therefore, both the practical, case-based perspective and the theoretical-and-comparative perspective become mutually dependent, mutually reinforcing and, hence, equally needed.

6.10. Evaluation & follow-up

Evaluation of any action you choose should be an ongoing function parallel to the events and development as they happen. This note offers some simple guidance on the specific

⁶⁵³ Use “Housing and Land Rights Violation Case Documentation Form” in this toolkit.

⁶⁵⁴ Kerry Able, and Jean Friesen, eds., *Aboriginal Resource Use in Canada: Historical and Legal Aspects* (Winnipeg: University of Manitoba Press, 1991); Alfred, Gerald R., and Franke Wilmer. "Indigenous Peoples, States and Conflict," in D. Carment and P. James, eds., *Wars in the Midst of Peace: The International Politics of Ethnic Conflict* (Pittsburg: University of Pittsburgh Press, 1997); Michael Coyle, "Claims Resolution: A Healing Process?" in J. Oakes, R. Riewe, K. Kinew and E. Maloney, eds., *Sacred Lands: Aboriginal World Views, Claims and Conflicts* (Calgary: Canadian Circumpolar Institute, 1998); Robert Rotberg and Dennis Thompson, eds., *Truth v. Justice: The Morality of Truth Commissions* (Princeton: Princeton University Press, 2000); Truth and Reconciliation Commission of South Africa Report, Vols. 1–5 (Cape Town: Juta, 1998); Theo van Boven, "Study Concerning the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms" [final report of Special Rapporteur] (Geneva: Commission on Human Rights, Subcommission on Prevention of Discrimination and Protection of Minorities) E/CN.4/Sub.2/1993/8. For an extensive bibliography of sources, go to: <http://userpage.fu-berlin.de/~theissen/biblio/>.

⁶⁵⁵ John Dugard, *Dealing with Crimes of a Past Regime: Is Amnesty Still an Option?* [The Third Manfred Lachs Memorial Lecture] (1999); Carla Edelenbosch, "Human Rights Violations - A Duty to Prosecute?" *Leiden Journal of International Law* Vol. 7, No. 2 (1994), 5–22; Dianne F. Orentlicher, "Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime," *The Yale Law Journal* Vol. 100, No. 8 (1991) 2537–615.

⁶⁵⁶ Uma Dhupelia Mesthrie, *The Truth and Reconciliation Commission and the Commission on Restitution of Land Rights: Some Comparative Thoughts* ["The TRC: Commissioning the Past" conference] (Johannesburg: University of the Witwatersrand, 1999); S. Nadasen, "Restitution, Reconstruction, Reconciliation and Redistribution: Land Reform: Balancing the Interests of the Dispossessed, the Homeless and Development," *Stellenbosch Law Review* (1997) 360–77; David B. Southern, "Restitution or Compensation: The Land Question in East Germany," *International and Comparative Law Quarterly* Vol. 42, No. 3 (1993), 690–97; David B. Southern, "Restitution or Compensation: The Open Property Question," *German Politics* Vol. 2, No. 3, 436–49. For a bibliography of global restitution and compensation experience, go to: <http://userpage.fu-berlin.de/~theissen/biblio/>.

evaluation tasks you will face. They are described in stages, with particular emphasis on the final stages and the vision for the future.

For our purposes, evaluation and follow-up imply two levels of assessment: (1) evaluation the action and (2) following the situation after the action concludes. The former is internal in nature and helps your organization, community or network become a learning institution by building on the lessons (successes, near-successes, failures and unanticipated results) of your efforts. The latter enables you, your organization, community or network to test the outcome to ascertain whether or not it has tangible benefits for those persons, communities, populations and peoples affected and targeted in your action. Ultimately, the follow-up process should lead you to the necessary conclusion as to what, if anything, to do next.

✓ Evaluating the action

Evaluation your action includes three integrated but conceptually distinct processes: (1) monitoring progress, (2) formative evaluation and (3) measuring the development impact.

1. Monitoring implementation progress

Monitoring the implementation of your action is the most frequent—indeed constant—aspect of the learning process. This should involve periodic reports on production of outcomes, financial accounting and levels and nature of inputs (e.g., technical assistance, training, social production of habitat). The periodicity of the reporting could be quarterly, if the action is expected to proceed for a year or more. Alternatively, reporting could be more frequent, especially if it is a short-term action, or if it takes place in a fast-paced environment such as a threatened eviction or natural disaster situation, and particularly if extreme deprivation of human well-being is at stake.

The responsibility for monitoring is to be shared by a group of actors. Remembering that, like in the “Toolkit” guide for strategic planning, the more participation, the more-favorable the result (“more participation = more dignity”).

Reporting on the action, based on the monitoring of implementation progress, should be specifically assigned, most probably to the coordinator of the action or the chief executive officer of the principal body organizing the action. The audience of the reports should be both internal, for the benefit of those engaged, and external, depending on the obligations you have to supporters, members and/or funders. The assignment of duties, division of labor and timing of evaluation events should be completed also in the planning stage of your activity (see “[Strategic planning](#)” link above).

2. Formative Evaluation Indicators of Accomplishments

Midway in the process of your action, you should conduct an assessment of the *quality and adequacy* of the tasks undertaken by assessing the actual outcomes against the standard of expected results you already have set out for yourselves.

You should develop an evaluation plan and data collection instruments as part of the project implementation. That means, you should plan ahead to collect information that will verify your intended results, whether that be in the form of documents, press reports, opinion surveys, affidavits, water-quality test results, etc. The formative evaluation activities probably will require site visits, rapid assessment and low-cost data collection techniques such as

focus groups, interviews, training evaluation forms, and simple targeted studies to identify key issues for action management.

3. Development-impact Assessment and Indicators

Development-impact assessments that you and your organization/community undertake less frequently, perhaps on an annual basis, will track changes in the outcomes, in order to determine the degree to which the larger environment of the human right to adequate housing is improving—or deteriorating, as the case may be.

Your action could—and should—produce an initial baseline report at the initial stage that coincides with your first inventory, site visits and/or assessment arising from your first use of this “Toolkit.” That report should record what you consider to be the key assumptions going into the activity, and will serve you in the subsequent stages of your action, especially at the final stages, to test those assumptions and adjust strategies to incorporate the knowledge you have created.

For the purpose of your organization’s integrity and the tactical responses you may require in the future, your action should be seen critically in the light of the purposes and goals you set out in your planning process (see “**Strategic planning**” link above). Some sample questions to include in your evaluation include the following:

- How does the action relate to your purpose statement of your organization/ community?
- How does the action relate to the goals(s) of your organization/community?
- Was the action planned or spontaneous?
- What was the expected result?
- Was that result achieved? If not, why?
- Were unintended results achieved?
- What were the lessons learned from this activity?
- How did this activity build/strengthen/develop your organization? What gains did you and others realize?
- How did your organization/community record and report the experience?
- How did your organization/community share and exchange the experience and lessons learned with others? Who? When? Where? What was the result?
- Has there been follow-up? Why? What? Who? When? Where?
- Click on “Following up the situation” for guidance on the last point.

✓ **Following up the situation**

Each successful or unsuccessful action needs to be tested further for at least two reasons: (1) in order to determine if the achievement is real or merely theoretical and (2) to determine what your next move is going to be.

The now famous *Irene Grootboom and Others v. Oostenberg Municipality*⁶⁵⁷ case before the South African Constitutional Court (1999) found in favor of the plaintiffs by applying the principles of international law on the human right to adequate housing and the legal strictures on the practice of forced eviction. The Court ordered the Western Cape Provincial Government and the Oostenberg Municipality to grant housing and utilities to the 390 adults and 510 children wrongfully evicted community at Wallacedene their right to return and

⁶⁵⁷ Irene Grootboom and Others versus Oostenberg Municipality, Cape Metropolitan Council, the Premier of the Province of the Western Cape, National Housing Board, and Government of the Republic of South Africa, Constitutional Court of South Africa Case No: 6826/99..

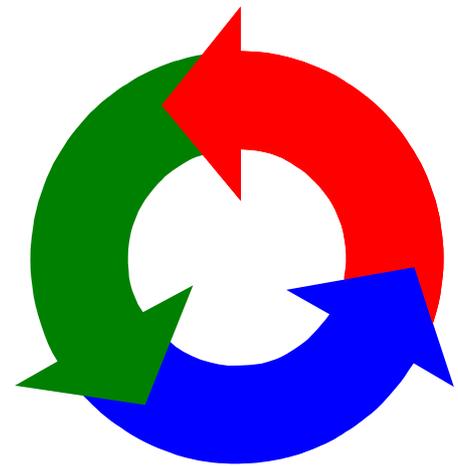
remain and to benefit from public services corresponding to that right. Until today, that decision has not been fully implemented.

Likewise, the landmark case of *Qa'dan v. Katzir*,⁶⁵⁸ in Israel, resulted in the 2000 High Court ruling that Katzir (a settlement built on Palestinian land, directed and funded in large part by the Jewish Agency) acted unlawfully when discriminating on the basis of "nationality" by excluding a non-Jewish from obtaining housing there. Until this day, that decision has not been honored, the indigenous Adil and Iman Qa'dan family of Arab citizens of Israel do not have their home in Katzir, and the Jewish Agency continues to provide land and housing benefits only to those holding "Jewish nationality," and to the exclusion of others.

There are numerous examples of slum clearance and resettlement that result in the promised secure tenure of housing, but fail to comply with other elements of the human right in their implementation. [Note: HLRN and this "Toolkit" do not advocate slum clearance or resettlement.] Inhabitants in resettlement often lack access to public goods and services, suitable location, are denied compensation for losses and are subject to a process inconsistent with the over-riding principle of self-determination.⁶⁵⁹

All such gaps and shortcomings in the outcome of any housing rights defense effort remain to be addressed, even though some advocates and service-providing NGOs may consider these developments to be victorious at some level. The true test remains, however, to determine the tangibility of the results within the framework of the human right to adequate housing, and over the long term.

With all of its emphasis on the law, this "Toolkit" is intended to assist in the realization of the human right to adequate housing as a complement to the theoretical elaboration of the right in law. Implementation is the ultimate objective of human rights, as well as this "Toolkit." Therefore, the tools provided here should serve also as the final evaluation criteria to examine whether or not the composite dimensions of the human rights are implemented and present or not.



You should use the elements (entitlements) of the human right to adequate housing here as your guide; these are also the binding criteria for all State parties and their representatives to apply as well. If you and your organization/community determine that certain criteria have been breached or neglected, then, alas, further remedial action will be required.

The bad news, perhaps, is that there may yet be more work to be done. However, even if one has to go back to the drawing board, at least the needed tools are available to the cyclical task. So, now, you can just do it.

⁶⁵⁸ *Qa'adan versus Israel Lands Administration (ILA), Ministry of Construction and Housing, Tal-Iron Local Municipal Council, Jewish Agency for the Land of Israel (JA), KATZIR: Cooperative Association for Community Settlement in Samaria Ltd., and the Farmers Association; Case No. 6698/95 of the Israeli Supreme Court, sitting as the High Court of Justice.*

⁶⁵⁹ See Housing and Land Rights Network, *Restructuring New Delhi's Urban Habitat: Building an Apartheid City?* (HIC-HLRN: New Delhi, 2002).

7. Location

7.1. Concept and meaning

Adequate housing must be in a place that enables access to employment, primary health-care, education and other social services and civic amenities. The financial and temporal cost of transport must not place excessive financial and other demands on the household. In addition, both rural and urban housing must be in a location that is safe, particularly from environmental hazards and pollutants.

7.2. Sources

In this section, your **Step 2**, the HLRN “Toolkit” provides the most important international legal basis and the popular claims that ground each element of the human right to adequate housing. This compilation attempts to be as comprehensive as possible; however, additional popular sources and legal developments will augment this inventory in the future.

It is vital to establish both the established sources in international law and the popular claims. The authority of the legal sources carries corresponding obligations on most States, and applies universally to all people on the planet as *human* rights. The popular sources advance claims that are “emerging” with human rights language eventually to be codified in the law. All legally established human rights norms originated as popular claims carried forth through various forms of historic struggle.

The Legal Authority

Please note that the legal instruments cited here carry differing levels of obligation, and they are organized for you accordingly. Customary law is made up of those norms and principles that legal opinion and interstate institutions consider so basic and so repeatedly affirmed as to be binding on all legal personalities. The Universal Declaration of Human Rights, the antecedent to all subsequent human rights treaties, is the most relevant example of customary law for our purposes, even though it does not establish a monitoring and enforcement mechanism to ensure compliance.

The ratified treaties (Covenants, Charters, Conventions, etc.) are binding on all their ratifying States parties, and each establishes an independent body to monitor and guide implementation. The treaty-monitoring process provides an opportunity for civil society, States and the international legal bodies each to play a role. These international treaties are also characterized as hard law (*lex lata*), because of their binding nature. Treaty law, by definition, is any agreement between two or more States. The treaties considered here are those of both international and regional nature.

The “soft-law” instruments (*lex feranda*) include the Declarations, Basic Principles, Minimum Rules, General Comments, etc., that are the multilateral commitments arising from international conferences, assemblies, summits, congresses and other specialised meetings. Also included in this category are the general and country-specific guidance that the treaty-monitoring bodies issue to guide and specify treaty obligations, as well as those instruments of inter-State agreement (decisions and resolutions) arising from the various political bodies of the international system (e.g., UN Commission on Human Rights, International Labour Organisation General Assembly, etc.). These instruments contain standards that are declaratory of already-binding international law, reflect the collective political will of States and provide specificity to the general Articles in the binding instruments. However, these form legal and policy guidance without the corresponding obligations of treaty law and without the corresponding legal monitoring mechanisms.

Thus, the list of legal sources in this section of the HLRN “Toolkit” maintains a corresponding priority order such that presents the binding instruments first (in chronological order of their adoption), and follows with the nonbinding, declaratory sources (in their chronological order):

- ***International Treaty Law***
- ***Regional Treaty Law***
- ***Declaratory Instruments and Jurisprudence***

The Moral Argument

The popular sources are useful especially in demonstrating ground-level recognition of the various elements of adequate housing as rights in and of themselves, but also provide a list of human rights that reflect common human needs, but await codification as *bona fide* rights. The “emerging rights” include elements inextricable from the human right to adequate housing: water, land and energy, among others. The popular sources are indicators of the ever-evolving specificity of human rights law and the legal and problem-solving horizons toward which social movements and the human rights community are heading.

The relevant excerpts from these collective moral are listed in the “Toolkit” Sources (Step 2) as *Popular Sources*. These are moral, rather than legal, in nature. However, as claims, they bear legal dimensions in the sense that they are the substance of future legal standards. We continue to include these claims in the HLRN “Toolkit” as they emerge from popular struggles, natural and social sciences, nongovernmental forums, social movements, campaigns and labour action (strikes), as well as other forms of popular and collective problem-solving initiatives.

In this “Toolkit,” *Popular Sources* are distinguished from the legal sources by their presentation in *italic* script.

Another source of the human right with a legal dimension is the jurisprudence of course-based decisions on cases involving housing and land rights. These also could provide the basis for legal argument even in distant jurisdictions. Examples include the case-specific—but internationally relevant—rulings in famous decisions in favor of housing rights claims such as those arising from legal struggles in Cyprus, Palestine/Israel and South Africa:

Qa’adan versus Israel Lands Administration (ILA), Ministry of Construction and Housing, Tal-Iron Local Municipal Council, Jewish Agency for the Land of Israel (JA), KATZIR: Cooperative Association for Community Settlement in Samaria Ltd., and the Farmers Association; Case No. 6698/95 of the Israeli Supreme Court, sitting as the High Court of Justice.

Irene Grootboom and Others versus Oostenberg Municipality, Cape Metropolitan Council, the Premier of the Province of the Western Cape, National Housing Board, and Government of the Republic of South Africa, Constitutional Court of South Africa Case No: 6826/99 (1999).

Loizidou versus Turkey (Article 50 and Merits), European Court of Human Rights Case 40/1993/435/514 (18 December 1996).

✓ Legal sources

International Treaty Law

International Covenant on Economic, Social and Cultural Rights (1966)

Article 11.1. “The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.”

International Labour Organisation Convention No. 117 on Social Policy (Basic Aims and Standards) (1962)

4(d) “The measures to be considered by the competent authorities for the promotion of productive capacity and the improvement of living of agricultural producers shall include: (d) the supervision of tenancy arrangements and of working conditions with a view to securing for tenants and labourers the highest practicable standards of living...”

Declaratory Instruments and Jurisprudence

The right to adequate housing: progress report submitted by Mr. Rajindar Sachar, Special Rapporteur Sub-Commission on the Promotion and Protection of Human Rights (E/CN.4/Sub.2/1993/15)

44. “‘Adequate housing’ is defined in the unanimously adopted Global Strategy as meaning: 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.”

Committee on Economic, Social and Cultural Rights (CESCR) General Comment No. 4, “The right to adequate housing” (1991)

8. (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.”

✓ Popular sources

Jerusalem Declaration (1995)

(Draft Charter of the Palestinian Housing Rights Movement)

1. “...Housing located in a safe and healthy place, with respect for the environment and close to community services, places of worship, work and income-producing opportunities, health-care facilities, schools and child-care centres, recreation centres and parks.”

7.3. Over-riding principles

Principles found in the initial Articles common to all the major international human rights treaties affirm standards of justice arising from the major legal systems of the world. These include principles of immediate application, such as the inalienable rights to self-

determination; non-discrimination, in general; gender equality; and the rule of law, including access to justice and domestic application of the human rights contained in each treaty, particularly by adopting legislative measures.

In the case of economic, social and cultural rights, the International Covenant on Economic, Social and Cultural Rights (ICESCR) is the principle source of these rights in treaty form. The Covenant also clarifies that the State party's treaty obligation entails ensuring the "progressive realisation" of the rights "to the maximum of its available resources" (Article 2.1), including the human right to adequate housing (Article 11). Therefore, a process of realising the rights should not regress, but should ensure "the continuous improvement of living conditions" (Article 11).

The ICESCR's Article 2.1 also requires States to undertake steps, individually and through international assistance and cooperation, especially economic and technical, progressively to achieve the full realization of the covenanted rights by all appropriate means. Thus, States party to the Covenant bear an obligation to apply these principles extraterritorially and in their international relations. Therefore, "international cooperation" forms an important practical aspect of ESC rights application and, therefore, one of the principles over-riding States' duties to implement human rights.

Comprehensive monitoring of the human right to adequate housing requires assessing each entitlement (element) in light of the rights and corresponding obligations arising from these over-riding legal principles:

- **Self-determination**
- **Nondiscrimination**
- **Gender equality**
- **Rule of law**
- **Progressive realization (nonregressivity/nonretrogression)**
- **International cooperation**

The normative approach provided in the international human rights system prevails upon the monitor to pose a number of relevant questions related to implementation not only of the specific content of the particular right, but also these over-riding principles common to the principal human rights treaties and applicable to all rights. This section will guide the monitor in applying these six over-riding principles in the respect, defense, promotion and fulfilment of the human right to adequate housing and land.

✓ **Self-determination**

General description

The principle of equal rights and self-determination of peoples is considered to have been a general principle of international law arising from common State practice already at the founding of the League of Nations. However, self-determination was first codified in the Charter of the United Nations in 1945, which sets forth the purposes of the United Nations as:

2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace...⁶⁶⁰

⁶⁶⁰ Charter of the United Nations, 26 June 1945, Article 1(2).

The Charter's Article 55 stipulates further:

With a view to the creation of conditions of stability and well-being, which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

- a. higher standards of living, full employment, and conditions of economic and social progress and development;⁶⁶¹
- b. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and
- c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

Every State has the duty, therefore, through unilateral, bilateral and multilateral action to promote universal respect for, and observance of human rights and fundamental freedoms in accordance with the Charter. Its Article 2.2 clarifies the universal duty of State membership such that:

All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with the present Charter.

The principle of self-determination has been progressively reaffirmed and legally defined throughout the UN system since its founding.⁶⁶² The material significance of self-determination is further elaborated in the Covenants on human rights adopted in 1966.⁶⁶³ The common Article 1(2) of both the ICCPR and ICESCR sets forth that:

All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

How concerned persons/communities exercise an effective role in determining the terms by which they realize the human right to adequate housing is also a subject of the inalienable right of self-determination. Self-determination is the right of peoples, not of States. It is the State, however, that is the legal personality obliged to ensure the protection, defense, promotion and fulfillment of self-determination as a duty under international public law, as well as the essential legitimizing factor of the State itself.⁶⁶⁴

⁶⁶¹ *Ibid.*, Chapter IX, "International Economic and Social Co-operation," Article 55.

⁶⁶² For example, see Declaration on the Granting of Independence to Colonial Countries and Peoples (1960), preamble and Article 7; "Permanent sovereignty over natural resources," General Assembly resolution 1803 (XVII) (1962), preamble and paras. 1–2, 5–7; International Convention on the Elimination of All Forms of Racism and Racial Discrimination (1965), Articles 1 and 5; Declaration on Social Progress and Development (1969), Articles 2, 3 and Part II; Declaration on Principles of International Law (1970), preamble and, esp., "The principle of equal rights and self-determination of peoples"; ECOSOC Declaration on Race and Racial Prejudice (1978), Articles 1, 3, 5 and 9 Declaration on the Right to Development (1986) preamble and Article 1, 6 and 8.

⁶⁶³ International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI), 16 December 1966 (entered into force 3 January 1976 in accordance with Article 27); Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI), 16 December 1966 (entered into force 23 March 1966 1976 in accordance with Article 49).

⁶⁶⁴ Consistent with the principle of the Universal Declaration of Human Rights, Article 21, which states that "the will of the people shall be the basis of the authority of government."

The concept of, and right to self-determination manifest in a spectrum of types and expressions of effective local control over developments and relations within a community and territory may involve either external or internal self-determination; that is, national independence as in the formal distinction of a self-determination unit with its own internationally recognized borders, a self-determination unit within the internationally recognized borders of a unitary State, or a community's⁶⁶⁵ effective control over developments and relations affecting it as an independent State.⁶⁶⁶

In its General Comment No. 12 on "the right of self-determination of peoples" (1984), The UN Human Rights Committee (HRC) gave its guidance on the corresponding obligations of States, with the following:

1. In accordance with the purposes and principles of the Charter of the United Nations, Article 1 of the International Covenant on Civil and Political Rights recognizes that all peoples have the right of self-determination. The right of self-determination is of particular importance because its realization is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights. It is for that reason that States set forth the right of self-determination in a provision of positive law in both Covenants and placed this provision as Article 1 apart from and before all of the other rights in the two Covenants.
2. Article 1 [of ICCPR] enshrines an inalienable right of all peoples as described in its paragraphs 1 and 2. By virtue of that right they freely "determine their political status and freely pursue their economic, social and cultural development". The Article imposes on all States parties corresponding obligations. This right and the corresponding obligations concerning its implementation are interrelated with other provisions of the Covenant and rules of international law.
3. Although the reporting obligations of all States parties include Article 1, only some reports give detailed explanations regarding each of its paragraphs. The Committee has noted that many of them completely ignore Article 1, provide inadequate information in regard to it or confine themselves to a reference to election laws. The Committee considers it highly desirable that States parties' reports should contain information on each paragraph of Article 1.
4. With regard to paragraph 1 of Article 1, States parties should describe the constitutional and political processes which in practice allow the exercise of this right.
5. Paragraph 2 affirms a particular aspect of the economic content of the right of self-determination, namely the right of peoples, for their own ends, freely to "dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence." This right entails corresponding duties for all States and the international community. States should indicate any factors or difficulties

⁶⁶⁵ While a standard legal definition of nation and people remains a subject of debate, the International Court of Justice has offered criteria for a community, having distinct rights as "a group of persons living in a given country or locality, having a race, religion, language and traditions of their own and united by the identity of race, religion, language and traditions in a sentiment of solidarity, with a view to preserving their traditions, maintaining their form of worship, insuring the instruction and upbringing of their children in accordance with the spirit and traditions of their race and rendering mutual assistance to each other," Permanent Court of International Justice, The Greco-Bulgarian "Communities" Advisory Opinion No. 17, 13 July 1939 (Leyden: Sijthoff, 1930), 21.

⁶⁶⁶ For a comprehensive consideration of the human right of self-determination and its applications, see Hurst Hannum. *Autonomy, Sovereignty, and Self-Determination: The Accommodation of Conflicting Rights* (Philadelphia: University of Pennsylvania Press, 1996).

which prevent the free disposal of their natural wealth and resources contrary to the provisions of this paragraph and to what extent that affects the enjoyment of other rights set forth in the Covenant.

6. Paragraph 3, in the Committee's opinion, is particularly important in that it imposes specific obligations on States parties, not only in relation to their own peoples but *vis-à-vis* all peoples which have not been able to exercise or have been deprived of the possibility of exercising their right to self-determination. The general nature of this paragraph is confirmed by its drafting history. It stipulates that "The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations". The obligations exist irrespective of whether a people entitled to self-determination depends on a State party to the Covenant or not. It follows that all States parties to the Covenant should take positive action to facilitate realization of and respect for the right of peoples to self-determination. Such positive action must be consistent with the States' obligations under the Charter of the United Nations and under international law: in particular, States must refrain from interfering in the internal affairs of other States and thereby adversely affecting the exercise of the right to self-determination. The reports should contain information on the performance of these obligations and the measures taken to that end.

7. In connection with Article 1 of the Covenant, the Committee refers to other international instruments concerning the right of all peoples to self-determination, in particular the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, adopted by the General Assembly on 24 October 1970 (General Assembly resolution 2625 (XXV)).

8. The Committee considers that history has proved that the realization of and respect for the right of self-determination of peoples contributes to the establishment of friendly relations and cooperation between States and to strengthening international peace and understanding.

Self-determination applied to communities

The over-riding principle of self-determination in this "Toolkit" is inspired by classic (customary and treaty) law criteria, as well as popular claims to the same. In both senses, the claim is legally fixed in the common Article 1 of the human rights treaties. Using the ICESCR as a basic and integrated instrument, the "ToolKit" especially applies this over-riding principle to Article 11, which guarantees the human right to housing.

In making the case for ultimate "self-determination" at the community level, this "Toolkit" draws on a number of popular instruments (mostly written and collectively endorsed statements, but also those rooted in oral traditions) asserting the "right" of communities to determine their own destiny. "Community" also enjoys a legal definition (see below).

Self-determination becomes as vital as any other need that grounds other human rights, including those other over-riding principles of rule of law, nondiscrimination, gender equality and international cooperation consistent with all human rights. In their collective dimension, these all become community "needs" and, consequently, "rights" insofar as their absence leads to erosion and violation of a bundle of individual, stand-alone rights and can lead to the deprivation or demise of a community as such.

It should be noted that States and others have recognized the real problem of “ethnocide” and “cultural genocide” resulting from assimilation policies so as to compel the rewriting of the International Labour Organisation (ILO) Convention No. 107 on Indigenous and Tribal Populations in Independent Countries (1956), eventually to adopt the Indigenous and Tribal Peoples Convention No. 169 (1989). Relevant to the practice of self-determination is the question of land tenure, which ILO Convention No. 169 treats in Articles 13–19, while at the same time disclaiming that the term “people” in the Convention does not convey implications as a term of international law (i.e., conferring the right of self-determination).

However, it is the human consequence of the deprivation, rather than the legal “peoplehood,” that makes self-determination vital for any putative victims. Therefore, collective self-determination becomes the right of communities as necessary, even if they are not (or not yet) internationally recognized as a “people” or “nation,” the category To avoid the horrendous consequences of demise and deprivation, and to ensure survival of communities as a “right”—especially marginal and otherwise vulnerable ones such as those facing ethnic cleansing and/or elimination through military, administrative, globalization, forced eviction or development measures—local self-determination is vital, no matter what assimilationist governments individually or jointly say. In human rights, it is the human who has the first and final subject of respect, protection, promotion and fulfillment.

That having been said, and recognizing that self-determination can be either internal or external, the international public law term of art “internal self-determination unit” applies in the case of group or community, and is subject to case-by-case interpretation. This could refer to the rightful place of a minority or an indigenous people. It could conceivably apply also to a community of urban poor, particularly if their survival and/or well-being is threatened and their self-determination then becomes a need/right and requisite to the realization of other rights (life, adequate housing, culture, health, etc.).

In any case, the claimant of self-determination, whether an external or internal type, must meet the challenge and legal test of asserting that the claim at any level does not conflict with—or at least is balanced with—the rights of others. That may mean, of course, ensuring that self-determination claims do not negate general ecological values, others’ self-determination rights, the rights of women to gender equality, security of person, regional peace and security, etc.

What are the criteria for *bona fide* claimants to local self-determination in the terms of international law as developed? The criteria presented by Martinez-Cobo (*Study of Discrimination against Indigenous Peoples*, UN document E/CN.4/Sub.2/1986/7/Add.4) has grounded much of the self-determination thinking about indigenous peoplehood and the rights arising. Based on his criteria for indigenous “people,” the characteristics constituting a community with the right to claim external or internal self-determination could also be that the community (1) predate the influx of “others,” (2) possess distinct cultural attributes, (3) occupy an identifiable territory and (4) identify itself as a people/community having the right to self-determination.

Legally defining the subjects of self-determination

Definitions of “people” or “nation,” the legal self-determination rights holders, are generally unpopular with States and their sitting governments, unless the definition applies to an existing “nation-state.” Of course, very few States can claim adherence to this definition, that is, to contain a single native people or nation (except, perhaps, Portugal, excluding

immigrants). The General Assembly has assumed the task of defining self-determination (particularly in resolution 1514(XV), 14 December 1960). That has been construed typically as applying to cases of decolonization (Angola, Algeria, Namibia, Mozambique, Palestine, Puerto Rico, etc.). In its Advisory Opinion on Namibia, the International Court of Justice recognized Namibians as a “people” and “nation” in light of the value of, and for the purpose of decolonization. Despite this legal reference, the actual definition of “people” and “nation” remains under debate for political and practical reasons.

In addition to the guidance on “people,” including indigenous peoples, as explicit self-determination rights holders, we have an international law definition of what constitutes a “community.” The “community” definition does not deviate significantly from the four-part construct that Martínez-Cobo offered (above). It comes to us from the first International Court in a case sorting out criteria for transferring the ethnically Greek and Turkish communities between the Republic of Turkey and Greece after the First World War:

A group of persons living in a given country or locality having a race, religion, language and tradition of their own and united in the identity of race, religion, language and tradition in a sentiment of solidarity, with a view to preserving traditions, maintaining their form of worship, insuring the instruction and upbringing of their children in accordance with the spirit and traditions of their race and rendering mutual assistance to each other.⁶⁶⁷

Leaving aside the probability that the purpose of the Court’s opinion (population transfer) would be legally impermissible today,⁶⁶⁸ the legal definition of “community” it provided is actually less ambiguous than that of “people” or “nation.” The “people” definition remains elusive largely because some States find it a political Pandora’s box that could challenge their jurisdiction and/or effective control over territory. Until now, some governments instead persist in proffering the legally vacuous term “indigenous populations,” so that the legally more-significant term “people/s” would wane into disuse, as would also the corresponding rightful and self-preserving claims of its subjects to self-determination. However, if one is looking for a way to apply self-determination to “communities,” one has this definition of the ICJ’s predecessor as a reference.

Significant also is the fact that the Court’s definitive Advisory Opinion was intended for a narrow and specific purpose. That was not to recognize an external self-determination right, but to rationalize a population transfer scheme that today would be considered a clear violation of international public law. That is not only because of the absence of consent and the obvious human suffering population transfer causes, but also because it deviates from the most basic concept of contemporary statecraft and democratic governance, which is that the State administer—including by way of implementing the right to self-determination—for *all* of its citizens. Population transfers and external self-determination claims, therefore, serve as a seismograph of a government’s failure at effective statecraft.

This dissertation on self-determination has admittedly merged concepts and definitions of communities with peoples/nations, as the Permanent Court of International Justice effectively has done. Nonetheless, the values that sustain them are akin, and so should the safeguards that promise to prevent the worst of consequences arising from human rights violations against any identifiable group. In summary, self-determination has a local and community-based expression and basis as a right. For the purposes of advancing human

⁶⁶⁷ Permanent Court of International Justice, The Greco-Bulgarian “Communities,” Advisory Opinion No. 17, 31 July 1930 (Leyden: Sijthoff, 1930), p. 21.

⁶⁶⁸ See report of the Special Rapporteurs Aun al-Khasawneh and Ribot Hatano, “The human rights dimensions of population transfer, including the implantation of settlers and settlements,” E/CN.4/Sub.2/1993/17.

rights through the “Toolkit,” both “communities” as well as “nations/peoples” hold the right and responsibility to determine their own habitat, the essence of a people and/or community's survival and sustainability with dignity in its dwelling place.

Applied to suitable location of housing

Applied to suitable location of housing, the over-riding principle of self-determination, in its classical expression, means that every people has the inalienable right to determine the appropriateness of location of the housing and land in its administrative and territorial unit(s). This determination must be made according to local specificity, reflecting the consent of the people subject to self-determination, but also within the obligations provided in the ICESCR and the CESCR's General Comment No. 4 (cited above). Therefore, for peoples and nations, as such, or for other affected persons as members of a community, a measure of self-determination, assured through “genuine consultation,” is required to realize appropriate location of housing, regardless of the type of tenure.

✓ Nondiscrimination

General description

Like self-determination, an inalienable human right common to the major legal systems throughout the world, a fundamental requisite of justice is the absence of discrimination on any arbitrary basis. Discrimination typically results in deprivation of human needs and rights.

Given its centrality, the principle of nondiscrimination, consequently, is an over-riding human rights principle embodied in the first Articles of each major human rights treaty. Nondiscrimination, and its corresponding State obligation to ensure nondiscrimination, are enshrined in the preamble of all international declarations and resolutions concerned with human rights matters, governance and the relations between and among States, nations and peoples.

Common to Article 2 in both the Covenants, nondiscrimination stands out as an over-riding principle with *immediate* application to all the rights contained in those instruments.⁶⁶⁹ The Covenants prohibit arbitrary preferential or punitive treatment and oblige States parties to undertake steps to ensure that rights be exercised without distinction or discrimination “of any kind [as to] race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”⁶⁷⁰

The International Convention on the Elimination of All Forms of Racial Discrimination (1965) defines discrimination as:

any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.⁶⁷¹

⁶⁶⁹ For further guidance on the legal obligations to immediate implementation of the nondiscrimination principle applied to housing rights, see the report of the Special Rapporteur on Adequate Housing E/CN.4/2002/59.

⁶⁷⁰ ICESCR, Article 2.2; ICCPR, Article 2.1.

⁶⁷¹ Article 1, International Convention on the Elimination of All Forms of Racial Discrimination, adopted by General Assembly resolution 2106 (XX) of 21 December 1965, entered into force, 4 January 1969.

Article 5 of that Convention actually offers the historic first codification of the human right to housing, with particular reference to the over-riding principle of nondiscrimination. It reads:

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

In the Convention and its negotiation history, an important distinction emerges: While it is the obligation of States' parties and their governments to combat both "racism" and "racial discrimination," the former is a state of mind that should be eradicated through measures including education and other efforts to bring about a cultural and social transformation toward antidiscrimination. The latter, "racial discrimination" is the actual activation of prejudice which, in its manifestation, is a material violation of the rights of others. Any official action or omission of practicing or condoning racial discrimination is a violation of an *immediate* obligation of the State, not subject to "progressive realization."

This distinction between (1) theoretical racism and (2) racial discrimination in practice has historic roots. It is found also in moral systems, as reflected in the Holy Qur'an, which recognizes the existence of prejudice, but, nevertheless, entreats against putting that into practice:

O you who believe, be upright for God, bearers of witness with justice; and let not hatred of a people incite you not to act equitably. Be just, [for] that is nearer to the observance of duty [the nearest thing to piety].⁶⁷²

This moral distinction was found relevant nearly one millennium later, during the French Revolution. Then, the revolutionary slogan and moral call to the Human Rights of Man and Citizen was "*liberté, égalité, fraternité*. While all three qualities were found desirable and necessary to build a new, democratic society, only liberty and equality could actually be legislated. Fraternity (or sorority) could be developed and encouraged by the State and civil society much more likely than it could be enforced. Nonetheless, a range of practical measures can be undertaken to nondiscrimination in actual practice.

Inherent in the principle of nondiscrimination is the understanding that programs formally providing advantages to persons and groups historically subject to discrimination are not considered to constitute unlawful discrimination. On the contrary, international public law calls upon States to provide additional assistance to those persons and groups subject to past and/or present discrimination, as in corrective/positive discrimination or affirmative action programs that redress foregoing patterns of deprivation.⁶⁷³

Applied to suitable location of housing

Applied to appropriate location of housing, the nondiscrimination principle ensures that individuals and groups are not deprived of appropriate location of housing, including legal enforcement, protection and remedy, nor denied this entitlement on the basis of race, color, creed, gender, sex, sexual orientation, political opinion, social or economic status, language,

⁶⁷² Chapter 5: The Food [al-Ma'da], Section 2: "Duty of Uprightness," verse 8. Maulana Muhammad Ali, transl. The Holy Qur'an (Lahore: Ahmadiyya Anjuman Isha'at Islam, 1963), p. 243.

⁶⁷³ See Marjorie Cohn, "Affirmative Action and the Equality Principle in Human Rights Treaties: United States' Violation of Its International Obligations," Virginia Journal of International Law, Vol. 43 (2002), 249-74.

physical ability/disability, property, form of legitimate work, descent, or any other origin or arbitrary criterion. For indigenous, tribal or other land-based peoples, the State has the obligation to recognize their criteria for appropriate location of housing in law and in administrative matters. Likewise, no State possesses the legal authority to practice or condone *de jure* or *de facto* discrimination that leads to the loss or denial of appropriate location of housing to any member of any group, particularly to the unfair advantage of another. This applies to the practice of nepotism and other forms of corruption that allow disproportionate benefits to family members or political partisans, as well as preferences given to groups such that ignite sectarian, interethnic, or other forms of social conflict. This entitlement is to be implemented immediately, and not subject to concepts of “**progressive realization**.”⁶⁷⁴

International public law calls States to provide special assistance to persons and groups who have been subject to past and/or present discrimination, as in affirmative action programs that redress foregoing patterns of deprivation.⁶⁷⁵

✓ Gender equality

General description

Despite the universal acceptance of the principle of gender equality in international law, many women are denied equal treatment and discriminated against in their housing on the basis of sex or gender. Approximately one-third of the world’s women may be homeless, living in inadequate housing and own less than one percent of the world’s property.⁶⁷⁶ The intersectionality of poverty or other factors (i.e., class, indigenous, refugee, migration, caste, sexual orientation, ethnic minority, age, disability, widowhood, citizenship or nationality status, etc.) further marginalize women. In the context of the increased feminization of poverty, decreased access to public services, and destruction of natural environments, all of which are accelerating with the process of globalization, women are increasingly placed in situations where they do not have adequate housing.

The denial of adequate housing for women is a violation of women’s human rights. It can also result in the violation of women’s other human rights such as rights to life, livelihood, adequate food, employment and political participation (e.g., voting rights). In particular, the lack of adequate housing also can make women more vulnerable to various forms of violence against women (e.g., domestic violence, trafficking, sexual and gender-based violence against migrant workers etc.).

The right to nondiscrimination in gender relations, as an over-riding principle in human rights implementation, is generally stated in UDHR, Article 2 (nondiscrimination) and throughout the Declaration in its language of human rights for “everyone” and “all are equal before the law.” More specifically, gender equality has emerged as a binding, over-riding principle in the two Covenants’ common Article 3:

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all... rights set forth in the present Covenant.

⁶⁷⁴ For further guidance on the legal obligations to immediate implementation of the nondiscrimination principle applied to housing rights, see the report of the Special Rapporteur on Adequate Housing E/CN.4/2002/59.

⁶⁷⁵ See Marjorie Cohn, “Affirmative Action and the Equality Principle in Human Rights Treaties: United States’ Violation of Its International Obligations,” *Virginia Journal of International Law*, Vol. 43 (2002), 249–74.

⁶⁷⁶ COHRE Fact Sheet on Women’s Right to Housing, Land and Property.

This principle is further elaborated in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).⁶⁷⁷ Article 13 obliges States parties to take all appropriate measures to eliminate discrimination against women in areas of economic and social life, and to ensure women's equal right to bank loans, mortgages, and other forms of social credit. In Article 14, paragraph 2, CEDAW specifically addresses women's equal rights in human settlements as the right of women in rural areas to enjoy adequate standard of living conditions, particularly, in relation to housing sanitation, electricity and water supply, transportation, education, communications and access to credit. This extends explicitly to women's "equal treatment in land and agrarian reform as well as in land resettlement schemes." Article 15 also addresses women's equal right to conclude contracts and administer property; while Article 16, paragraph 1 (c) guarantees women's equal rights and responsibilities during marriage and its dissolution, including equal rights for both spouses in respect of ownership, acquisition, management, administration, enjoyment and disposition of property.

This legal norm is carried forward in the Beijing Platform for Action (BPFA), which calls on Governments to remove all obstacles for women in obtaining affordable housing and access to land.⁶⁷⁸ This remains standard in the subsequent multilateral agreements formulated in the Istanbul Declaration and the Habitat Agenda (1996)⁶⁷⁹ and the World Summit on Sustainable Development (WSSD) Plan of Implementation (2002).⁶⁸⁰

The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (1997), which were developed for understanding and determining violations of economic, social and cultural rights, affirmed that, in order to eliminate discrimination against women's rights recognized in the Covenant, the State party should face the need and legal obligation to eliminate discrimination against women that arises out of social, cultural and other structural advantages.⁶⁸¹

Typically, for women the home is the single most important place in the world. Beyond shelter, it is a place for the vast majority of woman to generate income, care for children, and seek respite from violence and patriarchy in the community at large. For many still, it is the only place where women can participate fully in decisions and social activities.

Applied to suitable location of housing

The intersectionality of poverty or other factors (i.e., class, indigenous, refugee, migration, caste, sexual orientation, ethnic minority, age, disability, widowhood, citizenship or nationality status, etc.) further marginalize women as determiners of their appropriate location of their housing. In the context of the increased feminization of poverty, decreased access to public services and destruction of natural environments, all of which are accelerating in the current contexts of globalization, women are increasingly placed in situations where they do not have adequate housing, including by denying appropriate location of housing to them.

⁶⁷⁷ Adopted and opened for signature, ratification and accession by General Assembly resolution 34/180, 18 December 1979; entered into force, 3 September 1981, in accordance with Article 27(1).

⁶⁷⁸ Para 58(m).

⁶⁷⁹ Para 40 (b), 78 (e) and (g).

⁶⁸⁰ Para 67 (b).

⁶⁸¹ Related sources of gender equality for women in human settlements can be found in CEDAW Articles 1, 2(f), 3 and 5 (a); UDHR, Articles 2, 16, 17 and 25; UDHR, Articles 5 (d) (v) and (vi), 5 (e) (iii); ICERD, Article 2, para 1, Articles 3, 9, 16, 17, Article 23, para 4, ICCPR, Article 26; ICESCR, Article 2, para 2, Article 3, and Article 11, para 1; and CRC, Article 1, 16, para 1 and Article 27.

Similar forms of gender discrimination are also common against some men, for their presumed passive sexual role, and transgendered persons, as well as sex workers. With a view to housing location, this discrimination can manifest in ghettoizing such persons and/or conducting forced evictions for reasons as arbitrary as unauthorized sexuality.

Freely exercising one's own culture (cultural adequacy) in a human rights framework means allowing for cultural choice and expression within in order to ensure human needs and the requisites of fairness are satisfied. Preserving a practice of unequal rights to appropriate location of housing, or segregated housing is not consistent with that framework and likely would violate both the gender-equality provisions of ICESCR, CEDAW, ICERD and ICCPR, as well as provisions of the Vienna Convention on the Law of Treaties (1969).⁶⁸²

✓ Rule of law

General description

In the over-riding principles pertaining to previously discussed forms of discrimination, human rights are, by their nature, equal, inalienable and universal. By this is meant that the criteria for applying the standards and norms are to be inconsistent in their application. One way to ensure that is through the formal and institutionalized rule of law.

As enshrined in UDHR, Article 6, "Everyone has the right to recognition everywhere as a person before the law." This right is codified in the ICCPR (Article 16), and is supported by regional instruments affirming the same.⁶⁸³ The equal inalienable and universal right to a fair trial, including the presumption of innocence, is enshrined in ICCPR,⁶⁸⁴ as well as the regional instruments.⁶⁸⁵

The law-abiding State and its officers must not withhold or impede remedies, apply the law inconsistently or arbitrarily, or exercise any form of discrimination that affects the human right to adequate housing. Inhabitants who have lost or undergone damage to their housing unjustly or illegally have the right to unobstructed access to legal remedy, including compensation for victims, which the State bears the corresponding obligation to respect, defend, promote and fulfill.

States are required to maintain the rule of law in order to ensure a consistent, predictable and accessible resolution of disputes with remedy and compensation for the victims. This covers the right of equal access to public services, such as law enforcement, public defense and judicial services. The conduct of law enforcement officers, prosecutors and judges can determine whether or not the rule of law is respected or violated. Therefore, there is a tremendous need for the State to train, discipline and rehabilitate legal enforcers and practitioners. In the case of police services, the use of force is required to follow strictly the principle of presumed innocence and the criteria of necessity and proportionality in case

⁶⁸² The Vienna Convention sets forth, in Article 27, that "[A] party may not invoke the provisions of its internal law as justification to perform a treaty," and the customary law principle, arising from Article 8 of the Universal Declaration of Human Rights, states that "everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him [her] by the constitution or by law."

⁶⁸³ African Convention on Human and Peoples' Rights, Article 5; Inter-American Convention on Human Rights, Article 3.

⁶⁸⁴ Article 10 reads: "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his[her] rights and obligations and of any criminal charge before him[her]." [Bracketed text added.] Article 14.2 sets forth that "Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to the law."

⁶⁸⁵ African Charter, Article 7; Inter-American Convention, Article 8; European Convention on Human Rights, Article 6.

where State force is used.⁶⁸⁶ Where local statutory law may be silent on housing rights safeguards, lawyers and judges bear an extra professional duty to apply the human rights norms to the extent possible.

The principles of remedy and reparation have been firmly established in instruments declaratory of the human right to access to justice. Culminating the development of international law derived from the major legal systems in the world, the revised Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law (2003) outline the right and corresponding State obligations as follows:

VII. Victim's Right to Remedy

Remedies for violations of international human rights and humanitarian law include the victim's right to:

- (a) Access justice;
- (b) Reparation for harm suffered; and
- (c) Access the factual information concerning the violations.

VIII. Victims' Right to Access Justice

A victim's right of access to justice includes all available judicial, administrative and other public proceedings, mechanisms and modalities that exist under domestic laws, as well as under international law. Obligations arising under international law to secure the individual or collective right to access justice and fair and impartial proceedings should be made available under domestic laws. To that end, States should:

Make known, through public and private mechanisms, all available remedies for violations of international human rights and humanitarian law;

Take measures to minimize the inconvenience to victims, protect their privacy as appropriate, and ensure their safety from intimidation and retaliation, as well as that of their families and witnesses, before, during, and after judicial, administrative, or other proceedings that affect the interests of victims;

Facilitate assistance to victims seeking access to justice.

Make available all appropriate diplomatic and legal means to ensure that victims can exercise their rights to a remedy and reparation for violations of international human rights or humanitarian law.

In addition to individual access to justice, adequate provisions should also be made to allow groups of victims to present collective claims for reparation and to receive reparation collectively.

The right to an adequate, effective and prompt remedy against a violation of international human rights or humanitarian law includes all available international processes in which an individual may have legal standing and should be without prejudice to any other domestic remedies.⁶⁸⁷

The restitution of housing and property is one form of restitutive/restorative justice sought in the rule of law applied to housing rights violation victims. Efforts continue to develop these

⁶⁸⁶ Code of Conduct for Law Enforcement Officials, adopted by General Assembly resolution 34/169, 17 December 1979, Article 3; Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted at the Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August–7 September 1990, preamble and Articles 1–11.

⁶⁸⁷ As revised in accordance with UN Commission on Human Rights resolution E/CN.4/2003/34 (2003).

methods and disparate efforts, not least in the development of draft guidelines on restitution for refugees.⁶⁸⁸

Applied to suitable location of housing

In the case of a dispute over the suitable location of housing, the State bears an obligation to ensure that the rule of law is applied in a context of equality, inalienability and universality of rights, particularly with regard to the human right to adequate housing. In cases where the State (e.g., courts or police) assume a role in a dispute over the location of housing, it bears the responsibility to abide by its human rights obligations and refrain from violations of the right to housing, including with regard to location, such as unlawful forced eviction, or other forms of violence, or other punitive behavior inconsistent with the principles of (1) presumption of innocence until proven guilty and, in the use of force, (2) necessity and (3) proportionality.

The law-abiding State, its agents and offices must not apply arbitrary criteria for housing location or exercise any form of discrimination against the concerned inhabitants in the placement of their housing. Those who have an unsuitable location in their housing for reasons of unjust or illegal acts or omissions have the right to unobstructed access to legal remedy, including compensation for victims, for which the State bears the corresponding obligation.

✓ Nonretrogression/progressive realization

General description

ICESCR's Article 2 identifies the State party's obligation to ensure the "progressive realisation" of ESC rights. That is widely interpreted to mean that the State party breaches this provision if it tolerates or causes "regressivity" in the enjoyment of the right. The relevant jurisprudence has established that, even in the case of scarce resources, the State must exert good-faith efforts, including through international cooperation, to advance—and not derogate—the enjoyment of ESC rights, including adequate housing and its constituent entitlements.

The treaty bodies have clarified further that neither political processes, domestic legislation, scarcity of resources, or agreements with other parties can be invoked to justify nonimplementation of human rights treaty obligations.⁶⁸⁹ For example, the binding nature of a treaty obligation is further clarified in the Vienna Convention on the Law of Treaties (1969), clarifying in its Articles 27 and 46, that invoking an internal law is not admissible as a justification for nonimplementation of a treaty obligation.⁶⁹⁰ To harmonize treaty obligations with local implementation, human rights obligations arising from the treaties and case law

⁶⁸⁸ Progress report of the Special Rapporteur, Paulo Sérgio Pinheiro, "Housing and property restitution in the context of the return of refugees and internally displaced persons," E/CN.4/Sub.2/2004/22, 2 June 2004.

⁶⁸⁹ Letter of CESCR Chairperson Mme. Virginia Bonoan-Dandan to S.E. M. Yaakov Levy, Permanent Representative, Permanent Mission of Israel to the United Nations Office and Specialized Agencies at Geneva, 11 May 2001, annex to Letter by the Chairperson of the Committee on Economic, Social and Cultural Rights to the President of ECOSOC (11 May 2001).

⁶⁹⁰ Article 27 (Internal law and observance of treaties): "A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to Article 46." Article 46 (Provisions of internal law regarding competence to conclude treaties) states that: 1. A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance. 2. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith."

should guide policy formulation and decision-making processes in law-abiding States. Therefore, a process of realising the rights should not regress, but should ensure “the continuous improvement of living conditions” (Article 11).

This over-riding principle of “nonregressivity” has been reaffirmed in the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights (1986) and Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (1997),⁶⁹¹ as well as numerous cases of international jurisprudence through the monitoring functions of CESCR.

The many examples of globalization-era economic reforms demonstrate how the withdrawal of the State from its obligations to fulfill economic/social/cultural rights can lead to deprivation. The State nonetheless bears a covenanted obligation to ensure that economic policies do not make tenure more precarious and insecure, whether arising from domestic political change or pressures of an external actor, such as an international financial institution. In order to ensure “progressive realization,” therefore, it is vital to ensure that the human right to adequate housing forms a part of the overall human rights framework for development policy, especially guiding international cooperation arrangements. This civilizing process requires improved coordination among the relevant government bodies, such as ministries of Justice, Finance and Foreign Affairs. This is not only out of domestic duty toward citizens for States to ensure that development partnerships effect “progressive realization,” but also an extraterritorial obligation of the State party under ICESCR, Article 2.

The CESCR has commented also on the “core obligations” of States to implement the human right to adequate housing. It noted that, regardless of the state of development of any country, certain steps must be taken immediately, in addition to the over-riding principles of human rights law. These include abstaining from measures that would impinge upon the right, as well as to engage positively in practices to facilitate the people’s processes of groups seeking to improve their living conditions, in accordance with the specific elements outlined above.⁶⁹²

Applied to suitable location of housing

The State and its agents, as well as its guiding policies and legislation, should ensure that factors determining the suitable location of housing develop in a way that is conducive to the fulfillment of the human right to adequate housing. This means that new laws and policies, as well as trends in official behavior and practice, such as physical planning, should improve in the direction of greater justice for all and solutions for those living with factors forcing them into unsuitable housing locations. It also means that those same parties should develop greater capacity for, and actually deliver relief to those in severely unsuitable locations.

✓ International Cooperation

General description

⁶⁹¹ Text available at <http://ip.aaas.org/escrdocs.nsf/>.

⁶⁹² “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.” General Comment No. 4, para. 10.

States parties to both Covenants bear an obligation to implement human rights within a context of “international economic cooperation.”⁶⁹³ The ICESCR’s Article 2.1 requires States party to undertake steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

In the spirit of the numerous multilateral agreements on human rights and development, “progressive realization of ESC rights,” as a borderless objective, logically engages “international cooperation” duties for States to conduct themselves accordingly through their relations with other States, nations and peoples:

In fraternity and solidarity
Domestically and extraterritorially
Individually, jointly and/or collectively.

The preamble of the United Nations Charter specifies the purposes of the world organization insofar as “we the peoples of the United Nations” are determined “to promote social progress and better standards of life in larger freedom.” Article 1, para. 3 of the Charter sets out one of the UN’s purposes as “to achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.”

Linking international cooperation and self-determination as essential to the peaceful order of the United Nations, the Charter’s Article 55 reads:

With a view to the creation of conditions or stability and well-being[,] which are necessary for peace and friendly relations among nations based on respect for the principles of equal rights and self-determination of peoples, the United Nations shall promote universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

The Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations considers as essential:

the progressive development and codification of the following principles:... (d) the duty of States to cooperate with one another in accordance with the Charter;...(g) the principle that States shall fulfill in good faith the obligations assumed by them in accordance with the Charter, so as to secure their more-effective application within the international community would promote the realization of the purposes of the United Nations;...⁶⁹⁴

The UN States members share a duty to cooperate with one another, irrespective of their differences, to maintain international peace and security and promote international economic stability and progress, the general welfare of nations and international cooperation free from

⁶⁹³ Common Article 1.2.

⁶⁹⁴ Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly in its resolution 2625 (XXV) of 24 October 1970 Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly in its resolution 2625 (XXV) of 24 October 1970

discrimination. To this noble end, the Declaration embodied by UN members commitments such that:

(c) States shall conduct their international relations in the economic, social, cultural, technical and trade fields in accordance with the principles of sovereign equality and nonintervention;

(d) States Members of the United Nations have the duty to take joint and separate action in cooperation with the United Nations in accordance with the relevant provisions of the Charter.

States should cooperate in the economic, social and cultural fields as well as in the field of science and technology and to the promotion of international cultural and educational progress. States should cooperate in the promotion of economic growth throughout the world, especially that of the developing countries.⁶⁹⁵

In addition to its Article 2, ICESCR also sets out to identify the UN systems itself as a vehicle for international cooperation to uphold the Covenant. The Covenant empowers ECOSOC to raise the Covenant-monitoring reports as a guide for UN technical assistance.⁶⁹⁶

Other instruments of international public law are dedicated to specifying norms for international cooperation agreements between and among States. Consistent with human rights norms and other *jus cogens* principles of law, the Vienna Convention, Article 53, provides clarity:

A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

States parties adhering to the international law principles of international cooperation are required to behave extraterritorially consistent with the progressive realization of economic/social/cultural rights. For our purposes, this extends especially to the human right to adequate housing and land.

As a donor country, a State must ensure that the projects and programs it supports do not erode any of the entitlements contained in their right to adequate housing for inhabitants in beneficiary countries. That includes avoiding any action that leads to forced evictions, confiscation or demolition of housing. In the case of development assistance resulting in dislocation of inhabitants, all aspects of the undertaking are to be the subject of consultation with the affected persons, and the efforts should enhance legal security of tenure as a result within the covenanted human rights framework.

As a recipient country, structural adjustment, deregulated foreign investment, privatization and related measures typified by today's bilateral and multilateral arrangements assistance agreements and programs must be compatible with the human rights obligations of the affected State. Measures that deny or reduce tenure security would be illegal and

⁶⁹⁵ Ibid.

⁶⁹⁶ Article 22 reads: "The Economic and Social Council may bring to the attention of other organs of the United Nations, their subsidiary organs and specialized agencies concerned with furnishing technical assistance any matters arising out of the reports referred to in this part of the present Covenant which [sic] may assist such bodies in deciding, each within its field of competence, on the advisability of international measures likely to contribute to the effective progressive implementation of the present Covenant."

unaccepted as a condition of the assistance. States parties to the human rights instruments have a self-preserving opportunity and responsibility to uphold their prior treaty obligations as a form of (moral, legal and practical) resistance to negotiation pressures or conditionalities that may derogate the terms of legal security of tenure for inhabitants.

As all human rights implementation ultimately is a local matter, regional instruments can be a source a greater specificity in determining of State obligations and practical measures needed to uphold economic, social and cultural rights. For example, the African Charter on Human and Peoples' Rights (1981) provides a broad agreement on the term of international cooperation in its Article 21: 1, which establishes that:

All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it. 2. In case of spoliation, the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation. 3. The free disposal of wealth and natural resources shall be exercised without prejudice to *the obligation of promoting international economic cooperation based on mutual respect, equitable exchange and the principles of international law*. 4. State Parties to the present Charter shall individually and collectively exercise the right to free disposal of their wealth and natural resources with a view to strengthening African Unity and solidarity. 5. *State Parties to the present Charter shall undertake to eliminate all forms of foreign exploitation particularly that practised by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources.* [Emphasis added.]

States Parties are required to review multilateral agreements on investment, trade-related intellectual property arrangements, poverty-reduction strategy papers (PRSPs), bilateral and multilateral relations in the World Trade Organization context, World Bank lending and assistance terms, and the International Monetary Fund programs operating in, or otherwise affecting the State, in order to ensure consistency with covenanted obligations and avoid either retrogressivity or violations of its citizens' ESC rights. The State party is obliged to apply the Covenant *a priori* to ensure that any such conditionality would be subject to the ESC rights safeguards for its own inhabitants, and for those of another State party.

Privatization programs may lead to deprivation of the housing rights entitlement to tenure security. In the event of workers living in administrative housing who become laid off as part of a privatization or State-enterprise sell-off arrangement may lose their tenure altogether. Even in cases where local legislation is silent, international treaty obligations remain for the State party to defend the workers' human right to adequate housing by legal and enforceable protection for their secure tenure and all other housing rights entitlements.

As an extreme example of international cooperation conducted in explicit violation of ESC rights applying to adequate housing and secure tenure would be a scenario wherein a State engaged in, or condoning third parties to engage in acts or omissions that would contribute to population transfer or any of its related international crimes, such as mass deportations, ethnic cleansing, destruction of civilian or private property, implantation of settlers and settler colonies, or other forms of demographic manipulation of an internal or external self-determination unit. Duty prohibits States party from allowing public or private resources to accrue to settler colonies in an occupied territory, for example, or engage in any other acts or omissions that would facilitate another State party's violations of the Covenant or Convention in this way. There are numerous examples today in countries where these forms of violation continues unaddressed with the accomplice and collaboration of other States. Impunity still

characterizes the conduct of many of these crimes, as the perpetrators have not yet been prosecuted at any level, including at the International Criminal Court.

A State's participation in international economic sanctions or blockades that lead to violations of the ESC rights of persons other than the State Party's own residents, citizens and nationals may lead to conditions that undermine housing rights. CESCR has provided guidance to States parties of the Covenant on ESCRs affected by sanctions regimes and subject to protection measures to avoid regressivity and violation.⁶⁹⁷

Direct provision, or participation in multilateral programs of development and financial assistance actually may lead to violations of rights embodied in the Covenant (e.g., stagnation, deterioration or denial of work, education, health or housing rights, forced eviction, etc.) and constitute a breach of treaty obligations. Specifically, ICESCR and its enshrined rights should guide and govern a State's policies and conduct in any multilateral institution that imposes economic conditionalities on other States or their agents that bring about a negative consequences effect inhabitants housing rights conditions. The legacy of development banks' support for forced evictions of all possible scales and levels of deprivation has become notorious, and States that promote, finance or engage directly or indirectly in making decisions or executing these policies may be in breach of their human rights treaty obligations.

Applied to suitable location of housing

International development cooperation should lead to improved location factors and criteria for adequate housing, whether that be through the enhancement of administrative capacity, governance, service provision, technical cooperation or assistance of a material nature. Any cross-border cooperation and investment in human settlements and/or in other sector should not affect location criteria negatively.

✓ Other principles of application

The principles discussed above are those explicitly stated in the major international human rights treaties. At the same time, we can consider additional principles and concepts that also guide the application of the human right to adequate housing. These arise from the international jurisprudence of individual State party reviews by the treaty-monitoring bodies, as well as from their General Comments and General Recommendations. They also come to us from popular claims of people's movements, from the political resolutions of the multilateral organizations, from expert opinions found in the legal literature, and from the evolving experience at implementing human rights. Three such principles of application for us to consider are known as the "indivisibility of rights," "minimum core obligations" and "universality."

Indivisibility

The concept of all human rights as indivisible is as practical as it is theoretical. It arises from the realization that, when we unpack the contents of a right, we encounter aspects of the other rights as well.

⁶⁹⁷ See CESCR General Comment No. 8, "the relationship between economic sanctions and respect for ESC rights."

Take, for example, the “habitability” entitlement contained in the human right to adequate housing. The deterioration of the structural features of the home leaving the inhabitants exposed to the elements, or pollution in the immediate vicinity of the housing surely effect the enjoyment of the human right to “a standard of living adequate for the health and well-being of himself and of his family,” as recognized in Article 25 of the 1948 Universal Declaration of Human Rights (UDHR), and codified as the “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health” in Article 12 of the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR).

Likewise, homelessness is a status synonymous with the denial of voting rights in most States, where registration and voting require a *domicile fixe*. Thus, the human right to adequate housing is linked with everyone’s “right to take part in the government of his [sic] country, directly or through freely chosen representatives,” as promised in UDHR (Article 21), and codified in the Covenant on Civil and Political Rights (ICCPR), in 1966, as everyone’s “right to take part in public life, directly or through freely chosen representatives” (Article 25). Incorporating the experience of HIC members and others around the globe, it has become clear that our monitoring methodology calls our attention also to the “congruent” human right to participation and self-expression among the constituent entitlements of the human right to adequate housing.

Sorting, categorizing and distinguishing subjects of any kind can be a useful exercise that makes manageable order out of complexity and facilitates understanding. Human rights are no exception. However, in practice, we find that human rights are interdependent, and categorical separation can become artificial and actually impede understanding. One example is in the division of human rights found in the UDHR into the two, separate Covenants. The reason for adopting two basic Covenants, instead of one, is largely attributed to the divergent Cold War ideologies that dominated the General Assembly when it adopted the Covenants in 1966. Ideology is also the reason that one of the largest and wealthiest industrialized States has failed to ratify the ICESCR until today, and ideology also prevailed to exclude a “human right to own property” from that Covenant, although that right is included in the UDHR (Article 17). Despite the false impression left by the Covenants dividing human rights into two instruments camps, the ICCPR’s nonetheless recognizes, in its preamble, that:

... in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights.

Without appreciating the over-riding principle of indivisibility, other distortions can arise. With civil and political rights traditionally gaining from more attention and specificity than economic/social/cultural rights (consistent with some Western Bloc preferences), some authors have proposed that we consider “generations” of rights.^{698[1]} Presenting distinct rights

^{698[1]} French jurist Karel Vasak is attributed with first proposing the division of human rights into three generations, while at the International Institute of Human Rights (Strasbourg), in 1979. His division adapted the French Revolution’s slogan of *Liberté, Égalité, Fraternité* as ordinal categories. The three generations are subsequently reflected in some of the rubrics of the European Charter of Fundamental Rights.

First-generation human rights deal essentially with liberty. In Vasak’s view, these are seen as fundamentally civil and political in nature and serve to protect the individual from excesses of the State. First-generation rights include, *inter alia*, freedom of speech, the right to a fair trial, and freedom of religion, as enshrined in Articles 3–21 of UDHR and ICCPR.

Second-generation human rights would be those related to equality, and are supposedly the social, economic, and cultural rights. This theory sees these essentially as positive rights; that is, actions that the State is required to provide

in such a priority order perpetuates the historic neglect of economic/social/cultural rights and promotes a logic that may culminate in violations. Nominating civil and political rights in a hierarchical order as “first generation” rights classifies economic/social/cultural rights as secondary: the “second generation” of rights. Group rights, as distinct from individual rights, environmental rights and, in certain cases, self-determination thus become degraded as “third generation.” This view is kept alive by a simple misunderstanding of “progressive” realization, required in ICESCR, such that slow realization of economic/social/cultural rights is acceptable and that all aspects of economic/social/cultural rights, as such, are subject to gradual implementation. The indivisibility of human rights belies such gradualist or generational notions. Therefore, this toolkit cannot accommodate the divisive, generational approach to human rights not for ideological reasons, but for the fact that theories neatly segregating rights are not sustained in practice.

It is with this recognition of the indivisibility of rights that CESCR commented:

...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....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.^{699[2]}

Core obligations

Alone, the very general reference to the human rights in treaty texts does not provide the specific guidance needed for States parties around the world to know their precise obligations. ICESCR’s English-language version requires States to “take steps.” The French texts calls on States “to act” (*s’engage à agir*) and, in Spanish, the Covenant requires States “to adopt measures” (*a adoptar medidas*), but offers little about what those steps/actions/measures should be, except to say that these should be “appropriate,” “progressive” (nonregressive/ nonretrogressive), nondiscriminatory (nondiscrimination), involve international cooperation and include legislative measures (rule of law). Therefore, the treaty-monitoring bodies bear the task of issuing General Comments and General Recommendations to supply the needed specificity, based on international public law and the implementation experience of all States parties.

In its General Comment No. 3: “The nature of States parties’ obligations,”^{700[3]} CESCR addressed the principle of “minimum core obligations”:

to the people under its jurisdiction, as opposed to actions from which the State should refrain—e.g., forced eviction—in order to realize rights.

Third-generation human rights correspond with fraternity, or involving “solidarity.” They include group and collective rights, such as self-determination, economic and social development, sovereignty over natural resources, and the right to participate in the common heritage of mankind. Treated as third generation, the generational theory of rights presumes that these rights are not yet binding and dubiously judicial.

In an alternative explanation for the three-generational approach rests on the political divisions of the Cold War, where the West promoted allegedly first-generation (civil and political) rights, and the East promoted second-generation (economic, social and cultural) rights. The Third World (i.e., third priority in the putative hierarchy) promoted (third-generation), solidarity rights, as in the decolonization struggles of the 1970s, including decolonization processes delayed until today.

^{699[2]} General Comment No. 4: “the right to adequate housing” (1991), para. 9.

^{700[3]} Adopted by the CESCR in its fifth session (1990), E/1991/23.

...a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party. Thus, for example, a State party in which any significant number of individuals is deprived of ...basic shelter and housing...is, *prima facie*, failing to discharge its obligations under the Covenant. If the Covenant were to be read in such a way as not to establish such a minimum core obligation, it would be largely deprived of its *raison d'être*.^{701[4]}

The General Comment, like the Covenant, takes into consideration material limits of States. However, the Covenant's Article 2 (1) obligates each State party to take the necessary steps "to the maximum of its available resources," and the treaty body has determined that the nature of treaty obligations are such that a State bears a heavy burden of proof to demonstrate that "every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations."^{702[5]}

The "minimum core obligations" also include those appropriate steps to respect, defend, promote and fulfill the human right to adequate housing, like other economic/social/cultural rights, as a matter of immediate application. Among the appropriate measures, in addition to harmonizing domestic legislation with the covenanted rights, is to provide judicial remedies to victims within the national legal system. That would be among the most effective measures to ensure compliance with obligations to implement certain aspects of economic/social/cultural rights *immediately*, such as by ensuring nondiscrimination. The Committee has determined that it is "difficult to sustain" any suggestion that these immediate obligations are inherently non-self-executing. This legal authority is consistent also with the terms of the Vienna Convention on the Law of Treaties (1969), which provides that "A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty."^{703[6]} The treaty bodies have clarified further that neither political processes, domestic legislation, scarcity of resources, nor agreements with other parties could be invoked to justify nonimplementation of human rights treaty obligations.^{704[7]}

Nondiscrimination is perhaps the most obvious and urgent of the immediate principles in implementing the human right to adequate housing. CESCR has provided specific guidance such that, among other things, "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."^{705[8]}

^{701[4]} *Ibid.*, para. 10.

^{702[5]} *Ibid.*

^{703[6]} Vienna Convention on the Law of Treaties, signed at Vienna, 23 May 1969; entered into force, 27 January 1980, Article 27: "Internal law and observance of treaties." The Article also goes on to state that "this rule is without prejudice to Article 46." Article 46: "Provisions of internal law regarding competence to conclude treaties" states that "1. A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance. 2. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith."

^{704[7]} Letter of CESCR Chairperson Mme. Virginia Bonoan-Dandan to S.E. M. Yaakov Levy, Permanent Representative, Permanent Mission of Israel to the United Nations Office and Specialized Agencies at Geneva, 11 May 2001, annex to Letter by the Chairperson of the Committee on Economic, Social and Cultural Rights to the President of ECOSOC (11 May 2001).

^{705[8]} General Comment No. 3: "The nature of States parties' obligations,"^{705[8]} CESCR addressed the principle of "minimum core obligations," adopted by the CESCR in its fifth session (1990), E/1991/23, para. 11.

^{705[9]} The Vienna Convention sets forth, in Article 27, that "[A] party may not invoke the provisions of its internal law as justification to perform a treaty," and the customary law principle, arising from Article 8 of the Universal Declaration of Human Rights, states that "everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him [her] by the constitution or by law."

The measures needed for States parties to comply with obligations of immediate application include negative obligations. That is, many of the measures to realize the human right to adequate housing would require little more than the State and its agents to refrain from certain harmful practices, such as arbitrary house demolitions and forced eviction, or a meaningful commitment to enabling “self-help” or “social production of habitat” by affected groups. Such changes in State behavior would not require significant expenditure of public resources.

Universality

The principle of human rights’ “universality” is simply expressed in the UDHR’s recognition that “All human beings are born free and equal in dignity and rights” (Article 1). Everyone, without exception, is entitled to human rights by virtue of belonging to the human family. From a moral point of view, the universality of human rights is an essential principle if the human civilization is to advance for the better. In international law, the text of ICESCR also speaks consistently of right of “everyone,” which obliges States not to discriminate in adherence to minimum core obligations. In the field of housing, in particular, States are not permitted to interpret its minimum core obligations to apply selectively, that is, only to citizens, or only certain citizens, but also to ensure the human right to adequate housing is realized also for “everyone,” including residents, immigrants and migrant workers, etc. The only conditionality permitted in law is that the subjects of human rights qualify as members of the human family.

Before the Universal Declaration, the social movements, revolutions, antislavery struggles and intellectual contributions of the past have served as vehicles for the promotion of human rights that eventually have been incorporated into local and international law and practice. However, many of these famous accomplishments were limited in their substance or application, geographically or socially, or were subject to reversal. Social science and philosophy have contributed greatly to the recognition of human rights, but have not carried the force of law. The recognition of the universality of human rights overcomes the shortcomings left by these otherwise-significant accomplishments:

Limits in scope of application:

- The rights and ethics delivered through the world’s moral systems, especially those found in the religions, also are limited in scope by the fact that they apply to adherents to a particular faith group, not applying universally;
- The Magna Carta of 1215 imposed limits on royal impunity that equate as new rights for citizens, especially property-owning citizens. However, this historical achievement had only local application in the geographical realm of the English king.

Exclusion of social sectors and substantive rights:

- The “American Revolution,” in the English colonies that eventually became the original United States of America, realized the right to self-determination as a legal right and *raison d’état*. However, the right to self-determination, as inalienable as it is, applied in the American Revolution case as a right limited only to the white colonizers who identified themselves as a distinct people. The remaining indigenous peoples—whom the settlers mostly largely and replaced—have yet to achieve their self-determination to this day;

- The French Revolution, for all its achievements, realized rights for individuals. French farmers and workers sought recognition of their group rights in the context of the revolution; however, its leadership rejected those expansive notions of rights and insisted on *liberté, égalité and fraternité* with an individual focus;
- The results of the Bolshevik Revolution institutionalized recognition of group rights for workers, etc.; however, rejected a right to property ownership. However ethically grounded the rationale for that omission, the denial of property rights also has emerged as a common tool for depriving persons, communities and entire peoples of their means of subsistence, thereby demonstrating, by its violations, the importance of that neglected human right.

Retgression:

- The antislavery movement in Haiti at the end of the 18th Century resulted in a democratic regime and Constitution under the leadership of former slave and eventual General Toussaint Louverture. However, the same France that produced the world-changing Revolution only 12 years before saw the French General Napoleon I crush the new democracy in 1801 for reasons of imperial interest, reversing the accomplishments of Haitian antislavery democracy, with consequences extending to this day.

Despite their shortcomings, these episodes in the gradual achievement of rights through local struggle all have contributed to the accumulation of human rights recognition as universally applicable. Human rights law today embodies that cumulative recognition into an international and universal code that seeks to leave no human group, geographical region or human need without mutual protection in the multilateral legal regime.

Universality of human rights now means that it is impermissible to neglect certain rights as if they were intended selectively for certain cultures, as if and people of other cultures deserve an inferior standard. Universality also means that no State or government is exempt from its obligations, either for reasons of specificity of local law, as the Vienna Convention has addressed, or to uphold traditional practices that violate rights or their over-riding principles of application.

Interpreting rights consistent with one's own culture (as in the cultural adequacy of housing) means applying locally specific options and idiomatic expressions consistent with the human rights framework. However, practices that preserve or condone unequal rights to secure tenure, inheritance or other entitlements of the human right to adequate housing are not consistent with the present framework and likely to violate both the gender-equality provisions of the Covenant, as well as essential provisions of the Vienna Convention on the Law of Treaties (1969).^{706[9]}

While local experience of application and struggle continue to provide specificity on how to realize human rights, reveal a variety of possible strategies and define emerging rights (such as the rights to water, land and energy), cultural specificity does not mean allowance for the derogation of rights to something short of the over-riding principles and entitlements reflected in this toolkit. As affirmed by moral arguments and legal authority, adequate housing is the right of everyone, everywhere.

Conclusion

The over-riding principles featured in the monitoring steps of this toolkit are those explicitly mentioned in the major human rights treaties. The “Other principles of application” are implied in the human rights instruments or recognized in international jurisprudence, but are not less important to keep in mind.

The HLRN toolkit attempts to go further than merely encouraging the monitor to keep these additional principles in mind, however. The toolkit’s design actually incorporates all of these three principles, but without culling them out as additional steps in the monitoring process.

The indivisibility of rights is already present in the 12 entitlements; whereas, the first eight derive directly from the CESCR’s General Comment No. 4 specifically on the right to housing. The “Congruent rights” derive from rights whose sources and concepts arise from the ICCPR, Refugee Convention and other instruments. Therefore, the housing rights entitlements themselves embody the indivisibility concept in a practical form.

The core minimum obligations applying in the case of the human right to adequate housing also are consistent with those entitlements outlined in the General Comment No. 4, which are embedded in this methodology (human right to adequate housing entitlements A–H). Naturally, the local specificity as to the nature and level of effort required to realize the human right to adequate housing is precisely your contribution through your monitoring effort, your critical process and by posing your solutions to problems in the field.

The universality of the human right to adequate housing is also inherent to this toolkit, by design. That is manifest in the wide range of international and regional instruments guaranteeing the right and incorporated into the Step 2 presentation of both the Sources in international law and Popular sources.

The good news is that, with these principles integrated in the design of the toolkit, you are able to apply them as a matter of course. Therefore, it would be unnecessary and redundant to create corresponding, additional tasks. By applying the methodology in this Housing and Land Rights Monitoring Toolkit, you will be putting all of these inter-related and interdependent principles into living practice.

7.4. Guarantees

Guarantees of the Human Right to Adequate Housing

We will now determine the existing assets guaranteeing the entitlements of the human right to adequate housing in your country situation. We can begin by making our assessment at the general and international level, then proceeding to the more instrumental and local level. The “guarantees” do not mean only legal provisions, but also institutional, policy and other assets that function to ensure, or at least contribute to implementation of the various contents of our human right to adequate housing.

Therefore, one should assess first the State’s current obligations by its ratification of international (and then regional) treaties recognizing the human right to adequate housing, its over-riding principles and its specific entitlements. Then this method would have us determine any similar guarantees in the national constitution (or equivalent). At the more-specific level of legislation, the inquiry should have us identify which statutes, regulations and even municipal ordinances actually guarantee the right or any entitlement within the right. Presumably, public policies, programs, institutions and budgets in place should form the practical implementation counterparts to complement these legal criteria and the

respect, defense, promotion and fulfillment of the human right at the most-localized operational level.

Inquiry Begins Here

Following this logic, our line of inquiry on “guarantees” poses a number of questions for the monitor to provide the answer. Now your role will become more active. Accordingly, we will follow the method of assessing the guarantees in your country situation for implementation of the human right to adequate housing from general to specific, thus, focusing on:

- Ratifications and multilateral commitments:** Obligations arising from multilateral (international and regional) ratification of relevant treaties;
- Constitutional provisions** relevant to the human right to adequate housing and land;
- National legal system:** Legislation and other local law;
- Institutions:** both binding and bonding institutions, whether as a formal structure, or a more-customary, social character;
- Policies:** having nationwide application;
- Programs:** long-term, policy-based and systematic efforts;
- Projects:** having more temporary and localized application; and
- Budgets** of public institutions.



In that order, our line of inquiry will explore these guarantees for each of the twelve entitlements of the human right to adequate housing and land. You will likely find that you may already have the answers to many of these questions from the previous sections on “Sources” and “Over-riding Principles.” For instance, you have already learned about, and identified many multilateral treaty instruments guaranteeing the human right to adequate housing. Now, you will be able to fill in the rest of the guarantees to complete the picture of how these norms translate into legal and functional assurances locally for this and every entitlement of our human right that you choose to monitor and assess.

This method ensures that the monitor take into consideration also the guarantees of the over-riding human rights principles (as explained above in “Over-riding principles applied to legal security of tenure and freedom from dispossession” in Step 3 of this toolkit). These principles, found in the first Articles of all the major human rights treaties, are to be generally and universally applied in order to ensure a context for the realization of all rights, not least the human right to adequate housing and land. Since these principles over-ride, or sit on top of the human rights framework applied to housing and land, they appear first in the list of questions in our line of inquiry. These questions include a list of legal instruments and commitments by States to guarantee these over-riding principles. (Please note that these are illustrative lists; they are not exclusive lists. You may know of other such guarantees, and you may find that some listed do not apply to your country situation.)

In the same way that we proceed from the general to the specific, the inquiry about the guarantees of the over-riding principles is followed by the more precise, practical guarantees that ensure the human right to adequate housing and land is made real in practice. Therefore, the systematic questions here include a test of (1) the present (general and contextual) guarantees for applying the over-riding principles of international human rights law in the case of the entitlement legal security of tenure and freedom from dispossession

(i.e., self-determination, nondiscrimination, gender equality, rule of law, nonregressivity/nonretrogression and international cooperation), as well as (2) the (functional and specific) local guarantees of legal security of tenure and freedom from dispossession deriving from the guaranties listed above.

✓ Guarantees of the over-riding principles

Self-determination

Which international treaties has the State ratified, acceded to or succeeded to that guarantee that the principle of self-determination be applied, including in the housing context?

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention on the Elimination of All Forms of Racial Discrimination (1965)
- Convention on the Rights of the Child (1989)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- ILO No. 107 concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (1957)
- ILO Convention No. 169 concerning Indigenous Peoples in Independent Countries (1989)
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee that the principle of self-determination be applied, including in the housing context?

- Declaration on the Right to Development (1986)
- Declaration on Social Progress and Development (1969)
- Habitat II Agenda (1996)
- Istanbul Declaration (1996)
- Social Summit Declaration and Programme of Action (1995)
- Universal Declaration of Human Rights (1948)
- United Nations Commission on Human Rights resolutions
- UN General Assembly resolutions [various]
- Vienna Declaration and Programme of Action (1993)
- Durban Declaration and Programme of Action [of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] (2002)
- Johannesburg Declaration of the World Summit on Sustainable Development and Plan of Implementation (2001)

Which regional treaties has the State ratified, acceded to or succeeded to that guarantee that the principle of self-determination be applied, including in the housing context?

- African Charter on Human and Peoples Rights (1981)
- American Convention on Human Rights (1969)
- American Declaration of Human Rights (1948)
- Arab Charter on Human Rights (1994)

- (European) Convention for Protection of Human Rights and Fundamental Freedoms (1950)
- European Social Charter (1961)

Has the State participated in the adoption of multilateral agreements in the form of regional conferences, summits, or congresses, etc., or voted in favor of resolutions in regional organizations that guarantee that the principle of self-determination be applied, including in the housing context?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (2000)
- Rabat Declaration (1995)

Nondiscrimination

Which international treaties has the State ratified, acceded to or succeeded to that guarantee that the over-riding principle and human right to freedom from discrimination be applied, including also in the housing context?

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention on the Elimination of All Forms of Racial Discrimination (1965)
- Convention on the Rights of the Child (1989)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- International Labour Organisation Convention No. 107 concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (1957)
- International Labour Organisation Convention No. 117 *on Social Policy (Basic Aims and Standards)* (1962)
- ILO Convention No. 169 concerning Indigenous Peoples in Independent Countries (1989)
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)
- Refugee Convention (1951)
- Convention relating to the Status of Stateless Persons (1954)
- Convention on the Reduction of Statelessness (1961)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee that the over-riding principle and human right to freedom from discrimination be applied, including also in the housing context?

- Declaration on Asylum (1967)
- Declaration on the Right to Development (1986)
- Declaration on Social Progress and Development (1969)
- Declaration on the Elimination of Violence against Women (1993)

- Habitat II Agenda (1996)
- Declaration on Cities and Other Human Settlements in the New Millennium [Habitat II+5 UNGAR S-25/2] (2001)
- UN Guidelines on Internally Displaced Persons (1998) [vote in favor of adoption in UNHRCR E/CN.4/1998/53/Add.2, dated 11 February 1998]
- International Labour Organisation Recommendation No. 162 concerning Older Workers (1980)
- Istanbul Declaration (1996)
- Rio Declaration and Agenda 21 (1992)
- Social Summit Declaration and Programme of Action (1995)
- Universal Declaration of Human Rights (1948)
- UN General Assembly resolutions [various]
- United Nations Commission on Human Rights resolutions [various]
- Vancouver Declaration Human Settlements (1976)
- Vienna Declaration and Programme of Action (1993)
- Durban Declaration and Programme of Action [of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] (2002)
- Johannesburg Declaration of the World Summit on Sustainable Development Plan of Implementation (2001)

Which regional treaties has the State ratified, acceded to or succeeded to that guarantee that the over-riding principle and human right to freedom from discrimination be applied, including also in the housing context?

- African Charter on Human and Peoples Rights (1981)
- American Convention on Human Rights (1969)
- Arab Charter on Human Rights (1994)
- (European) Convention for Protection of Human Rights and Fundamental Freedoms (1950)
- European Social Charter (1961)

Has the State participated in the adoption of multilateral agreements in the form of regional-level conferences, summits, or congresses, etc., or voted in favor of resolutions in regional organizations that guarantee application of the over-riding principle and human right to freedom from discrimination, including also in the housing context?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (2000)
- Rabat Declaration (1995)

Gender equality

Which international treaties has the State ratified, acceded to or succeeded to that guarantee the application of the over-riding principle of gender equality be applied, including also in the housing context?

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention on the Rights of the Child (1989)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- International Labour Organisation Convention No. 117 *on Social Policy (Basic Aims and Standards)* (1962)
- International Labour Organisation Convention No. 131 Concerning Minimum Wage Fixing, with Special Reference to Developing Countries (1970)
- International Labour Organisation Convention Recommendation No. 115 concerning Workers' Housing (1961)
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee the application of the over-riding principle of gender equality be applied, including also in the housing context?

- Declaration on Asylum (1967)
- Declaration on the Right to Development (1986)
- Declaration on Social Progress and Development (1969)
- Habitat II Agenda (1996)
- Declaration on Cities and Other Human Settlements in the New Millennium [Habitat II+5 UNGAR S-25/2] (2001)
- International Labour Organisation Recommendation No. 162 concerning Older Workers (1980)
- Istanbul Declaration (1996)
- Rio Declaration and Agenda 21 (1992)
- Social Summit Declaration and Programme of Action (1995)
- Universal Declaration of Human Rights (1948)
- United Nations Commission on Human Rights resolutions
- Vienna Declaration and Programme of Action (1993)
- Durban Declaration and Programme of Action [of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] (2002)
- Johannesburg Declaration of the World Summit on Sustainable Development and Plan of Implementation (2001)

Which regional treaties has the State ratified, acceded to or succeeded to that guarantee the application of the over-riding principle of gender equality be applied, including also in the housing context?

- African Charter on Human and Peoples Rights (1981)
- American Convention on Human Rights (1969)
- American Declaration of Human Rights (1948)
- Arab Charter on Human Rights (1994)
- (European) Convention for Protection of Human Rights and Fundamental Freedoms (1950)
- European Social Charter (1961)

Has the State participated in the adoption of multilateral agreements in the form of regional conferences, summits, or congresses, etc., or voted in favor of resolutions in regional organizations that guarantee the application of the over-riding principle of gender equality be applied, including also in the housing context?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (2000)
- Rabat Declaration (1995)

Rule of law

Which international treaties has the State ratified, acceded to or succeeded to that guarantee the State's application of the over-riding principle of the rule of law, which also extends to the housing sphere?

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention on the Elimination of All Forms of Racial Discrimination (1965)
- Convention on the Rights of the Child (1989)
- Rome Statute on the Establishment of the International Criminal Court (1998)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- International Labour Organisation Convention No. 107 concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (1957)
- International Labour Organisation Convention No. 117 *on Social Policy (Basic Aims and Standards)* (1962)
- International Labour Organisation Convention No. 131 Concerning Minimum Wage Fixing, with Special Reference to Developing Countries (1970)
- ILO Convention No. 169 concerning Indigenous Peoples in Independent Countries (1989)
- International Labour Organisation Convention Recommendation No. 115 concerning Workers' Housing (1961)
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)
- Refugee Convention (1951)
- Convention relating to the Status of Stateless Persons (1954)
- Convention on the Reduction of Statelessness (1961)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee the State's application of the over-riding principle of the rule of law, which also extends to the housing sphere?

- Declaration on Asylum (1967)
- Declaration on the Right to Development (1986)
- Declaration on Social Progress and Development (1969)

- Habitat II Agenda (1996)
- Declaration on Cities and Other Human Settlements in the New Millennium [Habitat II+5 UNGAR S-25/2] (2001)
- International Labour Organisation Recommendation No. 162 concerning Older Workers (1980)
- Istanbul Declaration (1996)
- Rio Declaration and Agenda 21 (1992)
- Social Summit Declaration and Programme of Action (1995)
- Universal Declaration of Human Rights (1948)
- United Nations Commission on Human Rights resolutions
- Vancouver Declaration Human Settlements (1976)
- Vienna Declaration and Programme of Action (1993)
- Durban Declaration and Programme of Action [of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] (2002)
- Johannesburg Declaration of the World Summit on Sustainable Development and Plan of Implementation (2001)

Which regional treaties has the State ratified, acceded to or succeeded to that guarantee the State's application of the over-riding principle of the rule of law, which also extends to the housing sphere?

- African Charter on Human and Peoples Rights (1981)
- American Convention on Human Rights (1969)
- American Declaration of Human Rights (1948)
- Arab Charter on Human Rights (1994)
- (European) Convention for Protection of Human Rights and Fundamental Freedoms (1950)
- European Social Charter (1961)

Has the State participated in the adoption of multilateral agreements in the form of regional conferences, summits, or congresses, etc., or voted in favor of resolutions in regional organizations that guarantee the State's application of the over-riding principle of the rule of law, which also extends to the housing sphere?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (2000)
- Rabat Declaration (1995)

Nonregressivity/nonretrogression

Which international treaties has the State ratified, acceded to or succeeded to that guarantee the State's implementation of the principle of nonregressivity/nonretrogression in the respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human right to adequate housing and land?

- Convention on the Elimination of All Forms of Racial Discrimination (1965)
- Convention on the Rights of the Child (1989)

- International Covenant on Economic, Social and Cultural Rights (1966)
- International Labour Organisation Convention No. 117 *on Social Policy (Basic Aims and Standards)* (1962)
- International Labour Organisation Convention Recommendation No. 115 concerning Workers' Housing (1961)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee the State's implementation of the principle of nonregressivity/nonretrogression in the respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human right to adequate housing and land?

- Declaration on the Right to Development (1986)
- Declaration on Social Progress and Development (1969)
- Habitat II Agenda (1996)
- Declaration on Cities and Other Human Settlements in the New Millennium [Habitat II+5 UNGAR S-25/2] (2001)
- Istanbul Declaration (1996)
- Rio Declaration and Agenda 21 (1992)
- Social Summit Declaration and Programme of Action (1995)
- Universal Declaration of Human Rights (1948)
- United Nations Commission on Human Rights resolutions
- Vancouver Declaration Human Settlements (1976)
- Vienna Declaration and Programme of Action (1993)
- Durban Declaration and Programme of Action [of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] (2002)
- Johannesburg Declaration of the World Summit on Sustainable Development and Plan of Implementation (2001)

Which regional treaties has the State ratified, acceded to or succeeded to that guarantee the State's implementation of the principle of nonregressivity/nonretrogression in the respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human right to adequate housing and land?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (200)
- Rabat Declaration (1995)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee the State's implementation of the principle of nonregressivity/nonretrogression in the respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human right to adequate housing and land?

- American Declaration on the Rights and Duties of Man (1948)

- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (2000)
- Rabat Declaration (1995)

International Cooperation

Which international treaties has the State ratified, acceded to or succeeded to that guarantee the State's implementation of the principle of international cooperation to ensure respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human rights to adequate housing and land?

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention on the Elimination of All Forms of Racial Discrimination (1965)
- Convention on the Rights of the Child (1989)
- Rome Statute on the Establishment of the International Criminal Court (1998)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- International Labour Organisation Convention No. 107 concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (1957)
- International Labour Organisation Convention No. 117 *on Social Policy (Basic Aims and Standards)* (1962)
- International Labour Organisation Convention No. 131 Concerning Minimum Wage Fixing, with Special Reference to Developing Countries (1970)
- ILO Convention No. 169 concerning Indigenous Peoples in Independent Countries (1989)
- International Labour Organisation Convention Recommendation No. 115 concerning Workers' Housing (1961)
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)
- Refugee Convention (1951)
- Convention relating to the Status of Stateless Persons (1954)
- Convention on the Reduction of Statelessness (1961)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee the State's implementation of the principle of international cooperation to ensure respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human rights to adequate housing and land?

- Agenda 21 (1992)
- Declaration on Environment and Development (1992)
- Declaration on Asylum (1967)
- Declaration on the Right to Development (1986)
- Declaration on Social Progress and Development (1969)
- Habitat II Agenda (1996)

- Declaration on Cities and Other Human Settlements in the New Millennium [Habitat II+5 UNGAR S-25/2] (2001)
- International Labour Organisation Recommendation No. 162 concerning Older Workers (1980)
- Istanbul Declaration (1996)
- Rio Declaration and Agenda 21 (1992)
- Social Summit Declaration and Programme of Action (1995)
- Universal Declaration of Human Rights (1948)
- United Nations Commission on Human Rights resolutions
- Vancouver Declaration Human Settlements (1976)
- Vienna Declaration and Programme of Action (1993)
- Durban Declaration and Programme of Action [of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] (2002)
- Johannesburg Declaration of the World Summit on Sustainable Development and Plan of Implementation (2001)

Which regional treaties has the State ratified, acceded to or succeeded to that guarantee the State's implementation of the principle of international cooperation to ensure respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human rights to adequate housing and land?

- African Charter on Human and Peoples Rights (1981)
- American Convention on Human Rights (1969)
- American Declaration of Human Rights (1948)
- Arab Charter on Human Rights (1994)
- (European) Convention for Protection of Human Rights and Fundamental Freedoms (1950)
- European Social Charter (1961)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee the State's implementation of the principle of international cooperation to ensure respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human rights to adequate housing and land?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (2000)
- Rabat Declaration (1995)

What additional multilateral commitments has the State made to guarantee nondiscrimination in the respect, protection, promotion and fulfillment of the human right to adequate housing and, by extension, adequate location?

Do not forget that the body of the binding international treaties that the State already has ratified contains binding human rights obligations that take precedence over nonbinding declarations of mere intent or political will. Monitoring these obligations is the covenanted

task of the treaty parties [ratifying States], which has been delegated to neutral treaty-monitoring bodies that are supported in their task by government and civil-society monitors. Keep in mind also that some multilateral declarations and many agreements with international financial and development institutions may contain standards less protective of human rights and freedoms than those of a binding nature under human rights treaties. Those agreements may even impede the enjoyment of economic/social/cultural rights. Such agreements are to be evaluated subject to prior human rights treaty obligations—not vice versa.

✓ Local guarantees

Ratifications and international commitments

Which international treaties has the State ratified (acceded or succeeded to) that guarantee the human right to adequate housing, in particular adequate location?

Constitutional provisions

- Does the State have a Constitution, or equivalent, guaranteeing the right to human right to housing and land, including adequate location?
- Does the State have a Constitution, or equivalent, guaranteeing the right to local self-determination?
- Does the State have a Constitution, or equivalent, guaranteeing the right to freedom from discrimination?
- Does the State have a Constitution, or equivalent, guaranteeing gender equality?
- Does the State have a Constitution, or equivalent, guaranteeing the rule of law, including access to justice and democratic participation and representation?
- Does the State have a Constitution, or equivalent, guaranteeing the right to the continuous improvement of living conditions?
- Does the State have a Constitution, or equivalent, providing that international relations be conducted within the framework and objectives of human rights, including economic, social and cultural rights?

National legal system

- Is the right to adequate housing, including adequate location recognized as a distinct right in the country's legal system?
- Is national and local legislation consistent with the human rights right to housing and land, including adequate location?
- Is national and local legislation consistent with the principle of local self-determination?
- Is national and local legislation consistent with the right to freedom from discrimination? What statutes has the State/government legislated, and are in force, to ensure

nondiscrimination in the respect, defense, promotion and implementation of the human right to adequate housing, in particular, adequate location?

- Do the concerned persons or community have the sense that the terms of their entitlement to adequate location are equal and consistent with others'?
- Does national and local law maintain the principle of gender equality, particular as it relates to housing, land and adequate location of housing?
- Do local and national laws and regulations uphold the rule of law, including access to justice and democratic participation and representation in matters related to housing, land and adequate location of housing?
- Does the State's legal system maintain the right to the continuous improvement of living conditions?
- Are the laws and regulations of the State consistent with the principle that international relations, including international entities operating locally, conduct themselves within the framework and objectives of human rights, including economic, social and cultural rights, in particular, the human right to adequate housing and land, including adequate location?
- Does the performance of the law-enforcement services guarantee the practice and enforcement of the respect, defense, promotion and implementation of the human right to adequate housing, including adequate location?
- Are judges and lawyers performing sufficiently and consistently to uphold the human right to adequate housing, including the entitlement of adequate location? What are some examples?

Institutions

- Is there a sense in the community that the State and government institutions represent their aspirations to self-determination?
- What State and public institutions exist as a guarantee of nondiscrimination in the respect, defense, promotion and implementation of the human right to adequate housing, in particular, adequate location?
- Do the concerned persons or community have the possibility to exercise an effective role in determining the terms and conditions of adequate location of housing?
- What State and public institutions exist as a guarantee of gender equality in the defense, promotion and implementation of the human right to adequate housing, in particular, adequate location?
- What private and nongovernmental institutions exist as a guarantee of gender equality in the defense, promotion and implementation of the human right to adequate housing, in particular, adequate location?

- What informal institutions (including social norms) function so as to help implement the human right to adequate housing and, in particular, adequate location?⁷⁰⁷
- What social institutions and consistent social practices exist as a guarantee of gender equality in the defense, promotion and implementation of the human right to adequate housing, in particular, adequate location?
- How have these institutions actually improved capacity to protect, or actual protection of adequate location of housing for those in need?

Policies

- What statewide policies are in place and implemented to guarantee of the human right to adequate housing and, in particular, adequate location?

Keep in mind that the body of the binding international treaties that the State has ratified contain provisions that call for human rights to be implemented in the presence of the over-riding principles of self-determination, nondiscrimination, gender equality, the rule of law, international cooperation in the implementation of human rights, and progressive realization (nonregressivity/ nonretrogression) and the continuous improvement of living conditions.

- How have national policies enhanced local self-determination so as to ensure acceptable levels of adequate location of housing?
- How have national policies to ensure nondiscrimination positively affected adequate location of housing in the country?
- How have national gender policies led to improvements in the conditions of adequate location in the housing sphere, especially for those in need?
- How have the State's policies on access to justice enhanced conditions of adequate location of housing, especially for those in need?
- How have national housing policies ensured the continuous improvement of living conditions, in particular the housing rights entitlement of adequate location, especially for those in need?
- In what ways have national housing policies ensured that international relations and international entities operating within the country respect, defend, promote and fulfil the human right to housing, in particular the entitlement of adequate location for those in need?
- To what extent have external parties positively influenced your country's official policies or practices in guaranteeing the entitlement to adequate location of housing?

⁷⁰⁷ The operative concept of institutions here encompasses both bonding and bridging institutions. "Institutions," in this sense, involve the rules of the game under which formal and informal activity is conducted, and include public institutions, private institutions, collective practices and norms, as well as changing norms (e.g., brought about through the youth, technology, economic or demographic shifts, and other emerging behaviours). According to Douglas C. North, 1993 Nobel economics laureate, institutions are "humanly devised constraints that shape human interaction."

Programs

- What progressive steps has the State made on a national scale in the past period (year[s], or since your last assessment) to improve housing rights, especially the entitlement of adequate location? (These may include: law reforms, improved infrastructure, more effective implementation methods, population registry programs, programs to consider ratification of international covenants, and evaluations of housing rights implementation, etc.)

Keep in mind that the body of binding international treaties that the State has ratified contain provisions that call for human rights to be implemented in the presence of the over-riding principles of self-determination, nondiscrimination, gender equality, the rule of law, international cooperation in the implementation of human rights, and progressive realization (nonregressivity/ nonretrogression) and the continuous improvement of living conditions.

- What private-sector or NGO programs are in place and implemented to guarantee the human right to adequate housing and, in particular, adequate location?
- How have these national programs enhanced local self-determination in a way that has improved the conditions of adequate location of housing?
- What national programs are completed, ongoing, or planned to ensure nondiscrimination positively affected adequate location of housing in the country?
- Are there any national gender programs completed, ongoing or planned with the purpose and effect of improving the conditions of adequate location of housing in the housing sphere, especially for those in need? Do they cover land rights and inheritance issues?
- What are have the State's recent, present or future programs to enhance access to justice that are intended to improve housing and living conditions, especially for those in need? How have those programs implemented to date succeeded in enhancing adequate location of housing?
- How have national housing programs ensured the continuous improvement of living conditions, in particular the housing rights entitlement of adequate location, especially for those in need?
- In what ways have national housing programs ensured that international relations and international entities operating within the country respect, defend, promote and fulfil the human right to housing, in particular the entitlement of adequate location for those in need?
- Has the government in the concerned State cooperated with other State or non-State parties to find identify and adapt good practices locally to improve adequate location of housing for all those living there?

Projects

- What progressive actions has the State undertaken in the way of limited-scale or pilot projects in the past period (year[s], or since your last assessment) to improve housing rights, especially the entitlement of adequate location?

- ❑ What private-sector or NGO projects are in place and implemented to guarantee the human right to adequate housing and, in particular, adequate location?
- ❑ How have such local projects enhanced local self-determination in a way that has improved the conditions of adequate location of housing?
- ❑ What projects completed, ongoing, or planned to ensure nondiscrimination positively affected adequate location of housing in the country?
- ❑ Are there any gender-based projects completed, ongoing or planned with the purpose and effect of improving the conditions of adequate location in the housing sphere, especially for those in need? Do they cover land rights and inheritance issues?
- ❑ What are have the State's recent, present or future projects to enhance access to justice that are intended to improve housing and living conditions, especially for those in need? How have those programs implemented to date succeeded in enhancing adequate location of housing?
- ❑ How have these projects ensured the continuous improvement of living conditions, in particular the housing rights entitlement of adequate location, especially for those in need?
- ❑ In what ways have public or private projects ensured that international relations and international entities operating within the country respect, defend, promote and fulfil the human right to housing, in particular the entitlement of adequate location for those in need?
- ❑ Has the government in the concerned State cooperated with other State or non-State parties to find identify and adapt good practices locally through projects that actually improve adequate location of housing for all those living affected?
- ❑ Are there foreign State or foreign private interests operating projects affecting the housing and human settlements sector in the country and affecting the situation under review? Are their roles positively affecting the enjoyment of adequate location of housing?

Budgets

- ❑ What public budgets are in place to guarantee the human right to adequate housing and, in particular, adequate location? How does the budget correspond to actual spending and implementation targets?
- ❑ Is the necessary public budget information available to conduct a multiyear assessment of the financial performance of policies, programs and projects affecting housing and living conditions of those vulnerable and needy inhabitants of the country?
- ❑ Does the public have access to the budgets of private companies and organizations operating in the housing sphere and having an effect on the housing rights entitlement of adequate location?

- ❑ Does the reliable budget information support the public claims of those responsible for the budgets intended for improvement of living conditions of the needy, particularly in the housing rights entitlement of adequate location?
- ❑ What international obligations and commitments affect the public budget with ramifications on the housing sector, including the entitlement of adequate location?
- ❑ What national obligations and commitments affect the public budget with ramifications on the housing sector, including the entitlement of adequate location?
- ❑ What financial policies affect the public budget with ramifications on the housing sector, including the entitlement of adequate location of housing?

7.5. Obstacles, impediments, barriers

At the present stage in the monitoring process, you have well identified the elements arising from the human right and legal concept of adequate housing. You have completed the necessary review of international minimum standards that codify the right, along with the corresponding obligations on the ratifying State. Your process has taken you through the moral arguments of social movements and others, who are the very source of human rights throughout history. Those sources fill legal gaps and provide specificity to local human rights priorities and application. In your context, you also have identified which of the binding instruments and other theoretical guarantees apply to the case at hand.

At this point, you are advancing beyond the theoretical dimensions of the human right to adequate housing, its constituent elements and its guarantees. As a housing-and-land-rights monitor, you will now enter the practical dimension and assess the most difficult challenge in the field of human rights: implementation. The following sample questions guide the monitor to prepare needed data and arguments by detailing the present obstacles, impediments, barriers, threats and constraints that have brought about, or threaten to bring about a violation or deprivation of the right and the element of suitable location of housing, which you are currently addressing.

When monitoring documenting any stage of this toolkit inquiry, or assessing the conditions affecting any right, it is essential to ensure the highest quality of information possible. It has been said often that information is power. In our case, this is especially true, but the degree of that power will depend largely on the following qualities of your information:

- Completeness
- Level of detail and specificity
- Date (freshness) of the information
- Integrity of the information (i.e., lack of contradictions)
- Effective (articulate, concise, understandable and correct) use of language
- Relevance: linkage to the question of housing and land rights implementation
- Credibility of source (reputation, effective presentation, link to issue and community)

In order to begin assessing the compatibility of the theoretical affirmations of the human right to housing and land with the local reality, you will determine now whether, and to what extent barriers, contradictions, obstacles, and impediments contribute to actual and/or potential violations of the entitlement to suitable location of housing. This process is aided with the following battery of questions:

✓ Obstacles to the over-riding principles

Self-determination

- Are the people dissatisfied with the terms of location of their housing?
- Do the concerned persons or community lack the possibility to exercise an effective role in determining the terms of location of their housing?
- Does the community lack sufficient information or capacity sufficiently to enjoy the human right to adequate housing, in particular, the entitlement of adequate location of housing? [See the “**Information, education, capacity and capacity building**” entitlement in this toolkit.]
- Is illiteracy an impediment to the community’s access to sufficient information to enjoy the human right to adequate housing, in particular the entitlement of adequate location of housing? [See the “**Information, education, capacity and capacity building**” entitlement in this toolkit.]

Nondiscrimination

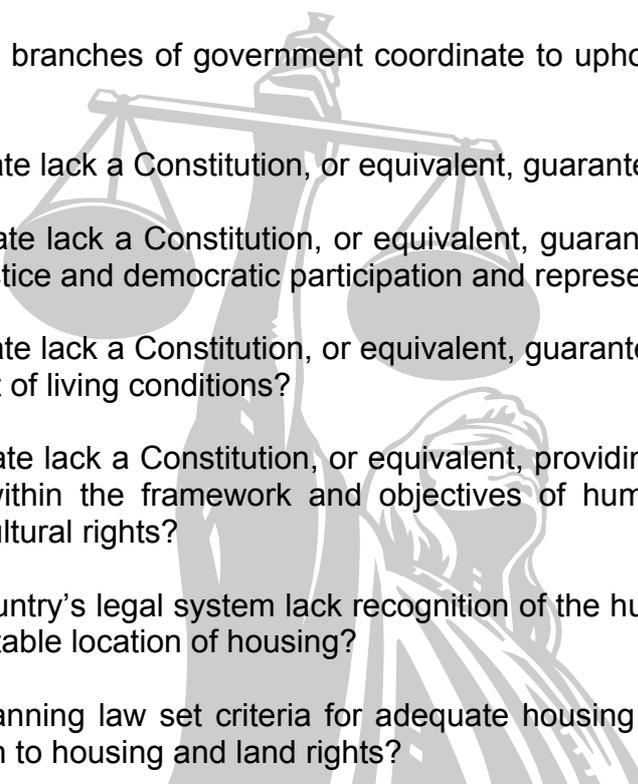
- To what extent is discrimination an issue in realizing the entitlement to suitable location of housing?
- Is there (does the affected community report) any type of discrimination practiced randomly, occasionally or on the social level, or institutionalized in some form, affecting suitable location of housing?
- What are the nature of the discrimination and its effects of the entitlement of suitable location of housing?
- Is the community subject to a pattern of environmental discrimination, causing the degradation of housing and subjecting them to pollution and other harmful physical and social conditions. [See also the entitlement of “**Environmental goods and services**” and “**Habitability**” in this toolkit.]

Gender equality

- Is there any gender-based discrimination applied in realizing the entitlement to suitable location of housing?
- Is the discrimination practiced randomly, occasionally or on the social level, or is it institutionalized in some form such that affects suitable location of housing?
- Does local law on inheritance, divorce or other specialization fail to provide equal rights to males and females of all ages? How?

Rule of law

- Has the State failed to ratify any of the relevant international or regional treaties guaranteeing the human right to adequate housing?

- 
- Has the State issued any reservations, declarations or understandings to international or regional treaties that possibly limit the affect of human right to adequate housing guarantees, particularly so as to affect the entitlement of suitable location of housing?
 - Has the State government failed to conduct a legal evaluation of housing rights implementation?
 - Has the State government failed to present timely reports to the relevant treaty-monitoring bodies covering the human right to adequate housing?
 - Has the State and its government failed to implement in good faith the Concluding Observations of the various treaty bodies concerning implementation of the human right to adequate housing?
 - Do the three branches of government (judiciary, legislative and executive) operate with autonomous authority?
 - Do the three branches of government coordinate to uphold and enforce a single system of law?
 - Does the State lack a Constitution, or equivalent, guaranteeing gender equality?
 - Does the State lack a Constitution, or equivalent, guaranteeing the rule of law, including access to justice and democratic participation and representation?
 - Does the State lack a Constitution, or equivalent, guaranteeing the right to the continuous improvement of living conditions?
 - Does the State lack a Constitution, or equivalent, providing that international relations be conducted within the framework and objectives of human rights, including economic, social and cultural rights?
 - Does the country's legal system lack recognition of the human right to adequate housing, including suitable location of housing?
 - Does the planning law set criteria for adequate housing location that are enforced with consideration to housing and land rights?
 - Do planning criteria contribute to a process of segregation or *apartheid*, dividing social groups on the basis of color, class, race, religion, or other arbitrary status?
 - Do legal or procedural shortcomings impede the admissibility of claims invoking international treaty obligations in the defense of human right to adequate housing, in particular, the entitlement to adequate location of housing?
 - Has the State failed to ratify the Rome Statute on the International Criminal Court, limiting the options to seek justice and remedy for gross violations of the human right to adequate housing?
 - Does the political system in the country lack coordination among branches of executive, legislative and judicial government?

- Does the State lack a Constitution, or equivalent, guaranteeing the rule of law, including access to justice and democratic participation and representation?
- Has the legislature failed to harmonize national laws with international human rights treaty obligations in the formulation of policies affecting the human right to adequate housing, in particular, with affect on adequate location of housing?
- Are there contradictions in the national law affecting suitable location of housing?
- Is there insufficient enforcement of laws and/or policies against arbitrary eviction enforced, including safeguards for vulnerable groups, such as: women, children, orphans, etc.?
- Do local authorities fail to recognize explicitly the application of the international human rights treaties that the State has signed and/or ratified and that guarantee the human right to adequate housing, including the entitlement of suitable location of housing?
- Is national and local legislation inconsistent with the human rights right to housing and land, including suitable location of housing?
- Is law enforcement inadequate to ensure enjoyment of the entitlement of suitable location of housing?
- Are law enforcement officers in need of training in, and information about the human right to adequate housing in order to uphold the entitlement of suitable location of housing?
- Do lawyers, prosecutors and/or judges lack awareness and training in the housing and land rights law in order to uphold and defend the entitlement of suitable location of housing?
- Has the national court system failed in any way to admit claims of housing and land rights victims, including those whose entitlement to suitable location of housing has been violated?
- Do the rule-of-law, regulations, or their enforcement fail to govern market forces effectively to ensure the respect, protection, promotion and fulfilment of the right to adequate housing (e.g., governing monopolies, procedures for legal redress)? How does fact affect the enjoyment of the housing rights entitlement to suitable location of housing?
- Does local law restrict civil society associations from advocating rights or providing services that would advance the respect, defense, promotion and fulfillment of the human right to housing, including adequate location of housing?

Nonregressivity / nonretrogression

- Has the State failed to take steps to improve housing rights, especially affecting suitable location of housing, in the past period (year[s], or since your last assessment)?
- Have new laws degraded protection of human right to adequate housing in the recent period, particularly affecting suitable location of housing?

- Have new policies degraded protection or enjoyment of human right to adequate housing in the recent period, particularly affecting suitable location of housing?
- Have national programs led to a decline in the enjoyment of human right to adequate housing in the recent period, particularly affecting suitable location of housing?
- Have infrastructure or physical features of the built or natural environment led to a decline in the enjoyment of human right to adequate housing, particularly affecting suitable location of housing?
- Have nationwide programs failed to improve, or led to a decline in, the enjoyment of human right to adequate housing, in particular the terms of suitable location of housing?
- Have local projects supported by State or local authorities failed to improve, or led to a decline in, the enjoyment of human right to adequate housing, in particular the terms of suitable location of housing?
- Have public budget allocations failed to improve, or led to a decline in, the enjoyment of human right to adequate housing, in particular the terms of suitable location of housing?
- To what extent has the State government's efforts fallen short in the improvement the terms of suitable location of housing, especially of the poor, vulnerable and minorities?

International cooperation

- Are foreign State or non-State interests operating in the housing and human settlements sector in the country and affecting the entitlement of suitable location of housing? Are their roles negatively affecting the enjoyment of suitable location of housing?
- To what extent have external parties (States, or international financial institutions) negatively influenced your country's official policies or practices in guaranteeing the right to suitable location of housing?
- Has the State neglected to take steps, "individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources" and capacities to ensure (especially poor and vulnerable) people's suitable location of housing?

✓ Local obstacles

Institutions

- As far as human right to adequate housing and suitable location of housing are concerned, are there gaps or shortcomings in the State, government and other public institutions positioned to improve living conditions, including the housing-rights entitlement of suitable location of housing?
- Has there been a recent decrease in the quantity or quality of civil society institutions upon which the community now relies.

- Do the concerned private and nongovernmental institutions fail to guarantee gender equality in the defense, promotion and implementation of the human right to adequate housing, in particular, suitable location of housing?
- What informal institutions (including social norms) function so as to impede the enjoyment of the human right to adequate housing and, in particular, suitable location of housing?⁷⁰⁸
- Do these institutions actually lack the will or capacity to protect legal suitable location of housing for those in need?
- Do these institutions actually lack the will, knowledge or capacity to use the relevant treaty body Concluding Observations in work of monitoring and lobbying officials

Policies

- Do the relevant ministries omit to incorporate international human rights treaty obligations in the formulation of policies affecting the human right to adequate housing, in particular, with affect on adequate location of housing?
- What statewide policies are still needed to guarantee of the human right to adequate housing and, in particular, suitable location of housing?
- Have the relevant national policies neglected to ensure acceptable levels of self-determination in determining the terms and conditions of suitable location of housing? How and why?
- Have national policies failed to reach their targets (even despite announcements of official intent) positively to affect suitable location of housing? How and why?
- Have national gender policies led to improvements in the conditions of legal suitable location of housing in the housing sphere, especially for those in need? How and why?
- Have the State's policies on access to justice failed to improve conditions of legal suitable location of housing, especially for those in need?
- Have national housing policies failed to ensure the continuous improvement of living conditions, in particular, by stagnating or degrading the housing rights entitlement of suitable location of housing, especially for those in need? How and why?
- Do national housing policies lack consideration of, and/or reference to the international human rights instruments relevant to the human right to adequate housing and suitable location of housing, and to which the State is bound?
- To what extent have external parties negatively influenced your country's official policies or practices in guaranteeing the suitable location of housing?

⁷⁰⁸ The operative concept of institutions here encompasses both bonding and bridging institutions. "Institutions," in this sense, involve the rules of the game under which formal and informal activity is conducted, and include public institutions, private institutions, collective practices and norms, as well as changing norms (e.g., brought about through the youth, technology, economic or demographic shifts, and other emerging behaviours). According to Douglas C. North, 1993 Nobel economics laureate, institutions are "humanly devised constraints that shape human interaction."

- Have State housing-policy implementing institutions omitted to seek international cooperation in the human right framework by conditioning international entities operating within the country also to respect, defend, promote and fulfil the human right to housing, in particular the entitlement of suitable location of housing?

Programs

- What negative steps has the State taken on a national scale in the past period (year[s], or since your last assessment) to improve housing rights, especially the entitlement of suitable location of housing? These may include declining legal assistance laws, deteriorating infrastructure without repair, declining implementation efforts?
- What related private-sector or NGO programs have failed to enhance the enjoyment of the human right to adequate housing, in particular, suitable location of housing?
- Is there a lack of, and need for national gender programs completed, ongoing or planned with the purpose and effect of improving the conditions of legal suitable location of housing in the housing sphere, especially for those in need?
- Do existing programs omit to cover land and inheritance rights?
- Have the intergovernmental relations declined between your State and others leading to a decline on options for international cooperation in advancing the respect, defense, promotion and/or fulfilment of the human right to adequate housing, in particular suitable location of housing?
- Has the government in the concerned State declined to cooperate with other States, intergovernmental agencies, or foreign non-State parties to identify and adapt good practices locally to improve the entitlement to suitable location of housing?

Projects

- What relevant State actions or omissions have led to the failure of limited-scale or pilot projects in the past period (year[s], or since your last assessment) to improve housing rights, especially the entitlement of suitable location of housing?
- What private-sector or NGO projects have failed to seek, or fallen short of their intended goal to guarantee the human right to adequate housing and, in particular, suitable location of housing?
- Have such local projects undermined local self-determination with negative effect on the conditions of suitable location of housing? How and why?
- Are foreign State or foreign private interests operating projects negatively affecting the housing and human settlements sector in the country and affecting the entitlement of suitable location of housing? How and why?
- Have projects conducted by local or international entities in the country privatized the provision of housing or public services replaced the role and responsibility of the State and local authorities to fulfil the human right to adequate housing, in particular the entitlement of suitable location of housing for those in need?

Budgets

- Are there obstacles to obtaining adequate information about public expenditures in the housing sector, or in areas affecting the enjoyment of the human right to adequate housing, including suitable location of housing?
- Is there a lack of legal and actual protection of the right to information, including information and documentation on public budget expenditures in the housing sphere related to the entitlement of suitable location of housing?
- Are public budgets inadequate to guarantee the human right to adequate housing and, in particular, suitable location of housing?
- Is there underspending of the budget such that impedes the achievement of policy, program or project implementation targets, affecting suitable location of housing?
- Do public budget items and actual financial performance reflect a lack of sufficient priority given to implementing policies, programs and projects to improve housing and living conditions, affecting also suitable location of housing, of those vulnerable and needy inhabitants of the country?
- Does the public have access to the budgets and financial performance data of private companies and organizations operating in the housing sphere and having an effect on the housing rights entitlement of suitable location of housing?
- Does the reliable budget information contradict the public claims of officials and institutions responsible for the continuous improvement of living conditions of the needy, particularly in the housing rights entitlement of suitable location of housing?
- Do international obligations and commitments negatively affect the public budget with ramifications on the housing sector, including with negative affect on the entitlement of suitable location of housing?
- What national obligations and commitments affect the public budget with ramifications on the housing sector, including the entitlement of suitable location of housing?
- What financial policies constrain the public budget with negative consequences on the housing sector, including the entitlement of suitable location of housing?
- Is the achievement of suitable location of housing accompanied by an inordinate economic burden?
- Is the State failing to regulate effectively the terms and conditions of housing market, so as to avoid corruption, collusion, fraud, discrimination, nepotism and any arbitrary criteria? How is this affecting the entitlement of suitable location of housing?
- Is the State prohibiting or impeding individual and community initiatives toward obtaining suitable location of housing, individually as well as collectively?
- Are State authorities permitting other parties to interfere with community efforts toward obtaining suitable location of housing, individually as well as collectively?

- ❑ Are present government mechanisms and structures inefficient at assisting the needy population from gaining access to suitable location of housing?
- ❑ Does the State lack needed resources to ensure suitable location of housing, especially for the poor, vulnerable and needy?
- ❑ Does national political disharmony impede enjoyment of the human right to adequate housing and suitable location of housing?
- ❑ Is there armed conflict in the country impeding the private and/or public institutions from carrying out development and delivering services that safeguard and improve suitable location of housing conditions?
- ❑ Has a natural disaster inflicted parts of the country, creating conditions that negatively affect the human right to adequate housing, including the entitlement to suitable location of housing? Do these conditions impede relief or reconstruction assistance by public and private actors?

7.6. The victims and vulnerable persons: the actors

At this step in the housing and land rights monitoring process, you will have to provide relevant facts and figures concerning the people who already have been affected and those who remain vulnerable. You should also identify and describe precisely which part of the population is affected.

Those affected (victims or vulnerable) individuals and groups could be, for example, an indigenous community historically undergoing discriminatory treatment and land confiscation. It is essential to report the number of affected people, among them proportions of children, women and other groups having special needs, such as the elderly, who may be particularly affected.

In your inquiry into the identities of the victims and the vulnerable inhabitants, it is vital that you determine the place and time, as well as the characteristics of the affected persons in the case. The numbers and any demographic data of the composition of the affected population are critical to understanding the case and characterizing the type of violations. The violation or vulnerability may be multidimensional (or intersectional), involving more than one form of discrimination. Knowing the victims and vulnerable persons can help determine which combinations of housing rights elements are simultaneously affected. In describing the population, knowing the particular vulnerabilities and special needs of the affected persons or community (whether arising from historical factors, gender, age or other demographics) complete the picture that you eventually will present to your intended audience.

✓ Distinguishing between the victims and vulnerable

It is also important for the monitor to distinguish between those victims, whom already have been violated, and those who are vulnerable to future violation or deprivation. Of course, this distinction will be strategically important later in the process, when the housing and land rights monitors and defenders choose an action in response to the violation. You will have to determine then if your intervention is to be remedial or preventive. In any case, an eye to those who remain vulnerable even after the principal violation, as well as after a particular

solution to a case, will maintain the monitors focus—as necessary—on the further interventions needed toward the ultimate realization of the human right to adequate housing and land.

The following sample questions guide the monitor to prepare needed data and arguments, in the case of any present obstacles, but focusing on the human dimension in the case of a violation of the housing rights entitlement of suitable location of housing.

Victims

- Identify the type and form of violation of the entitlement to suitable location of housing:
 - Homelessness
 - Forced eviction
 - Arbitrary demolition
 - Denial of equal inheritance rights
 - Confiscation of property by public officials and bodies
 - Confiscation by private actors (criminal gang, settlers, armed groups)

- Who has been affected by the violation of the entitlement of suitable location of housing?

- How many people have been affected in the same way in the last year (any time period)? Does it demonstrate a pattern?

- Identify and provide demographic details of the victims:
 - Numbers and proportions of refugees
 - Numbers and proportions of migrant workers
 - Numbers and proportions of minority persons
 - Numbers and proportions of males and females
 - Numbers and proportions of indigenous and/or tribal and semitribal people
 - Numbers and proportions of elderly, disabled, medically challenged persons with special needs
 - Numbers and proportions of members of groups subject to (current and historic) discrimination
 - Numbers and proportions of impoverished inhabitants, including those subject to discrimination on the basis of their economic status or work (e.g., Dalits)
 - Numbers and proportions of any other relevant group identity of victims

- Where does the violation of this right mostly occur (i.e., rural, urban, slums)?

- When does this violation mostly occur? Day or night? Weekend? Certain times of the year? Why does the violator choose this timing?

Vulnerable individuals and groups

- Identify the type and form of vulnerability to future violation of the entitlement to suitable location of housing:
 - Homelessness
 - Forced eviction
 - Arbitrary demolition
 - Denial of equal inheritance rights

- Confiscation of property by public officials and bodies
- Confiscation by private actors (criminal gang, settlers, armed groups)
- Who are the populations most likely to experience the violation of the right to suitable location of housing? Why are they vulnerable?
- Identify and provide demographic details of the concerned vulnerable persons or groups:
 - Numbers and proportions of refugees
 - Numbers and proportions of migrant workers
 - Numbers and proportions of minority persons
 - Numbers and proportions of males and females
 - Numbers and proportions of indigenous and/or tribal and semitribal people
 - Numbers and proportions of elderly, disabled, medically challenged persons with special needs
 - Numbers and proportions of members of groups subject to (current and historic) discrimination
 - Numbers and proportions of impoverished inhabitants, including those subject to discrimination on the basis of their economic status or work (e.g., Dalits)
 - Numbers and proportions of any other relevant group identity of vulnerable persons
- Explain the insecurity of their situation and give details about the naturally vulnerable populations (women, children, indigenous, slum dwellers, refugees, workers/migrant workers, farmers, etc.).

Focus on multidimensional / intersectional affects

Your case will be enhanced when your information includes emphasis on the particular types of victimization or vulnerability by focusing on the social groups typically subject to multidimensional, or intersectional types of deprivation. The monitor should identify such multiple forms of deprivation for each of the groups already identified in this section (above). This step allows you to identify the nature and causes of the particular affects on certain groups who may be made vulnerable already in addition to, or in advance of the specific housing land rights violation, or anticipated violation. The following sample questions will lead you to clarify this point.

Women

- Are women in the given community or case subject to deprivation of their entitlement to suitable location of housing?
- What are the reasons for this condition? Is it by some custom, religion or other ideological motivation?
- Does the practice of domestic or social violence against women somehow impede women's enjoyment of their entitlement to suitable location of housing?
- Are the formal or informal terms of inheritance already biased against women in a way that negatively affects the enjoyment of the entitlement to suitable location of housing?

Children

- Do housing conditions impede acceptable access to public goods and services as an element of the RAH, so as to obviate violence and abuse, including psychological & sexual abuse, within the home or community?
- Are housing conditions, in particular, the rights element of suitable location of housing, suitable for children to carry out their studies?
- Are housing conditions, including suitable location of housing, conducive to achieving the highest attainable standard of physical and mental health?

Racial, ethnic or other groups

- Who are the victims or vulnerable persons or community subject to discrimination that includes denial of suitable location of housing?
- Have the affected persons or groups (either the vulnerable or the victims) been denied their right to suitable housing, and particularly to suitable location of housing, because they belong to a specific minority, ethnic or indigenous group?
- How has historic discrimination, if any, affected the current situation?

✓ Victims' case documentation form

7.7. Losses/consequences

✓ Quantification methodology

Quantifying violations to the right to adequate housing: a tool for evaluating the effects of demolitions, confiscations and forced evictions

The purpose of this tool is to help determine the value of costs and losses that victims incur as a consequence of the violation their housing rights. Using this tool will aid in the various necessary stages of proper monitoring of specific violations of the right to housing, including:

1. Documentation and recording
2. Monitoring and reporting
3. Quantifying/evaluating
4. Identifying and solving problems
5. Follow-up assessments
6. Fact-finding missions
7. Public information and campaigns
8. Social mobilization
9. Media work
10. Compensation efforts
11. Legal defense and prosecution
12. Monitoring international obligations

The quantification methodology and “Loss Matrix” are designed to aid human rights workers responsible for each stage in the monitoring process, including interventions that are both preventive and remedial. These stages may involve the same individual human rights worker

at each stage, or may involve a division of team labor. In either case, this tool also can serve as a vehicle for organizing tasks in a coordinated and complementary way, when more than one individual or organization is involved in the process. For instance, if different teams or organizations are specializing in respective geographical areas, applying this tool commonly aids the process to avoid duplication and the discrediting contradiction of facts.

Whether or not your monitoring objective is legal defense, policy analysis, compensation or public information, the quantification of the effects of the violation strengthen your argument and, consequently, help mobilize support for the movement to end, redress and compensate/obtain restitution for the violations. In particular, your findings will substantiate the assertion that many housing rights violations actually widen and deepen poverty, having a de-development effect on the community and country.

The material and otherwise-calculable costs resulting from the violation are determined for each unit (household) affected and then totaling them. Alternatively, in the case of multiple units affected, a representative sample should be obtained to determine the average values, which then are to be multiplied by actual numbers of units affected.

Other incalculable losses still have to be recorded and reported in narrative terms. Such narrative explanation and analysis will be useful as an accompaniment to this quantification table.

Both short-term and long-term values are to be assessed.(You can follow examples of traffic dispute jurisprudence, or the law pertaining to insurance or divorce cases in your country to come up with a methodology of determining personal injury and pain-and-suffering damages claims for compensation purposes.) Accurate and thorough quantification of costs and losses calls for both a great deal of cooperation between the monitor and the affected community, and a continuous relationship over time.In order to capture many of the values, sustained monitoring and calculation are required over time. It is, therefore, recommended that such monitoring effort be undertaken or coordinated by those who maintain a program and commitment to the affected community over the long term.

This tool seeks to quantify the costs of victims, as well as public, or social costs. For our purposes, the principal victim(s) would be those persons whose property and lives are directly affected by the act, be it a demolition, confiscation and/or eviction, etc.(This tool would be used for any and all categories of violation.) Ancillary or indirect victims would be those who undergo the cost or other harm as a result of an act intended or directed at others. The indirect victims' losses and damage should be included in the overall assessment of the violation's effects.

The middle column, entitled "Methodology," in the quantification table found at the "**Loss Matrix**" link contains commentary on the contents of the calculated costs/losses and provides guidance on how to calculate them. It is there where you will record in your applied version of the "Loss Matrix" the type of items or values totaled under the particular type of cost/loss. There, too, you could cite whether of not the values are losses/costs to the principal victims only, or include those of indirect victims, such as those enduring collateral damage from a house demolition. The "Methodology" description should be as complete but concise as possible, within a short line or two.

It is possible to modify "Loss Matrix" to the user's discretion. (However, we emphasize that any modifications be shared among the community of monitors to ensure compatibility of findings.) For example, certain direct and indirect victims' losses may need to be separately

calculated for some reason. In that case, an additional column can be added. In any case, however, it is important to arrive at a global cost figure for the violations under review. The column at the far right under each category of cost should be totaled using the imbedded Excel formula.

Follow the links to access the details of the quantification methodology and “**Loss Matrix.**”

- Victim's material losses
- Victim's nonmaterial losses
- Other than victim's material losses (public costs)
- Other than victim's nonmaterial losses (including social costs)

Contents and methodology for determining each category of loss/costs

Victims' Material Losses

The Structure

The fair market value of the house, shelter or other structure(s). This is probably greater than the cost, as indicated in official records of the most recent tax assessment, for example. That price may be a guide, but is likely to be out of date with the value that would be obtained if the property were to be sold on the market. The market value would also likely be less than the “speculative value,” which is considered to be that value (price) that a speculator, investor or other interested party would anticipate after the demolition/eviction and after converting the structure—if partially retained—for eventual exchange or reassessment. The reference for determining the market value would be reliable real estate agents, banks, or other parties involved in the sale and exchange of such properties. The standard methodology would involve collecting three quotes/estimates and selecting the average, or taking the middle quote as the fair market value.

In the likely event that no such property market is actively issuing quotes on the value of the affected property. The remaining alternative method for determining market value would be the estimated cost of replacing the property at current market values.

Note that the victim incurring the loss in this case would be the owner(s) and or title holder(s), including those owning the property individually, or collectively, under formal title, or by traditional tenure systems.

Plot

The plot and the structure are considered separately in this methodology to accommodate systems where the two aspects of property value are determined separately, or by different methods. For example, a cooperative arrangement may provide for outright title to the structure, but a “share” of the land area under it. It also allows for disaggregating these values in the event of a dispute over one and not the other. In the event that the structure and the land are both held in title by the same owner and the values are customarily assessed in combination, the structure and plot values could be combined in the matrix.

The eviction and/or demolition may not involve the dispossession of land title or ownership of the plot on which the structure stands. In that case, the evaluator would proceed to the next categories and not enter a value for the plot. However, in some cases, such as in Israel, the land plot under a demolished structure may, perforce, be assumed by, or “revert to” the state as “state land” or “national land.” The evaluator must be familiar with the local laws and

regulations to determine if that is the case in the event of an eviction or demolition. That may determine whether or not a value is entered in this category of the matrix or not.

In the case of a housing plot being confiscated by the state, determining the value of that plot may be difficult if, again, no market value can be determined for the affected area. In that case, the methodology would involve determining the cost at current market value of a comparable site in another location.

Contents

Each affected party should cooperate with the field workers to provide an inventory of the actual contents lost and damaged in the demolition. The value of those contents for this quantification purpose is the **replacement value** of the items, not the market value. The contents (furniture, clothing, foodstuffs, electronics, housewares items, etc.) would be subject to depreciation and the resale or fair-exchange values would not be sufficient to cover the cost of replacement. The replacement value represents the actual cost of repurchasing items comparable in quality to those lost or damaged by the demolition. (For heirlooms and other items sentimental value, a replacement cost should be included in this category; however, the nonmaterial loss or irreplaceability should be expressed in the "Victims' Nonmaterial Losses" section of the matrix, with a narrative either included in the matrix or attached to it.

Collateral damage

This section of the matrix allows for inclusion of the material losses to the indirect victims in particular, including neighbors' and public property that are affected by the act. In cases of violent eviction or demolition, using bulldozer or explosives, for example, nearby property can be damaged in various degrees, or destroyed.

Infrastructure

This section refers to services and other infrastructure lost in the demolition/eviction/confiscation that would have to be replaced after the event. For example, electricity provided at the original site may have to be replaced by a generator or purchasing energy from an alternate source. Water, previously available from installed or nearby facilities may have to be replaced by purchasing water or hauling it from another source. The resulting added cost—including the relative cost of labor at the going rate of such work for hire, which is beyond the existing regular costs of obtaining same—is the value to be calculated here.

Business losses

If the demolition/eviction/confiscation results in the loss of a business, or a portion of business, that cost is to be included here. Those losses are the subject of subcategories to be detailed below.

Equipment/inventory

This includes the value of machinery and equipment, other installations, such as furnishings and built ins, as well as all stock and supplies. This should include also the property belonging to others lost or damaged in the event. For example, a laundry or repair service

would hold clients' property to be processed and returned. The values of those items are also to be included in this figure.

Prospective income

The loss resulting from inability to deliver goods and services, and the anticipate profit from existing stores, orders, contracts, etc. that would be unfulfilled due to the event. The short-term and long-term affects are to be calculated by different methods. This category of loss follows the method developed locally for determining "goodwill" as an asset, which would include the projected income from a pattern of business developed through the lifetime of the enterprise. [Refer to insurance law methods.]

Mortgage, other debts and penalties

The demolition/eviction/confiscation removes the owner's relationship with the land and/or structure, contents, livestock, inventory and other matters of material value, such as materials and work performed for physical improvement to the property. However, the event does not relieve the owner from responsibility to repay for those values obtained on a credit basis. Those values, including any penalties and increased interest resulting from the event, are to be included here for both the short-term and long-term. If a situation prevails, as in many legal systems, that a debtor relinquishes claims (as in a natural disaster, for example), then that cost should nonetheless be calculated and listed under the category of "Other than Victim's Losses."

Livestock

The value of livestock lost and the treatment of those injured by the event is calculated here. This would include also the labor costs for time spent in rounding up dispersed livestock at the rate of pay for such work for hire. The calculus for these values includes the loss of anticipated returns from normal sale of, and/or produce from the animals, including their normally anticipated progeny over the short-term and long-term. In the case of the animals' value as beasts of burden, the returns on their labor are to be included in the figures provided under lost revenue, increased transportation costs, returns from crop loss, or other appropriate category.

Land

The landed property not associated with the affected structure itself is to be calculated on the basis of fair market value, as with the structure and its plot entered above. This could be land adjacent to the dwelling or other affected structure, or land confiscated separately. This land could be lost entirely through confiscation, or its value could be reduced as a result of the eviction or demolition. In the case of eviction, land title might not be lost outright, but the conditions created by the eviction may prevent the owner(s) from returning to or reclaiming their land. In that case, the land in question would be calculated as an outright loss.

Trees/crops

The value of a lost or damaged nonfruit-bearing, or otherwise unharvestable tree or other vegetation would be determined by the cost of purchasing and replanting a comparable replacement. The nonmaterial, aesthetic, or sentimental value of the tree or other vegetation

would be included by narrative in the Victim's Nonmaterial Losses item under Environment or Heritage, as appropriate. The value of harvestable trees and crops would include the value of the replacement itself for fruit-bearing trees and crops, as well as the (short-term and long-term) value of the harvest. The loss of timber would be calculated accordingly also, with the value being the anticipated return from the harvesting or sale of the tree itself.

The ecological loss of vegetation, depending on the nature of the event—if by demolition were by fire or other destructive means—also carries a value. Ecological damage is calculated on the basis of the restoration costs entailed. Collateral damage to wildlife and other natural assets, owing to the damage and the time required to restore it, may be of both a calculable and incalculable loss. Where possible, such calculable values should be included here. Otherwise, those losses are to be recorded in the narrative section of both the Victim's and Nonvictim's Nonmaterial Losses, for those losses would be of a more public nature.

Lost/decreased wages/income

The loss of a home, including subsequent short-term or long-term resettlement, may involve the loss of livelihood, whether that livelihood is linked to the dwelling and/or land lost. In any event, wages would inevitably be lost (to victim or her/his employer) for nonproductive time attending to the event and its aftermath. Resettlement can lead to loss of a job or jobs altogether, or necessitate securing alternative employment, especially if temporary or long-term resettlement is far from the regular workplace. To calculate that value, one would subtract the short-term and long-term wages and other income of affected persons from the normal, anticipated wages and other income before the event. Since obtaining new employment and other income involves a loss of certain benefits, such as accumulated vacation leave, seniority and other benefits, the relative loss of those values should be included here if calculable. Job seniority may not be calculable value in monetary terms if it involves merely standing vis-à-vis colleagues. However, if that seniority arguably would have led to promotion with material effect in the short or long terms, that value is to be factored here as well.

Health care

The event itself or its aftermath may have negative health consequences. Social science has recorded the effects of eviction and resettlement upon the increased mortality and morbidity rates of the affected communities. While these notable consequences belong among the Victim's Nonmaterial Losses, the care for these consequences has clearly calculable values. The loss of life, limb and other health effects are the subject of the laws of states for the purposes of calculating victim compensation in insurance and other cases involving law suits. A sample of such methods taken from such statutes could form a composite methodology for calculating victims' health losses here.

The overcrowding, such as in interim or alternative housing arrangements, often leads to negative health consequences for those evicted, as well as for those providing the alternative shelter in their own quarters. The care and treatment of these health consequences (such as influenza, scabies, malnutrition, etc.) are an additional value added to these health care costs.

Interim housing

Eviction, confiscation and demolition victims often seek alternative housing with relatives or friends, either within the community or elsewhere. This housing has a value, which is to be calculated on the basis of fair rental rates for such shelter, whether rent is paid or not. It remains a cost and value that is subsidized in one form or another. It also can lead to an actual expanded definition of what constitutes the victim, for persons and groups offering assistance in various forms can be counted as second tier victims by virtue of the loss—voluntary or otherwise—incurred as a result of servicing the persons directly affected by the eviction, confiscation or demolition.

Bureaucratic and legal fees

While under threat of a violation, such as eviction, demolition and confiscation, the eventual victim would likely undergo costs related to both time spent and out-of-pocket costs in order to restrain or defend against the impending violation (if the threat is known in advance). Both the time and monetary costs incurred by both bureaucratic processes and legal advice and defense work should be quantified. Even if the legal advice given is free of charge to the affected person(s), those rendering the advice (NGO, CBO, other *pro bono* service) should put a value on that service for the purposes of this costing exercise. (The costs of bureaucratic efforts by public personnel is determined below under “Other than Victims’ Nonmaterial Costs.”)

Before the victim(s) can restore their proper housing, s/he conventionally undergoes a procedure and cost toward obtaining a license to rebuild or otherwise restore a dwelling. The costs incurred in this process, including fees, legal service, bribes and other out-of-pocket expenses should be included as a category in its own right.

Alternative/replacement housing

The cost of securing comparable housing on a permanent basis is represented here. (Temporary lodging costs are treated above under “Interim housing.”) The comparable housing is meant to include a dwelling with similar spatial dimensions, infrastructure, location and services as the home lost in the violation. This may involve calculation of the replaceable features of the original dwelling with some adjustments, depending on circumstances. For instance, a comparable dwelling space may be found near the source of livelihood, but may be in a differently priced market, and the adjusted figure would account for that. That dwelling may be comparable in most aspects, but lack services or infrastructure. In that case, the cost of obtaining the replacement services or infrastructure at the local rate would have to be added. Likewise, if the replacement housing is comparable to the original dwelling lost, but its location is less convenient for commuting to one’s source of livelihood or family and original community members, that additional transportation cost would be included in the “Transportation” item below.

Since this category of cost is of a more-or-less permanent nature, it should be cited in the “Long-term” cost column of the matrix. Typically, obtaining permanent replacement housing is a lengthy process; therefore, calculating this costs would be a subject for, and a further argument for follow up monitoring of violation cases.

Resettlement

The expenses of traveling and transport of goods to both interim and replacement housing sites form part of the resettlement cost. This, too, would likely involve the efforts and time on

the part of several persons—with equivalent values—in order to locate and secure the short-term and long-term housing alternatives. All related costs should be calculated as much as possible.

Transportation costs

This category is the amount of difference between the amounts spent on transportation as a result of the eviction, demolition or confiscation and the amounts spent (if any) on transportation in the normal conduct of life at the original place of residence. Such values include expenses *and* time spent commuting to and from the source of livelihood, visiting family and community members, going to market, carrying out cultural and religious activities, visiting grave sites, conducting other official or private business, etc.

Victims' nonmaterial losses

Health

In addition to the cost of medical treatment, the loss of health has a value seldom calculated in monetary terms. Methods for calculating the values of losses of life and limb can be found in local legal practice concerning divorce, traffic and insurance. This loss will have to be described in some detail in order to make your case.

Living space

A reduction in living space can have negative physical and emotional effects, as when an evicted family takes refuge with friends and relatives in small, temporary quarters. Consequences may include nervousness, loss of sleep or skin ailments. Be sure to describe this situation as part of the victim's experience.

Reconstruction licensing

Long waiting and frustration may result from the search for a license to rebuild after demolition, eviction or confiscation. This loss can be measured in time and stress, and should be included here.

Psychological harm

The victims may suffer mental stress and psychological harm, especially in the context of violence during eviction, or the trauma that accompanies homelessness after the violation. Children are particularly susceptible. Their story needs to be told. You may find criteria for quantifying the value of pain and suffering from the specialized practice of local law on traffic and insurance.

Disintegration of family

Displacement and other violations of adequate housing could lead to separation of family members and the deterioration of family relationships. With the psychological depression arising from housing and land loss, some victims may engage in antisocial behavior, such as violence or substance abuse that harms family relations.

Loss of community

Eviction, resettlement or land loss can fragment communities and reduce social capital built up over time. It can separate people from support systems (including child-care arrangements, domestic division of labor, etc.) upon which they depend for livelihood and social activities, while women bear an extra burden of maintaining an uprooted home.

Investment in infrastructure

Even—and especially—the most-impooverished communities have to invest in local infrastructure (e.g., electricity, water, transport, roads), particularly if the municipal institutions exclude them. Separation from these facilities by forced eviction, confiscation or demolition means a total loss of that investment, which may not be quantified, partly because they are the product of volunteer labor.

Investment in sanitation and waste-management systems

A community may provide its own waste-management solutions, however simple it may be, especially in the absence of public services. The vital functions of waste management may no longer be possible because of the separation, causing a loss of labor divisions or disposal options and spell a deterioration in the quality of life, including entitlements to environmental health as a result of the violation.

Investment in security protection systems

Informal communities are typically forced to seek their own security arrangements, since civil police may fail to serve them, or deteriorating living conditions may coincide with increased social violence.

Investment in educational infrastructure

Local communities' arrangements for popular education may be curtailed with eviction, leading also to the disruption of formal education (e.g., lost school days). Each home also is a locus of educational infrastructure, especially where children carry out their homework.

Heritage

For heirlooms and other items of sentimental value, as for land-based identity and culture, a replacement cost should be included in this category. However, the incalculable nonmaterial dimension, or irreplaceability should be expressed in the "Victims' Nonmaterial Losses" section of the matrix, with a narrative either included in the matrix or attached to it.

Victims' nonmaterial costs

Environment/ecology

Various forms of housing rights violation can spell the loss of environmental safety, health and recreation. Displacement and eviction sever the relationship between the inhabitants and their habitat. It may also force them to live in precarious or unsafe environments as a consequence.

Standing/seniority

A home owner who loses her/his housing also loses the status that comes with the property and securely tenured lifestyle. The formerly real or perceived capacity of the victims to advise and support others dissipates with the violation of their right to adequate housing, especially through land loss.

Relocating long-standing communities to new areas makes them low-status newcomers in competition with new, indigenous neighbors. Environmental degradation or rezoning may affect the status of a community negatively, leading to intangible—but sometimes also quantifiable—losses.

Political marginalization

Homeless people in many States are denied the right to vote for lack of a fixed address. Resettlement renders inhabitants politically weak vis-à-vis new neighbors, especially without the benefit of local connections and established relationships.

Social marginalization

Losing one's home and place to live often means losing also the social integration once enjoyed in the former residence. Spatial marginalization to the outskirts of the city may be synonymous with exclusion from social services and infrastructure.

Further vulnerabilities

The loss of home, land and social capital (i.e., productive relations within the community) can leave the victim(s) without protection from the natural elements, and/or without livelihood and sources of income. The homeless woman becomes further vulnerable to threats against her personal security and integrity long after the housing-rights violation.

Other-than-victims' material costs (public costs)

Police

The law enforcement officials engaged in either committing or remedying a housing and land rights violation, for example, represent a cost to the public purse. You can calculate their number, multiplied by the hours/days engaged and by corresponding wages and benefits to derive an estimate of the public costs incurred.

Bulldozers

In some cases (e.g., in Israel), courts issue orders to targeted inhabitants and communities to demolish their own homes. If they do not comply, the State carries out the deed and charges the victim for the service. In other cases, the housing rights monitor would have to calculate the cost of using the equipment and the wages of the operator to determine the public expenditure in carrying out that part of the violation.

Legal practitioners

Lawyers, either arguing against or defending housing and land rights, as well as judges, prosecutors and court staff dedicate time and materials that are covered from public budgets. Their level of effort and cost per unit of time (hours or days) could form a method of calculating these public costs.

Army

Military personnel and equipment used in the violation (or defense against a violation) also represent a cost. Quantifying these costs may be a more-elusive exercise, but it may be useful to pose estimates for your public's consideration.

Other forces

The public bodies may subcontract tasks and functions to private parties; however, those expenditures related to the case at hand would factor among the nonvictim's material costs.

Bureaucratic and personnel costs

The inspection, administrative processing, clerical and other desk work in public institutions may be carried out in connection with your case and paid by the tax payer. Your educated estimate of these values forms part of the public cost scenario.

Other-than-victims' nonmaterial costs

Social costs

Housing rights violations can be a cause or consequence of social unrest in a country. Depressed living conditions within a community often coincide with increased social violence, and dislocation often generates new adversary relations among inhabitants competing over territory and property, either at the original site, or in resettlement. Squalid living conditions also could give rise to practices and pathogens that bear a social cost in the form of declining public health.

Civic order

Linked to adequate housing and other economic and social rights, civic order typically deteriorates commensurate with the deprivation of living conditions. Resistance to eviction and forced relocation, demolitions and dispossession by any party is the natural response to a breakdown in civic order, including that characterized by the State omitting to implement its obligation to respect, defend, promote and fulfill the human right to adequate housing and land.

Political legitimacy

Depending on the facts and scale of a particular situation, a housing and land rights violation could undermine the legitimacy of the political party, government or even State in whose name the violation is committed. Alternatively, resolving and remedying a violation could have the opposite effect of recovering the loss of official credibility and legitimacy.

✓ **Loss matrix**

✓ **Housing contents inventory**

7.8. Duty holders

The professional monitor of the human right to adequate housing should provide a list as complete as possible of the duty holders both legally and morally responsible. This legal duty holder (i.e., the State and its agents) may be operating in conjunction with others in either the violation or the potential solution. The audience of your eventual action, whether they are the general public, journalists, or a prosecutor or judge, will need a clear and complete picture of the legal personalities, those who are responsible for their acts of commission and/or acts of omission, and who does what to whom, from the beginning to the present.

As borne out in the foregoing sections on sources of law and guarantees, the concerned State is always the principal duty holder. The State is the legal personality that is treaty bound by the obligation to respect, protect, promote and fulfil human rights, but also to aid those who have been deprived of them. The State's duties are threefold:

- To avoid deprivation,
- To protect and defend those facing deprivation,
- To provide remedy in the forms of assistance and justice to those deprived.

You may find that the State, as duty holder, has committed acts that cause deprivation, or omitted to protect or remedy a deprivation through the obstacles identified above. One might also find that the duty holder is constrained by other actors or factors, such as natural disaster, or global economic recession.

Identifiable institutions and man-made forces, either internal or external, may be known to contribute to a violation. These may include actors such as the International Monetary Fund (IMF), the World Bank, a multinational corporation or national planners. You may find that these parties are either directly or indirectly responsible for the deprivation, or conditions leading up to it. So, too, are factors such as debt or traditional social practices. Especially when the role of the State is passive (i.e., by denial or failure to protect and ensure remedy to the victims), other actors may come to the fore. Private companies, including multinational corporations, for instance, regularly acquire assets and carry out projects that involve forced evictions and land confiscation. In some cases, the regional and international development banks have their well-articulated policies on compensation/relocation. However, these companies may be the right hand of State policies, or implementers of international public projects. That is why it can be crucial to record the relations between the different actors forming a whole chain of duty holders.

One must not overlook the possibility that duty holders, particularly as violators owing remedy and restitution to victims, might also be members of the community, or even family members of the victim(s). Where does the State duty lie in such a situation?

As the legal personality obliged to respect, defend, promote and fulfil the human right to adequate housing, the State's duty lies squarely in the execution of its human rights obligations to regulate behavior of legal persons within its jurisdiction (and areas where it exercises effective control) in order to uphold rights. The human rights treaties and other instruments provide the guidance on how States—and statecraft—should address human

rights violations by third parties not only as matters of civil or criminal law, but also as means to ensure the legitimacy of the concerned government, or even State itself.

To have a full outline of questions for identifying the duty holders and the applicable legal obligations, you can use this "Toolkit" very effectively, since each element of the right to adequate housing that you have identified as relevant to your case has corresponding duty holders.

Primary duty holders: State authorities

- Has the State failed to take to prevent the violation of housing rights, especially suitable location of housing? What are those neglected steps?
- Has the State protected the impoverished and vulnerable inhabitants and aided the victims (e.g., by prosecution, return, compensation, etc.) in the violation of housing rights, especially suitable location of housing? Which are the particular bodies responsible for these preventive and remedial steps?
- Has the State taken sufficient measures to promote the entitlement of suitable location of housing (e.g., human rights education, campaigns, public-service announcements, awareness-raising publications, etc)? Which are the specific bodies responsible for those measures?
- What is the State's relationship with other duties holders regarding the assessed violations? Explain the nature of that relationship. Is it a contract, foreign aid package, nepotism, political patronage, etc.?

Secondary: Have other actors affected the denial of the entitlement to suitably located housing?

- Are other local, non-State actors somehow engaged in the denial of suitable location of housing? Who are they and what is their role?
- What role do international financial institutions (IFIs) such as the World Bank, IMF, a regional development bank, or the World Trade Organisation have in determining the policies or conditions affecting suitable location of housing in the affected community/country?
- What role and influence do multinational corporations or international development agencies have in determining the policies or conditions of suitable location of housing in the affected community/country?
- How are these secondary duty holders responsible for the violation of the right to suitable location of housing? To what extent do they influence State policies, programs, and laws having an effect on the violation?
- Do the secondary duty holders have internal policies/codes of conduct regarding housing rights, especially affecting the entitlement to suitable location of housing? If so, are they publicly accessible?
- What are the relevant details of those policies or codes? How do they protect the human right to adequate housing and the entitlement of suitable location of housing?

- Are these conditions part of an implementation contract or other cooperative agreement with State bodies or other partners?
- Before implementation, do they study the impact the projects will have or consider the possible unintended consequences?
- If there are several secondary duty holders, what is their relationship to each other, and how do they share responsibility for the assessed violation of the entitlement to suitable location of housing? What is the relationship between each of them and the State?
- Do local authorities lack sufficient autonomy in housing and community development to apply locally relevant options to ensure the human right to adequate housing, especially suitable location of housing?
- Do local authorities use their autonomy to protect and influence the central authorities of the State in a positive way, or do they participate in the violation and denial of the State's obligations and national policies?

Assessment

- To what extent is the State responsible for the vulnerability or violation of the housing rights entitlement to suitable location of housing?
- To what extent are non-State actors responsible for the vulnerability or violation of the housing rights entitlement to suitable location of housing?

7.9. Actions

The following table of actions (comprised of both preparation and implementation tasks) arranges a variety of possible problem-solving options for you by categorizing them for organizational and selective decision-making purposes. It is not an exhaustive set of options, but merely part of an array of possibilities for you to undertake with the affected community, depending on the present strengths (assets), weaknesses (liabilities), opportunities and threats.

Before selecting your actions, you should conduct a strategic planning exercise. For guidance click [here](#).

Footnotes shown here refer to relevant manuals, training materials, expertise, trainers, recorded experiences and/or methodologies already available to guide your chosen action toward a desired goal/result/solution. Toolkit users are encouraged to consult the HIC-HLRN website regularly for updates and further reference (www.hlrn.org) on constantly evolving updates, including strategies and practices arising from experiences throughout the global HIC and HIC-HLRN community.

Action		Solution
Preparation	Implementation	

Alternative tenure options		
Gather information for community to consider tenure options	Develop “limited equity cooperatives” ⁷⁰⁹	Legal secure tenure in adequate housing and sustainable land
	Inform and train community in pursuing land-tenure options ⁷¹⁰	
Community capacity building		
Conduct training for community on their human right to adequate housing ⁷¹¹	Mobilize community in local and national human rights campaigns	Greater community participation in projects, programs and policy formulation with well-defined human rights orientations
Legal service organizations and centers provide legal advice and representation to disadvantaged individuals and communities ⁷¹²	Organize popular resistance to HRAH violations (demonstrations, petitions, sit-ins, street theater, etc.) ⁷¹³	Community blocks housing rights violations by State and non-State entities
<i>Pro bono</i> (volunteer) lawyers provide legal advice and representation to disadvantaged individuals and communities	Organize national campaign on RAH ⁷¹⁴	Coordinated community action and reaction to influence State authorities on housing policies
Build capacity of community-based and other civil society organizations to manage projects and campaigns ⁷¹⁵		CBOs and NGOs more capable to support the affected people in responding rapidly and effectively to crises/violations

⁷⁰⁹ The limited-equity cooperative is a form of housing tenure in which shareholder residents manage their buildings, within limits imposed by a charter, and have the right to get back what they have paid for their shares plus an allowance for improvements, if and when they decide to leave. See Duncan Kennedy, “The Limited Equity Coop as a Vehicle for Affordable Housing in a Race and Class Divided Society,” 46 *Howard Law Journal* 85–125, 85 (Fall 2002).

⁷¹⁰ Luanne Warnock, *Sharing the Cost of Land Tenure and Stewardship* (Davis CA: Sustainable Agriculture Research and Education Program, University of California, 1996).

⁷¹¹ See Circle of Rights (Washington: 2000); Jules N. Pretty, Irene Guijt, John Thompson and Ian Scoones, *Participatory Learning and Action, A Trainer’s Guide* (London: International Institute for Environment and Development, 1995), available from Earthprint at www.earthprint.com; also materials of Peoples’ Movement for Human Rights Education, <http://www.pdhre.org>.

⁷¹² Gridley Hall and Burton Fretz, “Legal Services in the Third World,” *Clearinghouse Review* (December 1990); Jose Diokno, *Developmental Legal Aid in Rural Asean: Problems and Prospects* (Washington: 1981); Richard J. Wilson and Jennifer Rasmussen, *Promoting Justice: A Practical Guide to Strategic Human Rights Lawyering* (Washington: Human Rights Law Group: 2001).

⁷¹³ Morjane Baba, *Guérilla Kit* (Paris: La Découverte, 2003) ; Mike Prokosh and Laura Raymond, *The Global Activist’s Manual: Local Ways to Change the World* (New York: Nation Books, 2002).

⁷¹⁴ “Global Struggle and National Focus Note” (Geneva: HIC, 1996).

⁷¹⁵ Kaplan, Allan, *The Development of Capacity* (Geneva: UN Nongovernmental Liaison Service, 1999); Goggey, Shirley, *Rural Community Resource Centers: A Guide for Developing Countries* (London and Basingstoke: MacMillan, 1988).

Train communities (in HRAH, strategic planning, technical skills, etc.) ⁷¹⁶	Public agencies provide adequate technical, marketing and research assistance to disadvantaged community on an affirmative-action basis	Community better able to mount specific alternatives to official plans
Raise public awareness toward social mobilization through public education ⁷¹⁷	Mobilize peaceful public protests to housing rights violations	Prevent forced evictions
Enhance monitoring-and-documentation skills and methods (e.g., archiving, statistics, multimedia, etc.) to build strong argumentation ⁷¹⁸	Urgent Action appeals (organize regional and/or international mobilization) ⁷¹⁹	Convince public of violations and need for resolution
	Public-information campaigns ⁷²⁰	
Design and implement alternative planning (community generated techniques in the people's initiative to design their own living environment) ⁷²¹		Participatory alternative housing projects adapted to the community's needs
Conduct an inventory (enumeration) of community human resources and social capital ⁷²²	Organize and divide volunteer labor of affected communities; and to areas to develop alternative plans	Community housing and built environment upgraded on-site as alternative to relocation.
		Obtain adequate relocation site with suitable location, environmental conditions and

⁷¹⁶ Barrameda, Teresita V. and Lea I. Espallardo, Learning, Reflecting and Acting for a Human Rights Future: A Training Manual for the Education of the Human Right to Housing in Urban Communities (Quezon City: Process, Inc. and New York: PDHRE, 2000).

⁷¹⁷ Writing for change: An interactive guide to effective writing, writing for science, writing for advocacy [CD and user's guide] (Oxford: fahamu and IDRC, 2000); International Human Rights Internship Program, Ripple in Still Water: Reflections by Activists on Local- and National- Level Work on Economic, Social and Cultural Rights (Washington: University of Minnesota Human Rights Resource Center, 1997), Chapter 6, online at <http://www1.umn.edu/humanrts/edumat/IHRIP/ripple/toc.html>; Allan McChesney, Promoting and Defending Economic, Social and Cultural Rights: A Handbook (Washington: AAAS and HURIDOCS, 2000) Chapter 7 online at: <http://shr.aaas.org/escr/handbook/>.

⁷¹⁸ For guidance and methodology in documenting housing rights cases, see HLRN, Urgent Action! HLRN Guide to Practical Solidarity for Defending the Human Right to Adequate Housing [Arabic, English, French and Spanish versions] (Cairo: HLRN, 2003); and HIC Housing and Land Rights Network website: www.hlrn.org.

⁷¹⁹ For guidance and methodology in building housing rights cases argumentation and mobilise solidarity, see HLRN, Urgent Action! HLRN Guide to Practical Solidarity for Defending the Human Right to Adequate Housing [Arabic, English, French and Spanish versions] (Cairo: HLRN, 2003); and HIC Housing and Land Rights Network website: www.hlrn.org.

⁷²⁰ Strategic Campaigning (London: Amnesty International, 2003).

⁷²¹ Youth in Unity for Voluntary Action--YUVA and University of Tasmania, "Settlement Upgrading Manual) [Sakkardara alterantive plan] (October 2000); UNCHS, Human Settlements Development through Community Participation (Nairobi, UNCHS, 1991); Nick Waters, The Community Planning Handbook: How People Can Shape Their Cities, Towns and Villages in Any Part of the World (London: Earthscan, 2001).

⁷²² Ibid.

	Community representatives lobby officials and legislators to cooperate with/approve community-proposed alternatives	livelihood options
Community organizing		
Consult with community representatives and conduct an inventory (enumeration) of community human resources and social capital	Establish a tenants union ⁷²³	Community presents a common position in defense of its rights and interests
Identify and locate absentee landlord ⁷²⁴		
Cooperate and negotiate⁷²⁵		
Learn/use conflict resolution techniques and, including alternative dispute resolution ⁷²⁶	Decriminalize actions taken to obtain elements of HRAH	Administrative recognition of tenure and the human right to adequate housing of people without economic access
Mobilize inhabitants	Organize squatter actions and squatter-empowerment interventions ⁷²⁷	
Cooperate with National Human Rights Institutions ⁷²⁸	Propose and lobby for the implementation of National Plans of Action for Human	National housing shortage, upgrading needs and land

⁷²³ Tenant organizing resources" on the National Alliance of HUD Tenants website: <http://www.saveourhomes.org/>. Practical steps for forming a tenants union can be found on http://www.radio4all.org/aia/pro_tenant.html.

⁷²⁴ "Who is my landlord anyway?" (Seattle: The Tenants Union, 2004), go to <http://www.tenantsunion.org/research.html>.

⁷²⁵ For a collection of popular experiences in government-nongovernment cooperation in the field of human settlements, see Habitat International Coalition, Building the City with the People: New Trends in Community Initiatives with Local Governments (Mexico City: Habitat International Coalition, 1997), contents also available on line at HIC General Secretariat website, at <http://www.hic-net.org/library.asp>.

⁷²⁶ American Arbitration Association (AAA), Grievance Mediation Procedures (New York: AAA, 1992); AAA, Resolving Your Disputes (New York: AAA, 1993); American Bar Association, Alternative Dispute Resolution: An ADR Primer (Washington: Standing Committee on Dispute Resolution, 1989); Carpenter, Susan L. and W.J.D. Kennedy, Managing Public Disputes: A Practical Guide to Handling and Reaching Agreements (San Francisco: Jossey-Bass Publisher, 1988); Cochrane, Michael G. ed., Attorneys General and New Methods of Dispute Resolution (Washington: American Bar Association, 1990); Costantino, Cathy, A. and Merchant, Christina, S. Designing Conflict Management Systems (San Francisco: Jossey-Bass Publisher, 1996); Edelman, Lester, Frank Carr, and James L. Creighton, The MiniTrial (Ft. Belvoir VA: U.S. Army Corps of Engineers Institute for Water Resources, 1989); Edelman, Lester, Frank Carr, Charles Lancaster, and James L. Creighton, Non-Binding Arbitration (Ft. Belvoir VA: U.S. Army Corps of Engineers Institute for Water Resources, 1990); Fine, Erika S. and Elizabeth S. Plapinger, eds. for the CPR legal Program, Containing Legal Costs: ADR Strategies for Corporation, Law Firms, and Government (Butterworth Legal Publishers, 1988); ; Folberg, Jay and Alison Taylor, Mediation: A Comprehensive Guide to Resolving Conflicts without Litigation (San Francisco: Jossey-Bass Publishers, 1984). For a bibliography and resources guide on alternative dispute resolution, see Office of Personnel Management website: <http://www.opm.gov/er/adrguide/Section7.asp>.

⁷²⁷ Diana Mitlin and David Satterthwaite eds., Empowering Squatter Citizen: Local Government, Civil Society and Urban Poverty Reduction (London: International Institute for Environment and Development, 2004), available from Earthprint at www.earthprint.com.

	Rights ⁷²⁹	conflicts addressed in a National Plan of Action with provision for law and policy reform
Negotiate with municipal authorities to include the community/civil society as a partner ⁷³⁰	Increase community participation in design, planning, implementation and maintenance of housing ⁷³¹	Maintained and upgraded social housing
Train in negotiation and mediation skills ⁷³²	Negotiation toward reconciling evictions/removals and land grabbing ⁷³³	Indigenous peoples regain historic land claims
Develop community/local government cooperation	Monitor transparency in decision-making processes	Obtain social housing (provided by government), based on need, with amortization based on minimum wage level (affordability)
	Design infrastructure projects	
	Reform public policy toward providing affordable housing	
	Propose and implement National Shelter Strategy ⁷³⁴	
Design national (comprehensive) development plans		
Develop the cooperative sector	Promote cooperative sector initiatives to provide affordable housing	

⁷²⁸ OHCHR, National Institutions for the Promotion and Protection of Human Rights [Human Rights Series No. 19] (Geneva: OHCHR, undated), at <http://www.unhcr.ch/html/menu6/2/fs19.htm>.

⁷²⁹ Office of the High Commissioner for Human Rights, Handbook on National Human Rights Plans of Action [Professional Training Series No. 10] (Geneva and New York: OHCHR, 2002), at: <http://www.ohchr.org/english/about/publications/docs/nhrap.pdf>.

⁷³⁰ Janelle Plummer, Municipalities and Community Participation: A Sourcebook for Capacity Building (London: Earthscan, 2001); Janelle Plummer, ed., Focusing Partnership: A Sourcebook for Municipal Capacity Building in Public-Private Partnerships (London: Earthscan, 2002); Diane Warburton, ed., Community and Sustainable Development: Participation in the Future (London: Earthscan, 200X).

⁷³¹ UNCHS, Human Settlements Development through Community Participation (Nairobi: UNCHS, 1991).

⁷³² Scott Beattie, "Is Mediation a Real Alternative to Law? Pitfalls for Aboriginal Participants," Australian Dispute Resolution Journal 8 (1997) 57; Larissa Behrendt, Aboriginal Dispute Resolution: A Step towards Self-Determination and Community Autonomy. (Sydney: Federation Press, 1995).

⁷³³ Michael Asch and Norman Zlotkin, "Affirming Aboriginal Title: A New Basis for Comprehensive Claims Negotiations," in Michael Asch, ed., Aboriginal and Treaty Rights in Canada: Essays on Law, Equality, and Respect for Difference (Vancouver: University of British Columbia Press, 1997).

⁷³⁴ UNCHS, Developing a National Shelter Strategy: Lessons from Four Countries (Nairobi: UNCHS, 1990); OHCHR, Handbook on National Human Rights Plans of Action (Geneva: OHCHR, 2001)

Use/lobby/cooperate with the international human rights system (interventions with factual, legal and political mechanisms of the UN and regional human rights systems) ⁷³⁵	Undertake negotiations at international/ multilateral level (whereby negotiators representing the State assert their prior obligations under international human rights treaty law against IFI [Word Bank, regional development bank, IMF, etc.] and WTO conditionalities leading to housing rights regressive / retrogressive violations) ⁷³⁶	Obtain/ensure continuous regulation of housing market practices (e.g., to ensure tenure security, accessibility of housing, building materials, direct investment, etc.)
		End to practices of land confiscation through foreclosure, adverse possession and eminent domain without adequate, consensual alternatives
Develop / reform / enforce law ⁷³⁷		
Initiate/reform legislation and regulatory processes in compliance with the human-right-to-adequate - housing framework	Undertake class action suits (with minimum of [e.g., at least 15] physical or legal persons undertaking a litigation action, generally in the name of a whole group of the population), or public-interest litigation (e.g., India) ⁷³⁸	Law and policy enforced to respect, defend, promote and fulfill housing rights
		Law enforcement officers protect population from and implied protection
Collect sufficient data to determine material and nonmaterial losses to victims of housing and land rights violations		Violators prosecuted and punished
		Victims receive restitution and full compensation for violation and material and nonmaterial losses

⁷³⁵ See "NGO participation in the activities of the Committee on Economic, Social and Cultural Rights," UN doc. E/C.12/2000/6, 7 July 2000, website: <http://www.hchr.un.ch>; and "Revised general guidelines regarding the form and contents of reports to be submitted by states parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights," UN doc. E/C.12/1991/1, 17 June 1991.

⁷³⁶ INCHRITI, Trade, Investment, Finance and Human Rights: Essential Documents (Geneva: INCHRITI, 2001).

⁷³⁷ Mario Rosário, "[Action "Tsimá Ga Ku Aka" to build together](#)" (1996); Janeth López, "[Asesoría en vivienda para el proceso de reinserción en Colombia](#)" (1996); K.A. Jayaratne, "[Collaborative Partnership to Improve the Low Income Neighbourhoods](#)," (1996); Michael Shapcott, "[Rupert Pilot Project. A self-Help and Community Rehabilitation Project in Canada](#)" (1996); Leopold Mutembei, "[Struggles of the urban poor to improve their living conditions](#)" (1996); Leonard Chileshe Mulenga, "[The case of Bauleni Upgrading](#)" (1995); Johan Silas, "[The Improvement of Low Cost Housing and Environment](#)" (1996); in Habitat International Coalition, Building the City with the People: New Trends in Community Initiatives with Local Governments (Mexico City: Habitat International Coalition, 1997), contents also available on line at HIC General Secretariat website, at <http://www.hic-net.org/library.asp>.

⁷³⁸ "Public interest litigation" (PIL) is a form of litigation filed in a court of law, for the protection of "public interest." Most prominently used in the Indian context, it is not defined in any statute or act. It has been interpreted by judges to consider the intent of public at large. Although, the main and only focus of such litigation is public interest, PIL can be filed in cases involving, e.g., such issues as pollution, "terrorism," road safety, constructional hazards, violated human rights of the poor, the content or conduct of government policy, to compel municipal authorities to perform a public duty, etc. See, for example: Upendra Baxi, "Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India" [revised], in Upendra Baxi, ed., Law and Poverty: Critical Essays (Bombay: Tripathi 1988); Mario Gomez, In the Public Interest: Essays on Public Interest Litigation and Participatory Justice (Colombo: Legal Aid Centre, University of Colombo, 1993); Sampat Jain, Public Interest Legislation (New Delhi, Deep & Deep, 2002); Shri. V.S.Vadivel, "Public Interest Litigation (PIL) A Boon or Bane?" (Legal Services India, 2004),

<http://www.legalserviceindia.com/articles/pil.htm>; see also Help Line Law website: <http://www.helpinelaw.com/docs/main.php3?id=PIL11>.

Conduct national housing and land rights assessment ⁷³⁹	Lobby parliament	Law promotes housing and land acquisition and retention in disadvantaged communities consistent with international commitments to promote just patterns of land distribution
	Raise test cases, constitutional challenges through court system	
	Develop laws on properties left without will and testate in order to narrow the class of heirs and prevent fractionation of the ownership	
	Nationwide constitutional review campaign	Constitutional reform ⁷⁴⁰
Institutional reform		
Establish and maintain an effective Land Trust to support communities subject to discrimination and dispossession		Land ownership expanded for disadvantaged communities on an affirmative-action basis
Monitor and survey practices of public and private lending institutions for discrimination practices and patterns	Lobby for disciplinary action and rehabilitation of institutions to end discriminatory practices	Institutions apply uniform criteria in housing and community development programs, policies and transactions
International human rights system interventions		
Prepare and present collective parallel report to human rights treaty bodies (or submit cases under individual complaints procedures under Optional Protocols)		UN treaty body Concluding Observations coincide with community's evaluation of housing rights conditions and proposals for solutions

⁷³⁹ Apply this HIC-HLRN Housing and Land Rights Monitoring Toolkit on a national scale to all elements of the human right to adequate housing.

⁷⁴⁰ See, for example, "The history of constitutional reform in Kenya," World History Archives (2004), <http://www.hartford-hwp.com/archives/36/index-bbh.html>.

Raise cases and submit briefs before regional human rights courts and commissions ⁷⁴¹		State compelled to implement its treaty obligations to respect, defend, promote and fulfill the human right to adequate housing and land
Use Concluding Observations in public information and media campaigns, litigation		
Submit cases to UN Commission on Human Rights 1503 Procedure		States intervene to resolve impasse in housing rights violation case
Submit question/case to UNESCO complaints procedure		States intervene to resolve impasse in housing rights violation case
Legal defense		
Develop and deliver legal literacy and litigation strategy training ⁷⁴²	Provide legal-aid services to defend individual and community housing and land rights	Judicial rulings include legal precedents for future litigation and law reform to ensure individual and group rights to adequate housing and land
Collect detailed data on violations, perpetrators, values of losses and other consequences ⁷⁴³	Present admissible evidence in litigation on behalf of victims ⁷⁴⁴	
		Judicial remedies, including legal precedents for future litigation and law reform to ensure gender equality
Develop gender-awareness and gender-justice training for communities, police,	Provide legal-aid services to defend equal rights to housing and land for	Victims receive restitution and full compensation for violation and material and nonmaterial

⁷⁴¹ Litigating Economic, Social and Cultural Rights: Achievements, Challenges and Strategies (Geneva: COHRE, 2004), available at <http://www.cohre.org/library/Litigating%20ESCR%20Report.pdf>; Amicus Curiae in Grupo Interdisciplinario por los Derechos Humanos v. Colombia [submitted by COHRE to Inter-American Commission on Human Rights on case of housing destruction by paramilitary groups in Ituango and El Aro, Colombia], on line at <http://www.cohre.org/downloads/amicuscolombia1.doc>; Amicus Curiae in Justiça Global, et al. v. Government of Brazil, Inter-American Commission on Human Rights [submitted by COHRE on actual and threatened violations of housing rights, including forced evictions, with the planned Alcântara Spaceport expansion, in Brazil] available at <http://www.cohre.org/downloads/amicusbrazil1.doc>; Amicus Curiae in CELS & CEJIL v Argentina, Inter-American Commission on Human Rights [submitted by COHRE to Inter-American Commission on Human Rights on case local authorities conducting forced evictions in Barrio Ejército de los Andes, Provincia de Buenos Aires, Argentina], available at <http://www.cohre.org/downloads/amicusargentina1.doc>. See also COHRE Case Law Database on line at <http://www.cohre.org/tframe.htm>; Case law database for economic, social and cultural rights available on the ESCR-Net website at <http://www.escr-net.org/>; found in “Case Law” at http://www.escr-net.org/EngGeneral/Case_law.asp, or “Jurisprudencia” at http://www.escr-net.org/EspGeneral/Case_law.asp.

⁷⁴² Margaret Schuler and Sakuntala Kadirgamar-Rajasingham, Legal Literacy: A Tool for Women’s Empowerment (Washington: Women, Law and Development, OEF International, 1992).

⁷⁴³ See “Housing and Land Rights Violation Case Documentation Form” in this toolkit.

⁷⁴⁴ Domestic Implementation of International Human Rights: Litigating Economic, Social and Cultural Rights, on Human Rights Internet website at http://www.hri.ca/fortherecordCanada/vol1/guide-part_11.htm; Case Law Database for Economic, Social and Cultural Rights available on the ESCR-Net website at <http://www.escr-net.org/>; found in “Case Law” at http://www.escr-net.org/EngGeneral/Case_law.asp, or “Jurisprudencia” at http://www.escr-net.org/EspGeneral/Case_law.asp.

lawyers, prosecutors and judges ⁷⁴⁵	women and gender-discrimination victims	losses ⁷⁴⁶
Develop judicial procedures and expertise to provide for land-consolidation courts	Consolidate and reduce unstable “in-common” tenancy to maintain family and community land retention, especially to uphold land base for minority groups and indigenous peoples	Communities restore and retain their land base
Media cooperation and campaigns		
Conduct training for media professional in the human right to adequate, corresponding obligations, interviewing victims, quantifying victims’ losses and community follow-up ⁷⁴⁷	Meet journalists and media professionals to follow-up on training and present new documentation and information on developments	Informed public supports community alternative-development and/or anti-eviction proposals
Provide media outlets with economic analyses of various possible alternatives (on-site upgrading v. relocation)		
Provide media outlets with alternative plans and community proposals for their development		
Policy reform		
Reverse and prosecute discriminatory practices toward disadvantages individuals and communities by both public and private lending institutions		Fairness-in-lending policy formulated and enforced for housing and land purchase, rehabilitation and sustainability
Expand public-private initiatives to stimulate investment and multipurpose development communities		Integrated development with low-cost housing on public and donated lands
Provide housing and relief		
Exchange expertise in temporary housing and	Organize emergency relief (immediate provision of	Eviction and displacement victims receive emergency

⁷⁴⁵ Shelter Rights Initiative, Gender Specific Rights Litigation and Protection Strategies (Lagos: SRI, 1998); SRI, Manual on Judicial Protection of Economic, Social and Cultural Rights (Lagos: SRI, 2000).

⁷⁴⁶ “Seminar on the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms,” Netherlands Quarterly on Human Rights Special Issue (1993); S. Nadasen, “Restitution, Reconstruction, Reconciliation and Restribution: Land Reform—Balancing the Interests of the Dispossessed, the Homeless and Development,” Stellenbosch Law Review (1997), 360–77. For a bibliography of global restitution and compensation experience, go to: <http://userpage.fu-berlin.de/~theissen/biblio/>.

⁷⁴⁷ HIC-HLRN training module on “Housing and Land Rights for Media Professionals.”

relief provision	housing and/or housing resources at no cost to those denied: water, medical services, economic relief, housing resources and building materials, etc.)	(temporary) housing
Resource mobilization		
Conduct an inventory (accounting) of community (human and material) resources	Design, adapt and implement alternative-finance schemes; (e.g., small savings toward common projects) and self-financing for needy inhabitants (with freehold tenure options) ⁷⁴⁸	Upgrading and generally improved living conditions on site, as alternative to relocation
	Establish and operate nonbank institutions as lenders and builder of adequate, low-income housing ⁷⁴⁹	
	Organize self-help cooperation through rotating community credit (building & upgrading infrastructure, social production of housing ⁷⁵⁰)	

⁷⁴⁸ Alternative Financing Models: Hybrids of Homeownership Mutual Housing (The Enterprise Foundation, 2003); "Capitalizing on Collaboratives: New Partners for Comm. Dev. Finance" (Washington: Center for Policy Alternatives, July 1996); Enrique Ortiz, FONHAPO: The Experience of the National Fund for Low Income Housing in Mexico (London: International Institute for Environment and Development, 1998), available from Earthprint at www.earthprint.com.

⁷⁴⁹ Jeffrey Carmichael and Michael Pomerleano, The Development and Regulation of Non-Bank Financial Institutions (Washington: World Bank, 2002); Indonesia: Housing Finance for the Urban Poor (Manila: Asia Development Bank, 2001); Peer Smet, "Indian Housing Finance Alliances and the Urban Poor," Global Built Environment Review Vol. 2, No. 1, 58–66, <http://www.edgehill.ac.uk/gber/pdf/vol2/issue1/Eight.pdf>.

⁷⁵⁰ Joseph Schechla, ed., *Anatomies of a Social Movement* (Cairo: HIC-HLRN, 2004); Habitat International Coalition, *Building the City With the People. New Trends in Community Initiatives in Cooperation with Local Governments* (Mexico City: Habitat International Coalition, 1997); Prem Pangora, *Citizen's Initiatives for environmental improvements: The case of River Sabarmati, Ahmedabad, India* (Mexico City: Habitat International Coalition, 1997); Joël Audefroy, *Construyendo la Ciudad con la Gente. Nuevas tendencias en la colaboración entre las iniciativas comunitarias y los gobiernos locales* (Mexico City: Coalición Internacional para el Habitat, 1998); Gustavo Romero, La producción social del hábitat: reflexiones sobre su historia, concepciones y propuestas (2000), available on line at http://www.hic-net.org/online/Romero_PSH-intro.pdf; Eike Jacob, *Social Production of Habitat in Latin America* (2003); Habitat International Coalition-América Latina, "Social Production of Habitat. Conceptual framework" (2003); Enrique Ortiz, Social Production of Habitat: Marginal option or reality-transforming strategy? (2003), available on line at http://www.hic-net.org/online/Ortiz_SPH.pdf; Enrique Ortiz, *Vivitos y Coleando. 40 años trabajando por el hábitat popular en América Latina* (2002).

	<p>Immediate, diligent and effective increase in advice-and-lending services, on an affirmative-action basis within public lending institutions</p>	
	<p>Develop microcredit schemes (for upgrading and construction, but with social and legal components providing HRAH content)⁷⁵¹</p>	
<p>Analyze economic costs of the various possible alternatives (on-site upgrading v. relocation)</p>		
<p>Raise material support (raise funds) from private, public and intergovernmental donors), including microcredit⁷⁵²</p>		
<p>Plan/undertake reconstruction,⁷⁵³ upgrading and general improvement of living conditions (with multiple parties cooperating)</p>		
<p>Restoration and increase housing subsidy programs for low-income people, including by tax reform (e.g., reversal of tax cuts for the wealthiest tax payers)</p>		<p>Low-income people pay no more than 30% of monthly incomes for adequate housing</p>
<p>Conduct an inventory of community financial and material resources</p>	<p>Develop community savings schemes</p>	<p>Social production of habitat: Community/self-financed upgrading of housing and improvement of living conditions</p>

⁷⁵¹ Nazrul Islam, [Grameen Bank Bangladesh. A credit institution for housing](#) (1996); Jaffer Murtaza, [The Tanzania-Bondeni Community Lands Trust](#) (1996).

⁷⁵² Nazrul Islam, [Grameen Bank Bangladesh. A credit institution for housing](#) (1996); Jaffer Murtaza, [The Tanzania-Bondeni Community Lands Trust](#) (1996).

⁷⁵³ See York University Postwar Reconstruction and Development Unit, website: <http://www.york.ac.uk/depts/poli/prdu>.

Conduct public budget analysis from the housing rights perspective ⁷⁵⁴	Develop participatory budgeting ⁷⁵⁵ (ensuring that necessary programs and projects are budgeting according to housing rights obligations)	Public budgets comply with State's housing rights obligations to ensure "progressive realization" with "maximum of available resources"
Training other actors (outside community)		
Train civil servants in HRAH (including international treaty obligations upon the State and local authorities)	Reform urban/land planning criteria, procedures and objectives to harmonize with local community needs and criteria ⁷⁵⁶	Physical planning integrates human rights obligations, language and priorities directed to needy and vulnerable communities
Train lawyers in HRAH, (including international treaty obligations upon the State, as well as litigation strategies) ⁷⁵⁷	Legal argument, litigation and judicial decisions invoke international norms and treaty obligations	Legal recognition of traditional legal and tenure systems and provision of secure title ⁷⁵⁸
		Legal recognition of tenure and the human right to adequate housing of people without economic access

⁷⁵⁴ Ravikant Joshi, *A Case for Reform: how municipal budgets can change our cities* (Mumbai: YUVA Books, 2001); Maria Socorro I. Diokno, "A Rights-based Approach towards Budget Analysis" (Washington: International Human Rights Internship Program, 1999); Institute for Development Policy Analysis and Advocacy—IDPAA (Atiur Rahman et al.), *Alternative Budget Analysis: A Series of Studies on the National Budget for the Perspective of Poverty Eradication* [three volumes: Budget and the Poor, The Budget-making Process, People's Budget: An Alternative Exercise Using Participatory Tools] (Dhaka: University Press Ltd., 2002).

⁷⁵⁵ Rebecca Abers, 1998, "From clientelism to cooperation: Local government, participatory policy, and civic organizing in Porto Alegre, Brazil"; *Politics and Society*. 26(4)c 511–37; Rebecca Abers, *Inventing Local Democracy: Grassroots Politics in Brazil* (Boulder: Lynne Rynner, 2000); Baierle, Sergio, 1998, "The Explosion of Citizenship: The Emergence of a New Ethical-Political Principal in Popular Movement in Porto Alegre, Brazil," in Sonia E. Alvarez, Evelina Dagnino and Arturo Escobar, *Cultures of Politics/Politics of Cultures: Revisioning Latin America Social Movements* (Boulder: Westview Press, 1998); Sousa Boaventura de Santos, "Participatory Budgeting in Porto Alegre: Toward a Redistributive Democracy." *Politics and Society* 26(4) (1998), 461-509; *Quem é o público do Orçamento Participativo: se perfil, porque participa, e o que pensa do processo* (Porto Alegre: Cidade de Porto Alegre, 1999); Luciano Fedozzi, *Orçamento Participativo: Reflexões sobre a experiência de Porto Alegre* (Porto Alegre: Tomo Editorial, 1998); Pedro Jacobi and Macro Antonio Carvalho Teixeira, "Orçamento Participativo: co-responsabilidade na gestão das cidades," *São Paulo em Perspectiva*, 10 (3) (1996) 119–28; Brain Wampler, "Orçamento Participativo: Os paradoxos da participação e governo no Recife," *Cadernos de Estudos Sociais*, 15(2) (1999), 343–73; Brian Wampler, *A Guide to Participatory Budgeting* (October 2000). Internet sources: Participatory budget: The Case of Porto Alegre (Brazil) at:

<http://www.goethe.de/br/poa/buerg/en/framebag.htm> (2004);

World Bank: http://www.worldbank.org/html/fpd/urban/urb_age/porto.htm,

<http://www.worldbank.org/wbiep/decentralization/Topics13.7.htm>, <http://www.worldbank.org/participation/>; Inter-American Development Bank: <http://www.iadb.org/exr/IDB/stories/2000/eng/JAN00E/c200c1.htm>,

<http://www.iadb.org/exr/idb/sidebars/2000/eng/c200c4.htm>; Conference Proceedings on Participatory Budgeting:

<http://www.idre.ca/lacro/docs/conferencias/stren.html>, <http://www.ssc.wisc.edu/~wright/deliberative.html>,

<http://www.pqualc.org>.

⁷⁵⁶ UNCHS, *Developing a National Shelter Strategy: Lessons from Four Countries* (Nairobi: UNCHS, 1990); OHCHR, *Handbook on National Human Rights Plans of Action* (Geneva: OHCHR, revised draft May 2001).

⁷⁵⁷ Shelter Rights Initiative, *Gender Specific Rights Litigation and Protection Strategies* (Lagos: SRI, 1998); SRI, *Manual on Judicial Protection of Economic, Social and Cultural Rights* (Lagos: SRI, 2000).

⁷⁵⁸ Peter R. Grose, "An Indigenous Imperative: The Rationale for the Recognition of Aboriginal Dispute Resolution Mechanisms." *Mediation Quarterly* 12 (4) (summer 1995), 327–38.

		Judge issues restraining orders halting forced evictions and removals, land confiscation, property destruction and other housing and land rights
Train judges in HRAH (including international treaty obligations upon the State) ⁷⁵⁹		Judicial decision orders return, restitution and compensation for evictees, IDPs, refugees ⁷⁶⁰
Train law enforcement officials in the human right to adequate housing (including international treaty obligations upon the State)	Quantify losses/costs of housing rights violations	Victims compensated for losses ⁷⁶¹
Transitional justice (post conflict) ⁷⁶²		
Document details on violations, perpetrators, values of losses and other consequences ⁷⁶³	Present evidence to truth (and reconciliation) commission ⁷⁶⁴	Public aware of population transfer, mass dispossessions and other crimes committed during conflict

⁷⁵⁹ Shelter Rights Initiative, Manual on Housing Rights Protection Strategies for Lower Court Judges (Lagos: SRI, 2000).

⁷⁶⁰ UNCHS, Housing and Property Rights in Kosovo (Pristina: UNCHS, March 2000).

⁷⁶¹ For elaboration of the principles of compensation to victims of human rights violations, see Theo Van Boven, "Basic Principles and Guidelines on the Right to Reparation for Victims of Gross Violations of Human Rights and Humanitarian Law, Appendix 8 ("The van Boven Principles"), Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, E/CN.4/Sub.2/1996/17; also E/CN.4/1997/104, annex and subsequently revised as "Basic principles and guidelines on the right to a remedy and reparation for victims of violations of international human rights and humanitarian law," by Cherif Bassiouni, independent expert, Commission on Human Rights (E/CN.4/2000/62, annex). John Dugard, "Is the Truth and Reconciliation Process Compatible with International Law? An Unanswered Question," South African Journal on Human Rights Vol. 13, 258–68. For quantification methodology, see HIC-HLRN Loss Matrix in this Housing and Land Rights Monitoring Toolkit, or go to www.hlrn.org; for implementation, see to UNCHS, Housing and Property Rights in Kosovo (Pristina: UNCHS, 2000).

⁷⁶² For a general bibliography on transitional justice, go to <http://www.peacemakers.ca/bibliography/bib26reconciliation.html> or <http://userpage.fu-berlin.de/~theissen/biblio/> (on experiences of Germany and South Africa).

⁷⁶³ Use "Housing and Land Rights Violation Case Documentation Form" in this toolkit.

⁷⁶⁴ Kerry Able, and Jean Friesen, eds., Aboriginal Resource Use in Canada: Historical and Legal Aspects (Winnipeg: University of Manitoba Press, 1991); Alfred, Gerald R., and Franke Wilmer. "Indigenous Peoples, States and Conflict," in D. Carment and P. James, eds., Wars in the Midst of Peace: The International Politics of Ethnic Conflict (Pittsburg: University of Pittsburgh Press, 1997); Michael Coyle, "Claims Resolution: A Healing Process?" in J. Oakes, R. Riewe, K. Kinew and E. Maloney, eds., Sacred Lands: Aboriginal World Views, Claims and Conflicts (Calgary: Canadian Circumpolar Institute, 1998); Robert Rotberg and Dennis Thompson, eds., Truth v. Justice: The Morality of Truth Commissions (Princeton: Princeton University Press, 2000); Truth and Reconciliation Commission of South Africa Report, Vols. 1–5 (Cape Town: Juta, 1998); Theo van Boven, "Study Concerning the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms" [final report of Special Rapporteur] (Geneva: Commission on Human Rights, Subcommission on Prevention of Discrimination and Protection of Minorities) E/CN.4/Sub.2/1993/8. For an extensive bibliography of sources, go to: <http://userpage.fu-berlin.de/~theissen/biblio/>.

	Issue amnesty for past crimes and perpetrators of forced evictions/removals ⁷⁶⁵	Social reconciliation
	Present evidence to Truth and Justice Commission	Social reconciliation
		Crimes and perpetrators prosecuted and punished
Present evidence to “mixed courts”	Return, restitution and compensation for evictees, IDPs, refugees ⁷⁶⁶	

Of course, an illustrative list of potential interventions does not sufficiently convey the wealth of local governmental and nongovernmental experience available for review and exchange. Moreover, it is, as always, at the local level of implementation where human rights, including the human right to adequate housing, are transformed from moral suasion and legal theory to implementable reality. Therefore, both the practical, case-based perspective and the theoretical-and-comparative perspective become mutually dependent, mutually reinforcing and, hence, equally needed.

7.10. Evaluation & follow-up

Evaluation of any action you choose should be an ongoing function parallel to the events and development as they happen. This note offers some simple guidance on the specific evaluation tasks you will face. They are described in stages, with particular emphasis on the final stages and the vision for the future.

For our purposes, evaluation and follow-up imply two levels of assessment: (1) evaluation the action and (2) following the situation after the action concludes. The former is internal in nature and helps your organization, community or network become a learning institution by building on the lessons (successes, near-successes, failures and unanticipated results) of your efforts. The latter enables you, your organization, community or network to test the outcome to ascertain whether or not it has tangible benefits for those persons, communities, populations and peoples affected and targeted in your action. Ultimately, the follow-up process should lead you to the necessary conclusion as to what, if anything, to do next.

✓ Evaluating the action

⁷⁶⁵ John Dugard, *Dealing with Crimes of a Past Regime: Is Amnesty Still an Option?* [The Third Manfred Lachs Memorial Lecture] (1999); Carla Edelenbosch, “Human Rights Violations - A Duty to Prosecute?” *Leiden Journal of International Law* Vol. 7, No. 2 (1994), 5–22; Dianne F. Orentlicher, “Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime,” *The Yale Law Journal* Vol. 100, No. 8 (1991) 2537–615.

⁷⁶⁶ Uma Dhupelia Mesthrie, *The Truth and Reconciliation Commission and the Commission on Restitution of Land Rights: Some Comparative Thoughts* [“The TRC: Commissioning the Past” conference] (Johannesburg: University of the Witwatersrand, 1999); S. Nadasen, “Restitution, Reconstruction, Reconciliation and Redistribution: Land Reform: Balancing the Interests of the Dispossessed, the Homeless and Development,” *Stellenbosch Law Review* (1997) 360–77; David B. Southern, “Restitution or Compensation: The Land Question in East Germany,” *International and Comparative Law Quarterly* Vol. 42, No. 3 (1993), 690–97; David B. Southern, “Restitution or Compensation: The Open Property Question,” *German Politics* Vol. 2, No. 3, 436–49. For a bibliography of global restitution and compensation experience, go to: <http://userpage.fu-berlin.de/~theissen/biblio/>.

Evaluation your action includes three integrated but conceptually distinct processes: (1) monitoring progress, (2) formative evaluation and (3) measuring the development impact.

1. Monitoring implementation progress

Monitoring the implementation of your action is the most frequent—indeed constant—aspect of the learning process. This should involve periodic reports on production of outcomes, financial accounting and levels and nature of inputs (e.g., technical assistance, training, social production of habitat). The periodicity of the reporting could be quarterly, if the action is expected to proceed for a year or more. Alternatively, reporting could be more frequent, especially if it is a short-term action, or if it takes place in a fast-paced environment such as a threatened eviction or natural disaster situation, and particularly if extreme deprivation of human well-being is at stake.

The responsibility for monitoring is to be shared by a group of actors. Remembering that, like in the “Toolkit” guide for strategic planning, the more participation, the more-favorable the result (“more participation = more dignity”).

Reporting on the action, based on the monitoring of implementation progress, should be specifically assigned, most probably to the coordinator of the action or the chief executive officer of the principal body organizing the action. The audience of the reports should be both internal, for the benefit of those engaged, and external, depending on the obligations you have to supporters, members and/or funders. The assignment of duties, division of labor and timing of evaluation events should be completed also in the planning stage of your activity (see [“Strategic planning”](#) link above).

2. Formative Evaluation Indicators of Accomplishments

Midway in the process of your action, you should conduct an assessment of the *quality and adequacy* of the tasks undertaken by assessing the actual outcomes against the standard of expected results you already have set out for yourselves.

You should develop an evaluation plan and data collection instruments as part of the project implementation. That means, you should plan ahead to collect information that will verify your intended results, whether that be in the form of documents, press reports, opinion surveys, affidavits, water-quality test results, etc. The formative evaluation activities probably will require site visits, rapid assessment and low-cost data collection techniques such as focus groups, interviews, training evaluation forms, and simple targeted studies to identify key issues for action management.

3. Development-impact Assessment and Indicators

Development-impact assessments that you and your organization/community undertake less frequently, perhaps on an annual basis, will track changes in the outcomes, in order to determine the degree to which the larger environment of the human right to adequate housing is improving—or deteriorating, as the case may be.

Your action could—and should—produce an initial baseline report at the initial stage that coincides with your first inventory, site visits and/or assessment arising from your first use of this “Toolkit.” That report should record what you consider to be the key assumptions going into the activity, and will serve you in the subsequent stages of your action, especially at the

final stages, to test those assumptions and adjust strategies to incorporate the knowledge you have created.

For the purpose of your organization's integrity and the tactical responses you may require in the future, your action should be seen critically in the light of the purposes and goals you set out in your planning process (see "**Strategic planning**" link above). Some sample questions to include in your evaluation include the following:

- How does the action relate to your purpose statement of your organization/ community?
- How does the action relate to the goals(s) of your organization/community?
- Was the action planned or spontaneous?
- What was the expected result?
- Was that result achieved? If not, why?
- Were unintended results achieved?
- What were the lessons learned from this activity?
- How did this activity build/strengthen/develop your organization? What gains did you and others realize?
- How did your organization/community record and report the experience?
- How did your organization/community share and exchange the experience and lessons learned with others? Who? When? Where? What was the result?
- Has there been follow-up? Why? What? Who? When? Where?
- Click on "Following up the situation" for guidance on the last point.

✓ **Following up the situation**

Each successful or unsuccessful action needs to be tested further for at least two reasons: (1) in order to determine if the achievement is real or merely theoretical and (2) to determine what your next move is going to be.

The now famous *Irene Grootboom and Others v. Oostenberg Municipality*⁷⁶⁷ case before the South African Constitutional Court (1999) found in favor of the plaintiffs by applying the principles of international law on the human right to adequate housing and the legal strictures on the practice of forced eviction. The Court ordered the Western Cape Provincial Government and the Oostenberg Municipality to grant housing and utilities to the 390 adults and 510 children wrongfully evicted community at Wallacedene their right to return and remain and to benefit from public services corresponding to that right. Until today, that decision has not been fully implemented.

Likewise, the landmark case of *Qa'dan v. Katzir*,⁷⁶⁸ in Israel, resulted in the 2000 High Court ruling that Katzir (a settlement built on Palestinian land, directed and funded in large part by the Jewish Agency) acted unlawfully when discriminating on the basis of "nationality" by excluding a non-Jewish from obtaining housing there. Until this day, that decision has not been honored, the indigenous Adil and Iman Qa'dan family of Arab citizens of Israel do not have their home in Katzir, and the Jewish Agency continues to provide land and housing benefits only to those holding "Jewish nationality," and to the exclusion of others.

⁷⁶⁷ Irene Grootboom and Others versus Oostenberg Municipality, Cape Metropolitan Council, the Premier of the Province of the Western Cape, National Housing Board, and Government of the Republic of South Africa, Constitutional Court of South Africa Case No: 6826/99..

⁷⁶⁸ Qa'adan versus Israel Lands Administration (ILA), Ministry of Construction and Housing, Tal-Iron Local Municipal Council, Jewish Agency for the Land of Israel (JA), KATZIR: Cooperative Association for Community Settlement in Samaria Ltd., and the Farmers Association; Case No. 6698/95 of the Israeli Supreme Court, sitting as the High Court of Justice.

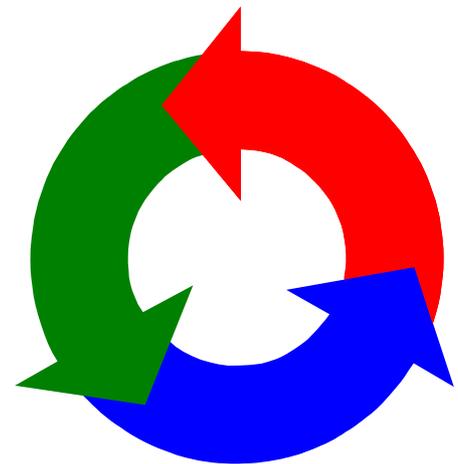
There are numerous examples of slum clearance and resettlement that result in the promised secure tenure of housing, but fail to comply with other elements of the human right in their implementation. [Note: HLRN and this “Toolkit” do not advocate slum clearance or resettlement.] Inhabitants in resettlement often lack access to public goods and services, suitable location, are denied compensation for losses and are subject to a process inconsistent with the over-riding principle of self-determination.⁷⁶⁹

All such gaps and shortcomings in the outcome of any housing rights defense effort remain to be addressed, even though some advocates and service-providing NGOs may consider these developments to be victorious at some level. The true test remains, however, to determine the tangibility of the results within the framework of the human right to adequate housing, and over the long term.

With all of its emphasis on the law, this “Toolkit” is intended to assist in the realization of the human right to adequate housing as a complement to the theoretical elaboration of the right in law. Implementation is the ultimate objective of human rights, as well as this “Toolkit.” Therefore, the tools provided here should serve also as the final evaluation criteria to examine whether or not the composite dimensions of the human rights are implemented and present or not.

You should use the elements (entitlements) of the human right to adequate housing here as your guide; these are also the binding criteria for all State parties and their representatives to apply as well. If you and your organization/community determine that certain criteria have been breached or neglected, then, alas, further remedial action will be required.

The bad news, perhaps, is that there may yet be more work to be done. However, even if one has to go back to the drawing board, at least the needed tools are available to the cyclical task. So, now, you can just do it.



⁷⁶⁹ See Housing and Land Rights Network, *Restructuring New Delhi’s Urban Habitat: Building an Apartheid City?* (HIC-HLRN: New Delhi, 2002).

8. Cultural appropriateness

8.1. Concept and meaning

Housing configuration, spatial design and site/community organization should be determined locally and in harmony with a community's cultural preferences and attributes. The state must enable cultural expression and diversity and should ensure the participation of all cultural/religious groups in planning.

8.2. Sources

In this section, your **Step 2**, the HLRN “Toolkit” provides the most important international legal basis and the popular claims that ground each element of the human right to adequate housing. This compilation attempts to be as comprehensive as possible; however, additional popular sources and legal developments will augment this inventory in the future.

It is vital to establish both the established sources in international law and the popular claims. The authority of the legal sources carries corresponding obligations on most States, and applies universally to all people on the planet as *human* rights. The popular sources advance claims that are “emerging” with human rights language eventually to be codified in the law. All legally established human rights norms originated as popular claims carried forth through various forms of historic struggle.

The Legal Authority

Please note that the legal instruments cited here carry differing levels of obligation, and they are organized for you accordingly. Customary law is made up of those norms and principles that legal opinion and interstate institutions consider so basic and so repeatedly affirmed as to be binding on all legal personalities. The Universal Declaration of Human Rights, the antecedent to all subsequent human rights treaties, is the most relevant example of customary law for our purposes, even though it does not establish a monitoring and enforcement mechanism to ensure compliance.

The ratified treaties (Covenants, Charters, Conventions, etc.) are binding on all their ratifying States parties, and each establishes an independent body to monitor and guide implementation. The treaty-monitoring process provides an opportunity for civil society, States and the international legal bodies each to play a role. These international treaties are also characterized as hard law (*lex lata*), because of their binding nature. Treaty law, by definition, is any agreement between two or more States. The treaties considered here are those of both international and regional nature.

The “soft-law” instruments (*lex feranda*) include the Declarations, Basic Principles, Minimum Rules, General Comments, etc., that are the multilateral commitments arising from international conferences, assemblies, summits, congresses and other specialised meetings. Also included in this category are the general and country-specific guidance that the treaty-monitoring bodies issue to guide and specify treaty obligations, as well as those instruments of inter-State agreement (decisions and resolutions) arising from the various political bodies of the international system (e.g., UN Commission on Human Rights, International Labour Organisation General Assembly, etc.). These instruments contain standards that are declaratory of already-binding international law, reflect the collective political will of States and provide specificity to the general Articles in the binding instruments. However, these form legal and policy guidance without the corresponding obligations of treaty law and without the corresponding legal monitoring mechanisms.

Thus, the list of legal sources in this section of the HLRN “Toolkit” maintains a corresponding priority order such that presents the binding instruments first (in chronological order of their adoption), and follows with the nonbinding, declaratory sources (in their chronological order):

- ***International Treaty Law***
- ***Regional Treaty Law***
- ***Declaratory Instruments and Jurisprudence***

The Moral Argument

The popular sources are useful especially in demonstrating ground-level recognition of the various elements of adequate housing as rights in and of themselves, but also provide a list of human rights that reflect common human needs, but await codification as *bona fide* rights. The “emerging rights” include elements inextricable from the human right to adequate housing: water, land and energy, among others. The popular sources are indicators of the ever-evolving specificity of human rights law and the legal and problem-solving horizons toward which social movements and the human rights community are heading.

The relevant excerpts from these collective moral are listed in the “Toolkit” Sources (Step 2) as *Popular Sources*. These are moral, rather than legal, in nature. However, as claims, they bear legal dimensions in the sense that they are the substance of future legal standards. We continue to include these claims in the HLRN “Toolkit” as they emerge from popular struggles, natural and social sciences, nongovernmental forums, social movements, campaigns and labour action (strikes), as well as other forms of popular and collective problem-solving initiatives.

In this “Toolkit,” *Popular Sources* are distinguished from the legal sources by their presentation in *italic* script.

Another source of the human right with a legal dimension is the jurisprudence of course-based decisions on cases involving housing and land rights. These also could provide the basis for legal argument even in distant jurisdictions. Examples include the case-specific—but internationally relevant—rulings in famous decisions in favor of housing rights claims such as those arising from legal struggles in Cyprus, Palestine/Israel and South Africa:

Qa’adan versus Israel Lands Administration (ILA), Ministry of Construction and Housing, Tal-Iron Local Municipal Council, Jewish Agency for the Land of Israel (JA), KATZIR: Cooperative Association for Community Settlement in Samaria Ltd., and the Farmers Association; Case No. 6698/95 of the Israeli Supreme Court, sitting as the High Court of Justice.

Irene Grootboom and Others versus Oostenberg Municipality, Cape Metropolitan Council, the Premier of the Province of the Western Cape, National Housing Board, and Government of the Republic of South Africa, Constitutional Court of South Africa Case No: 6826/99 (1999).

Loizidou versus Turkey (Article 50 and Merits), European Court of Human Rights Case 40/1993/435/514 (18 December 1996).

✓ Legal sources

International Treaty Law

Convention on the Rights of the Child (1989)

Article 20.1 & 3. “A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State...When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.”

International Covenant on Economic, Social and Cultural Rights (1966)

Article 15.1a & 2. “The States Parties to the present Covenant recognize the right of everyone...to take part in cultural life...The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.”

International Convention on the Elimination of All Forms of Racial Discrimination (1965)

Article 1.1. In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”

Article 5. “...States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of... **(e) (iii)** The right to housing... **(vi)** The right to equal participation in cultural activities...”

International Labour Organisation Convention No. 117 on Social Policy (Basic Aims and Standards) (1962)

4(d) “The measures to be considered by the competent authorities for the promotion of productive capacity and the improvement of living of agricultural producers shall include: (d) the supervision of tenancy arrangements and of working conditions with a view to securing for tenants and labourers the highest practicable standards of living...”

Declaratory Instruments and Jurisprudence

World Summit on Sustainable Development Plan of Implementation (2002)

5. “Peace, security, stability and respect for human rights and fundamental freedoms, including the right to development, as well as respect for cultural diversity, are essential for achieving sustainable development and ensuring that sustainable development benefits all.

11. (b) Use low-cost and sustainable materials and appropriate technologies for the construction of adequate and secure housing for the poor...taking into account their culture...specific social conditions and vulnerability to natural disasters...”

UNESCO Universal Declaration on Cultural Diversity (2001)

Reaffirming that culture should be regarded as the set of distinctive spiritual, material, intellectual and emotional features of society or a social group, and that it encompasses, in

addition to art and literature, lifestyles, ways of living together, value systems, traditions and beliefs,

Noting that culture is at the heart of contemporary debates about identity, social cohesion, and the development of a knowledge-based economy,

Affirming that respect for the diversity of cultures, tolerance, dialogue and cooperation, in a climate of mutual trust and understanding are among the best guarantees of international peace and security,

Aspiring to greater solidarity on the basis of recognition of cultural diversity, of awareness of the unity of humankind, and of the development of intercultural exchanges,

Considering that the process of globalization, facilitated by the rapid development of new information and communication technologies, though representing a challenge for cultural diversity, creates the conditions for renewed dialogue among cultures and civilizations,

14. “*Respecting and protecting* traditional knowledge, in particular that of indigenous peoples; recognizing the contribution of traditional knowledge, particularly with regard to environmental protection and the management of natural resources, and fostering synergies between modern science and local knowledge.”

Declaration of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (2001)

34. “We recognize that people of African descent have for centuries been victims of racism, racial discrimination and enslavement and of the denial by history of many of their rights...Recognition should therefore be given to their rights to culture and their own identity; to participate freely and in equal conditions in political, social, economic and cultural life; to development in the context of their own aspirations and customs; to keep, maintain and foster their own forms of organization, their mode of life, culture, traditions and religious expressions; to maintain and use their own languages; to the protection of their traditional knowledge and their cultural and artistic heritage...”

42. We emphasize that, in order for indigenous peoples freely to express their own identity and exercise their rights, they should be free from all forms of discrimination, which necessarily entails respect for their human rights and fundamental freedoms. Efforts are now being made to secure universal recognition for those rights in the negotiations on the draft declaration on the rights of indigenous peoples, including the following: to call themselves by their own names; to participate freely and on an equal footing in their country’s... cultural development; to maintain their own forms of organization, lifestyles, cultures and traditions; to maintain and use their own languages; to maintain their own economic structures in the areas where they live; to take part in the development of their educational systems and programmes...”

66. “We affirm that the ethnic, cultural, linguistic and religious identity of minorities, where they exist, must be protected and that persons belonging to such minorities should be treated equally and enjoy their human rights and fundamental freedoms without discrimination of any kind...”

Committee on Economic, Social and Cultural Rights (CESCR) General Comment No. 4, “the right to adequate housing” (1991)

8. (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.”

UNESCO Declaration on Race and Racial Prejudice (1978)

Article 5.1. “men and women [...] should respect the right of all groups to their own cultural identity and the development of their distinctive cultural life within the national and international context;”

✓ Popular sources

The European Charter for Human Rights in the City (2000)

Article XV. “*Right to Culture 1. The citizens have a right to culture in all its expressions, manifestations and modalities. 2. The municipal authorities, in cooperation with cultural associations and the private sector, promote the development of the urban cultural life with a respect for diversity. Public spaces are made available for cultural and social activities at the disposal of the citizens under conditions of equality for everyone.*”

Jerusalem Declaration (1995)

(Draft Charter of the Palestinian Housing Rights Movement)

1. “*...Housing and communities designed, built and managed in conformity with Palestinian culture and values to maintain our cultural identity and skills, to preserve our national heritage and to promote our sense of being and belonging to a place, so crucial to our survival as a people.*”

National Campaign for Housing Rights: Some Essential Points for Shaping State Intervention in Housing in India Today (1990)

VII. “*Housing is one of the more important expression of and vehicle for cultural identity and diversity.*”

8.3. Over-riding principles

Principles found in the initial Articles common to all the major international human rights treaties affirm standards of justice arising from the major legal systems of the world. These include principles of immediate application, such as the inalienable rights to self-determination; non-discrimination, in general; gender equality; and the rule of law, including access to justice and domestic application of the human rights contained in each treaty, particularly by adopting legislative measures.

In the case of economic, social and cultural rights, the International Covenant on Economic, Social and Cultural Rights (ICESCR) is the principle source of these rights in treaty form. The Covenant also clarifies that the State party's treaty obligation entails ensuring the “progressive realisation” of the rights “to the maximum of its available resources” (Article 2.1), including the human right to adequate housing (Article 11). Therefore, a process of realising the rights should not regress, but should ensure “the continuous improvement of living conditions” (Article 11).

The ICESCR's Article 2.1 also requires States to undertake steps, individually and through international assistance and cooperation, especially economic and technical, progressively to achieve the full realization of the covenanted rights by all appropriate means. Thus, States party to the Covenant bear an obligation to apply these principles extraterritorially and in their international relations. Therefore, “international cooperation” forms an important practical aspect of ESC rights application and, therefore, one of the principles over-riding States' duties to implement human rights.

Comprehensive monitoring of the human right to adequate housing requires assessing each entitlement (element) in light of the rights and corresponding obligations arising from these over-riding legal principles:

- **Self-determination**
- **Nondiscrimination**
- **Gender equality**
- **Rule of law**
- **Progressive realization (nonregressivity/nonretrogression)**
- **International cooperation**

The normative approach provided in the international human rights system prevails upon the monitor to pose a number of relevant questions related to implementation not only of the specific content of the particular right, but also these over-riding principles common to the principal human rights treaties and applicable to all rights. This section will guide the monitor in applying these six over-riding principles in the respect, defense, promotion and fulfilment of the human right to adequate housing and land.

✓ Self-determination

General description

The principle of equal rights and self-determination of peoples is considered to have been a general principle of international law arising from common State practice already at the founding of the League of Nations. However, self-determination was first codified in the Charter of the United Nations in 1945, which sets forth the purposes of the United Nations as:

2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace...⁷⁷⁰

The Charter's Article 55 stipulates further:

With a view to the creation of conditions of stability and well-being, which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

- a. higher standards of living, full employment, and conditions of economic and social progress and development;⁷⁷¹
- b. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and
- c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

Every State has the duty, therefore, through unilateral, bilateral and multilateral action to promote universal respect for, and observance of human rights and fundamental freedoms in accordance with the Charter. Its Article 2.2 clarifies the universal duty of State membership such that:

⁷⁷⁰ Charter of the United Nations, 26 June 1945, Article 1(2).

⁷⁷¹ *Ibid.*, Chapter IX, "International Economic and Social Co-operation," Article 55.

All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with the present Charter.

The principle of self-determination has been progressively reaffirmed and legally defined throughout the UN system since its founding.⁷⁷² The material significance of self-determination is further elaborated in the Covenants on human rights adopted in 1966.⁷⁷³ The common Article 1(2) of both the ICCPR and ICESCR sets forth that:

All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

How concerned persons/communities exercise an effective role in determining the terms by which they realize the human right to adequate housing is also a subject of the inalienable right of self-determination. Self-determination is the right of peoples, not of States. It is the State, however, that is the legal personality obliged to ensure the protection, defense, promotion and fulfillment of self-determination as a duty under international public law, as well as the essential legitimizing factor of the State itself.⁷⁷⁴

The concept of, and right to self-determination manifest in a spectrum of types and expressions of effective local control over developments and relations within a community and territory may involve either external or internal self-determination; that is, national independence as in the formal distinction of a self-determination unit with its own internationally recognized borders, a self-determination unit within the internationally recognized borders of a unitary State, or a community's⁷⁷⁵ effective control over developments and relations affecting it as an independent State.⁷⁷⁶

In its General Comment No. 12 on "the right of self-determination of peoples" (1984), The UN Human Rights Committee (HRC) gave its guidance on the corresponding obligations of States, with the following:

⁷⁷² For example, see Declaration on the Granting of Independence to Colonial Countries and Peoples (1960), preamble and Article 7; "Permanent sovereignty over natural resources," General Assembly resolution 1803 (XVII) (1962), preamble and paras. 1–2, 5–7; International Convention on the Elimination of All Forms of Racism and Racial Discrimination (1965), Articles 1 and 5; Declaration on Social Progress and Development (1969), Articles 2, 3 and Part II; Declaration on Principles of International Law (1970), preamble and, esp., "The principle of equal rights and self-determination of peoples"; ECOSOC Declaration on Race and Racial Prejudice (1978), Articles 1, 3, 5 and 9 Declaration on the Right to Development (1986) preamble and Article 1, 6 and 8.

⁷⁷³ International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI), 16 December 1966 (entered into force 3 January 1976 in accordance with Article 27); Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI), 16 December 1966 (entered into force 23 March 1966 1976 in accordance with Article 49).

⁷⁷⁴ Consistent with the principle of the Universal Declaration of Human Rights, Article 21, which states that "the will of the people shall be the basis of the authority of government."

⁷⁷⁵ While a standard legal definition of nation and people remains a subject of debate, the International Court of Justice has offered criteria for a community, having distinct rights as "a group of persons living in a given country or locality, having a race, religion, language and traditions of their own and united by the identity of race, religion, language and traditions in a sentiment of solidarity, with a view to preserving their traditions, maintaining their form of worship, insuring the instruction and upbringing of their children in accordance with the spirit and traditions of their race and rendering mutual assistance to each other," Permanent Court of International Justice, The Greco-Bulgarian "Communities" Advisory Opinion No. 17, 13 July 1939 (Leyden: Sijthoff, 1930), 21.

⁷⁷⁶ For a comprehensive consideration of the human right of self-determination and its applications, see Hurst Hannum. *Autonomy, Sovereignty, and Self-Determination: The Accommodation of Conflicting Rights* (Philadelphia: University of Pennsylvania Press, 1996).

1. In accordance with the purposes and principles of the Charter of the United Nations, Article 1 of the International Covenant on Civil and Political Rights recognizes that all peoples have the right of self-determination. The right of self-determination is of particular importance because its realization is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights. It is for that reason that States set forth the right of self-determination in a provision of positive law in both Covenants and placed this provision as Article 1 apart from and before all of the other rights in the two Covenants.

2. Article 1 [of ICCPR] enshrines an inalienable right of all peoples as described in its paragraphs 1 and 2. By virtue of that right they freely "determine their political status and freely pursue their economic, social and cultural development". The Article imposes on all States parties corresponding obligations. This right and the corresponding obligations concerning its implementation are interrelated with other provisions of the Covenant and rules of international law.

3. Although the reporting obligations of all States parties include Article 1, only some reports give detailed explanations regarding each of its paragraphs. The Committee has noted that many of them completely ignore Article 1, provide inadequate information in regard to it or confine themselves to a reference to election laws. The Committee considers it highly desirable that States parties' reports should contain information on each paragraph of Article 1.

4. With regard to paragraph 1 of Article 1, States parties should describe the constitutional and political processes which in practice allow the exercise of this right.

5. Paragraph 2 affirms a particular aspect of the economic content of the right of self-determination, namely the right of peoples, for their own ends, freely to "dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence." This right entails corresponding duties for all States and the international community. States should indicate any factors or difficulties which prevent the free disposal of their natural wealth and resources contrary to the provisions of this paragraph and to what extent that affects the enjoyment of other rights set forth in the Covenant.

6. Paragraph 3, in the Committee's opinion, is particularly important in that it imposes specific obligations on States parties, not only in relation to their own peoples but *vis-à-vis* all peoples which have not been able to exercise or have been deprived of the possibility of exercising their right to self-determination. The general nature of this paragraph is confirmed by its drafting history. It stipulates that "The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations". The obligations exist irrespective of whether a people entitled to self-determination depends on a State party to the Covenant or not. It follows that all States parties to the Covenant should take positive action to facilitate realization of and respect for the right of peoples to self-determination. Such positive action must be consistent with the States' obligations under the Charter of the United Nations and under international law: in particular, States must refrain from interfering in the internal affairs of other States and thereby adversely affecting the

exercise of the right to self-determination. The reports should contain information on the performance of these obligations and the measures taken to that end.

7. In connection with Article 1 of the Covenant, the Committee refers to other international instruments concerning the right of all peoples to self-determination, in particular the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, adopted by the General Assembly on 24 October 1970 (General Assembly resolution 2625 (XXV)).

8. The Committee considers that history has proved that the realization of and respect for the right of self-determination of peoples contributes to the establishment of friendly relations and cooperation between States and to strengthening international peace and understanding.

Self-determination applied to communities

The over-riding principle of self-determination in this "Toolkit" is inspired by classic (customary and treaty) law criteria, as well as popular claims to the same. In both senses, the claim is legally fixed in the common Article 1 of the human rights treaties. Using the ICESCR as a basic and integrated instrument, the "ToolKit" especially applies this over-riding principle to Article 11, which guarantees the human right to housing.

In making the case for ultimate "self-determination" at the community level, this "Toolkit" draws on a number of popular instruments (mostly written and collectively endorsed statements, but also those rooted in oral traditions) asserting the "right" of communities to determine their own destiny. "Community" also enjoys a legal definition (see below).

Self-determination becomes as vital as any other need that grounds other human rights, including those other over-riding principles of rule of law, nondiscrimination, gender equality and international cooperation consistent with all human rights. In their collective dimension, these all become community "needs" and, consequently, "rights" insofar as their absence leads to erosion and violation of a bundle of individual, stand-alone rights and can lead to the deprivation or demise of a community as such.

It should be noted that States and others have recognized the real problem of "ethnocide" and "cultural genocide" resulting from assimilation policies so as to compel the rewriting of the International Labour Organisation (ILO) Convention No. 107 on Indigenous and Tribal Populations in Independent Countries (1956), eventually to adopt the Indigenous and Tribal Peoples Convention No. 169 (1989). Relevant to the practice of self-determination is the question of land tenure, which ILO Convention No. 169 treats in Articles 13–19, while at the same time disclaiming that the term "people" in the Convention does not convey implications as a term of international law (i.e., conferring the right of self-determination).

However, it is the human consequence of the deprivation, rather than the legal "peoplehood," that makes self-determination vital for any putative victims. Therefore, collective self-determination becomes the right of communities as necessary, even if they are not (or not yet) internationally recognized as a "people" or "nation," the category To avoid the horrendous consequences of demise and deprivation, and to ensure survival of communities as a "right"—especially marginal and otherwise vulnerable ones such as those facing ethnic cleansing and/or elimination through military, administrative, globalization, forced eviction or development measures—local self-determination is vital, no matter what

assimilationist governments individually or jointly say. In human rights, it is the human who has the first and final subject of respect, protection, promotion and fulfillment.

That having been said, and recognizing that self-determination can be either internal or external, the international public law term of art "internal self-determination unit" applies in the case of group or community, and is subject to case-by-case interpretation. This could refer to the rightful place of a minority or an indigenous people. It could conceivably apply also to a community of urban poor, particularly if their survival and/or well-being is threatened and their self-determination then becomes a need/right and requisite to the realization of other rights (life, adequate housing, culture, health, etc.).

In any case, the claimant of self-determination, whether an external or internal type, must meet the challenge and legal test of asserting that the claim at any level does not conflict with—or at least is balanced with—the rights of others. That may mean, of course, ensuring that self-determination claims do not negate general ecological values, others' self-determination rights, the rights of women to gender equality, security of person, regional peace and security, etc.

What are the criteria for *bona fide* claimants to local self-determination in the terms of international law as developed? The criteria presented by Martínez-Cobo (*Study of Discrimination against Indigenous Peoples*, UN document E/CN.4/Sub.2/1986/7/Add.4) has grounded much of the self-determination thinking about indigenous peoplehood and the rights arising. Based on his criteria for indigenous "people," the characteristics constituting a community with the right to claim external or internal self-determination could also be that the community (1) predate the influx of "others," (2) possess distinct cultural attributes, (3) occupy an identifiable territory and (4) identify itself as a people/community having the right to self-determination.

Legally defining the subjects of self-determination

Definitions of "people" or "nation," the legal self-determination rights holders, are generally unpopular with States and their sitting governments, unless the definition applies to an existing "nation-state." Of course, very few States can claim adherence to this definition, that is, to contain a single native people or nation (except, perhaps, Portugal, excluding immigrants). The General Assembly has assumed the task of defining self-determination (particularly in resolution 1514(XV), 14 December 1960). That has been construed typically as applying to cases of decolonization (Angola, Algeria, Namibia, Mozambique, Palestine, Puerto Rico, etc.). In its Advisory Opinion on Namibia, the International Court of Justice recognized Namibians as a "people" and "nation" in light of the value of, and for the purpose of decolonization. Despite this legal reference, the actual definition of "people" and "nation" remains under debate for political and practical reasons.

In addition to the guidance on "people," including indigenous peoples, as explicit self-determination rights holders, we have an international law definition of what constitutes a "community." The "community" definition does not deviate significantly from the four-part construct that Martínez-Cobo offered (above). It comes to us from the first International Court in a case sorting out criteria for transferring the ethnically Greek and Turkish communities between the Republic of Turkey and Greece after the First World War:

A group of persons living in a given country or locality having a race, religion, language and tradition of their own and united in the identity of race, religion, language and tradition in a sentiment of solidarity, with a view to preserving traditions, maintaining their form of worship,

insuring the instruction and upbringing of their children in accordance with the spirit and traditions of their race and rendering mutual assistance to each other.⁷⁷⁷

Leaving aside the probability that the purpose of the Court's opinion (population transfer) would be legally impermissible today,⁷⁷⁸ the legal definition of "community" it provided is actually less ambiguous than that of "people" or "nation." The "people" definition remains elusive largely because some States find it a political Pandora's box that could challenge their jurisdiction and/or effective control over territory. Until now, some governments instead persist in proffering the legally vacuous term "indigenous populations," so that the legally more-significant term "people/s" would wane into disuse, as would also the corresponding rightful and self-preserving claims of its subjects to self-determination. However, if one is looking for a way to apply self-determination to "communities," one has this definition of the ICJ's predecessor as a reference.

Significant also is the fact that the Court's definitive Advisory Opinion was intended for a narrow and specific purpose. That was not to recognize an external self-determination right, but to rationalize a population transfer scheme that today would be considered a clear violation of international public law. That is not only because of the absence of consent and the obvious human suffering population transfer causes, but also because it deviates from the most basic concept of contemporary statecraft and democratic governance, which is that the State administer—including by way of implementing the right to self-determination—for *all* of its citizens. Population transfers and external self-determination claims, therefore, serve as a seismograph of a government's failure at effective statecraft.

This dissertation on self-determination has admittedly merged concepts and definitions of communities with peoples/nations, as the Permanent Court of International Justice effectively has done. Nonetheless, the values that sustain them are akin, and so should the safeguards that promise to prevent the worst of consequences arising from human rights violations against any identifiable group. In summary, self-determination has a local and community-based expression and basis as a right. For the purposes of advancing human rights through the "Toolkit," both "communities" as well as "nations/peoples" hold the right and responsibility to determine their own habitat, the essence of a people and/or community's survival and sustainability with dignity in its dwelling place.

Applied to cultural appropriateness of housing

Applied to cultural appropriateness of housing, the over-riding principle of self-determination traditionally means that every people and nation has the inalienable right to determine the culturally based criteria of housing and land in its administrative and territorial unit(s). This determination naturally must be made according to local specificity, reflecting the consent of the people subject to self-determination, but also within the obligations provided in the ICESCR and the CESCR's General Comment No. 4 (cited above). Therefore, for peoples, as such, or for other affected persons forming a community, a measure of self-determination, assured through "genuine consultation," is required to realize and sustain the cultural appropriateness of housing.

✓ Nondiscrimination

⁷⁷⁷ Permanent Court of International Justice, The Greco-Bulgarian "Communities," Advisory Opinion No. 17, 31 July 1930 (Leyden: Sijthoff, 1930), p. 21.

⁷⁷⁸ See report of the Special Rapporteurs Aun al-Khasawneh and Ribot Hatano, "The human rights dimensions of population transfer, including the implantation of settlers and settlements," E/CN.4/Sub.2/1993/17.

General description

Like self-determination, an inalienable human right common to the major legal systems throughout the world, a fundamental requisite of justice is the absence of discrimination on any arbitrary basis. Discrimination typically results in deprivation of human needs and rights.

Given its centrality, the principle of nondiscrimination, consequently, is an over-riding human rights principle embodied in the first Articles of each major human rights treaty. Nondiscrimination, and its corresponding State obligation to ensure nondiscrimination, are enshrined in the preamble of all international declarations and resolutions concerned with human rights matters, governance and the relations between and among States, nations and peoples.

Common to Article 2 in both the Covenants, nondiscrimination stands out as an over-riding principle with *immediate* application to all the rights contained in those instruments.⁷⁷⁹ The Covenants prohibit arbitrary preferential or punitive treatment and oblige States parties to undertake steps to ensure that rights be exercised without distinction or discrimination “of any kind [as to] race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”⁷⁸⁰

The International Convention on the Elimination of All Forms of Racial Discrimination (1965) defines discrimination as:

any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.⁷⁸¹

Article 5 of that Convention actually offers the historic first codification of the human right to housing, with particular reference to the over-riding principle of nondiscrimination. It reads:

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

In the Convention and its negotiation history, an important distinction emerges: While it is the obligation of States' parties and their governments to combat both “racism” and “racial discrimination,” the former is a state of mind that should be eradicated through measures including education and other efforts to bring about a cultural and social transformation toward antidiscrimination. The latter, “racial discrimination” is the actual activation of prejudice which, in its manifestation, is a material violation of the rights of others. Any official action or omission of practicing or condoning racial discrimination is a violation of an *immediate* obligation of the State, not subject to “progressive realization.”

⁷⁷⁹ For further guidance on the legal obligations to immediate implementation of the nondiscrimination principle applied to housing rights, see the report of the Special Rapporteur on Adequate Housing E/CN.4/2002/59.

⁷⁸⁰ ICESCR, Article 2.2; ICCPR, Article 2.1.

⁷⁸¹ Article 1, International Convention on the Elimination of All Forms of Racial Discrimination, adopted by General Assembly resolution 2106 (XX) of 21 December 1965, entered into force, 4 January 1969.

This distinction between (1) theoretical racism and (2) racial discrimination in practice has historic roots. It is found also in moral systems, as reflected in the Holy Qur'an, which recognizes the existence of prejudice, but, nevertheless, entreats against putting that into practice:

O you who believe, be upright for God, bearers of witness with justice; and let not hatred of a people incite you not to act equitably. Be just, [for] that is nearer to the observance of duty [the nearest thing to piety].⁷⁸²

This moral distinction was found relevant nearly one millennium later, during the French Revolution. Then, the revolutionary slogan and moral call to the Human Rights of Man and Citizen was "*liberté, égalité, fraternité*. While all three qualities were found desirable and necessary to build a new, democratic society, only liberty and equality could actually be legislated. Fraternity (or sorority) could be developed and encouraged by the State and civil society much more likely than it could be enforced. Nonetheless, a range of practical measures can be undertaken to nondiscrimination in actual practice.

Inherent in the principle of nondiscrimination is the understanding that programs formally providing advantages to persons and groups historically subject to discrimination are not considered to constitute unlawful discrimination. On the contrary, international public law calls upon States to provide additional assistance to those persons and groups subject to past and/or present discrimination, as in corrective/positive discrimination or affirmative action programs that redress foregoing patterns of deprivation.⁷⁸³

Applied to cultural appropriateness of housing

Applied to the cultural appropriateness of housing, the nondiscrimination principle ensures that individuals and groups are not deprived of opportunities to access culturally appropriate housing. Therefore, legal enforcement, protection and remedy should not be denied on the basis of race, color, creed, gender, sex, sexual orientation, political opinion, social or economic status, language, physical ability/disability, property, form of legitimate work, descent, or any other origin or arbitrary criterion. For indigenous, tribal or other land-based peoples, the State has the obligation to recognize their criteria for cultural appropriateness of their housing in law and in administrative matters. Likewise, no State possesses the legal authority to practice or condone *de jure* or *de facto* discrimination that leads to the loss or denial of culturally appropriate housing to any member of any group, particularly to the unfair advantage of another. This obligation of the State is immediate in nature, not to be delayed under pretexts of "progressive realization."⁷⁸⁴

This applies to the practice of racial discrimination, tribalism, nepotism and other forms of corruption that allow disproportionate benefits to family members or political partisans, as well as preferences given to groups such that produce sectarian, territorial or ethnic conflict. International public law also calls States to provide special assistance to persons and groups who have been subject to past and/or present discrimination, as in affirmative action programs that redress foregoing patterns of deprivation.⁷⁸⁵

⁷⁸² Chapter 5: The Food [al-Ma'da], Section 2: "Duty of Uprightness," verse 8. Maulana Muhammad Ali, transl. The Holy Qur'an (Lahore: Ahmadiyya Anjuman Isha'at Islam, 1963), p. 243.

⁷⁸³ See Marjorie Cohn, "Affirmative Action and the Equality Principle in Human Rights Treaties: United States' Violation of Its International Obligations," Virginia Journal of International Law, Vol. 43 (2002), 249-74.

⁷⁸⁴ For further guidance on the legal obligations to immediate implementation of the nondiscrimination principle applied to housing rights, see the report of the Special Rapporteur on Adequate Housing E/CN.4/2002/59.

⁷⁸⁵ See Marjorie Cohn, "Affirmative Action and the Equality Principle in Human Rights Treaties: United States' Violation of Its International Obligations," Virginia Journal of International Law, Vol. 43 (2002), 249-74.

✓ Gender equality

General description

Despite the universal acceptance of the principle of gender equality in international law, many women are denied equal treatment and discriminated against in their housing on the basis of sex or gender. Approximately one-third of the world's women may be homeless, living in inadequate housing and own less than one percent of the world's property.⁷⁸⁶ The intersectionality of poverty or other factors (i.e., class, indigenous, refugee, migration, caste, sexual orientation, ethnic minority, age, disability, widowhood, citizenship or nationality status, etc.) further marginalize women. In the context of the increased feminization of poverty, decreased access to public services, and destruction of natural environments, all of which are accelerating with the process of globalization, women are increasingly placed in situations where they do not have adequate housing.

The denial of adequate housing for women is a violation of women's human rights. It can also result in the violation of women's other human rights such as rights to life, livelihood, adequate food, employment and political participation (e.g., voting rights). In particular, the lack of adequate housing also can make women more vulnerable to various forms of violence against women (e.g., domestic violence, trafficking, sexual and gender-based violence against migrant workers etc.).

The right to nondiscrimination in gender relations, as an over-riding principle in human rights implementation, is generally stated in UDHR, Article 2 (nondiscrimination) and throughout the Declaration in its language of human rights for "everyone" and "all are equal before the law." More specifically, gender equality has emerged as a binding, over-riding principle in the two Covenants' common Article 3:

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all... rights set forth in the present Covenant.

This principle is further elaborated in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).⁷⁸⁷ Article 13 obliges States parties to take all appropriate measures to eliminate discrimination against women in areas of economic and social life, and to ensure women's equal right to bank loans, mortgages, and other forms of social credit. In Article 14, paragraph 2, CEDAW specifically addresses women's equal rights in human settlements as the right of women in rural areas to enjoy adequate standard of living conditions, particularly, in relation to housing sanitation, electricity and water supply, transportation, education, communications and access to credit. This extends explicitly to women's "equal treatment in land and agrarian reform as well as in land resettlement schemes." Article 15 also addresses women's equal right to conclude contracts and administer property; while Article 16, paragraph 1 (c) guarantees women's equal rights and responsibilities during marriage and its dissolution, including equal rights for both spouses in respect of ownership, acquisition, management, administration, enjoyment and disposition of property.

This legal norm is carried forward in the Beijing Platform for Action (BPFA), which calls on Governments to remove all obstacles for women in obtaining affordable housing and access

⁷⁸⁶ COHRE Fact Sheet on Women's Right to Housing, Land and Property.

⁷⁸⁷ Adopted and opened for signature, ratification and accession by General Assembly resolution 34/180, 18 December 1979; entered into force, 3 September 1981, in accordance with Article 27(1).

to land.⁷⁸⁸ This remains standard in the subsequent multilateral agreements formulated in the Istanbul Declaration and the Habitat Agenda (1996)⁷⁸⁹ and the World Summit on Sustainable Development (WSSD) Plan of Implementation (2002).⁷⁹⁰

The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (1997), which were developed for understanding and determining violations of economic, social and cultural rights, affirmed that, in order to eliminate discrimination against women's rights recognized in the Covenant, the State party should face the need and legal obligation to eliminate discrimination against women that arises out of social, cultural and other structural advantages.⁷⁹¹

Typically, for women the home is the single most important place in the world. Beyond shelter, it is a place for the vast majority of woman to generate income, care for children, and seek respite from violence and patriarchy in the community at large. For many still, it is the only place where women can participate fully in decisions and social activities.

Applied to cultural appropriateness of housing

The intersectionality of poverty or other factors (i.e., class, indigenous, refugee, migration, caste, sexual orientation, ethnic minority, age, disability, widowhood, citizenship or nationality status, etc.) further marginalize women as persons having cultural requirements in their home. In the context of the increased feminization of poverty, decreased access to public services and destruction of natural environments, all of which are accelerating in the current contexts of globalization, women are increasingly placed in situations where they do not have adequate housing, including by denying the cultural appropriateness of housing that, for example, lacks privacy.

Freely exercising one's own culture (cultural adequacy) is understood to mean allowing for cultural choice and expression within the human rights framework; that is, within limits beyond which the rights of others are adversely affected. Preserving a practice of unequal rights economic/social/cultural rights is not consistent with the present framework and likely would violate both the gender-equality provisions of the Covenant, as well as provisions of the Vienna Convention on the Law of Treaties (1969).⁷⁹²

✓ Rule of law

General description

In the over-riding principles pertaining to previously discussed forms of discrimination, human rights are, by their nature, equal, inalienable and universal. By this is meant that the criteria for applying the standards and norms are to be inconsistent in their application. One way to ensure that is through the formal and institutionalized rule of law.

⁷⁸⁸ Para 58(m).

⁷⁸⁹ Para 40 (b), 78 (e) and (g).

⁷⁹⁰ Para 67 (b).

⁷⁹¹ Related sources of gender equality for women in human settlements can be found in CEDAW Articles 1, 2(f), 3 and 5 (a); UDHR, Articles 2, 16, 17 and 25; UDHR, Articles 5 (d) (v) and (vi), 5 (e) (iii); ICERD, Article 2, para 1, Articles 3, 9, 16, 17, Article 23, para 4, ICCPR, Article 26; ICESCR, Article 2, para 2, Article 3, and Article 11, para 1; and CRC, Article 1, 16, para 1 and Article 27.

⁷⁹² The Vienna Convention sets forth, in Article 27, that "[A] party may not invoke the provisions of its internal law as justification to perform a treaty," and the customary law principle, arising from Article 8 of the Universal Declaration of Human Rights, states that "everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him [her] by the constitution or by law."

As enshrined in UDHR, Article 6, “Everyone has the right to recognition everywhere as a person before the law.” This right is codified in the ICCPR (Article 16), and is supported by regional instruments affirming the same.⁷⁹³ The equal inalienable and universal right to a fair trial, including the presumption of innocence, is enshrined in ICCPR,⁷⁹⁴ as well as the regional instruments.⁷⁹⁵

The law-abiding State and its officers must not withhold or impede remedies, apply the law inconsistently or arbitrarily, or exercise any form of discrimination that affects the human right to adequate housing. Inhabitants who have lost or undergone damage to their housing unjustly or illegally have the right to unobstructed access to legal remedy, including compensation for victims, which the State bears the corresponding obligation to respect, defend, promote and fulfill.

States are required to maintain the rule of law in order to ensure a consistent, predictable and accessible resolution of disputes with remedy and compensation for the victims. This covers the right of equal access to public services, such as law enforcement, public defense and judicial services. The conduct of law enforcement officers, prosecutors and judges can determine whether or not the rule of law is respected or violated. Therefore, there is a tremendous need for the State to train, discipline and rehabilitate legal enforcers and practitioners. In the case of police services, the use of force is required to follow strictly the principle of presumed innocence and the criteria of necessity and proportionality in case where State force is used.⁷⁹⁶ Where local statutory law may be silent on housing rights safeguards, lawyers and judges bear an extra professional duty to apply the human rights norms to the extent possible.

The principles of remedy and reparation have been firmly established in instruments declaratory of the human right to access to justice. Culminating the development of international law derived from the major legal systems in the world, the revised Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law (2003) outline the right and corresponding State obligations as follows:

VII. Victim’s Right to Remedy

Remedies for violations of international human rights and humanitarian law include the victim’s right to:

- (a) Access justice;
- (b) Reparation for harm suffered; and
- (c) Access the factual information concerning the violations.

VIII. Victims’ Right to Access Justice

A victim’s right of access to justice includes all available judicial, administrative and other public proceedings, mechanisms and modalities that exist under domestic laws, as well as under international law. Obligations arising under international law to secure the individual or collective right to access justice and

⁷⁹³ African Convention on Human and Peoples’ Rights, Article 5; Inter-American Convention on Human Rights, Article 3.

⁷⁹⁴ Article 10 reads: “Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his[her] rights and obligations and of any criminal charge before him[her].” [Bracketed text added.] Article 14.2 sets forth that “Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to the law.”

⁷⁹⁵ African Charter, Article 7; Inter-American Convention, Article 8; European Convention on Human Rights, Article 6.

⁷⁹⁶ Code of Conduct for Law Enforcement Officials, adopted by General Assembly resolution 34/169, 17 December 1979, Article 3; Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted at the Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August–7 September 1990, preamble and Articles 1–11.

fair and impartial proceedings should be made available under domestic laws. To that end, States should:

Make known, through public and private mechanisms, all available remedies for violations of international human rights and humanitarian law;

Take measures to minimize the inconvenience to victims, protect their privacy as appropriate, and ensure their safety from intimidation and retaliation, as well as that of their families and witnesses, before, during, and after judicial, administrative, or other proceedings that affect the interests of victims;

Facilitate assistance to victims seeking access to justice.

Make available all appropriate diplomatic and legal means to ensure that victims can exercise their rights to a remedy and reparation for violations of international human rights or humanitarian law.

In addition to individual access to justice, adequate provisions should also be made to allow groups of victims to present collective claims for reparation and to receive reparation collectively.

The right to an adequate, effective and prompt remedy against a violation of international human rights or humanitarian law includes all available international processes in which an individual may have legal standing and should be without prejudice to any other domestic remedies.⁷⁹⁷

The restitution of housing and property is one form of restitutive/restorative justice sought in the rule of law applied to housing rights violation victims. Efforts continue to develop these methods and disparate efforts, not least in the development of draft guidelines on restitution for refugees.⁷⁹⁸

Applied to cultural appropriateness of housing

In the case of a dispute over the cultural appropriateness of housing, the State bears an obligation to ensure that the rule of law is applied in a context of equality, inalienability and universality of rights, particularly with regard to the human right to adequate housing. In the case where the State (e.g., courts or police) play a role in such a dispute or its resolution, the State bears the responsibility to abide by its human rights obligations and refrain from violations of the right to housing, including the cultural appropriateness of housing. Such violations could arise from improper planning or implementation of projects, especially if relocations are involved. In all cases, the State, its agents and all those operating its jurisdiction must avoid forced eviction, other forms of violence, or other punitive behavior inconsistent with the rule-of-law principles in human rights norms.

The law-abiding State, its agents and offices must not withhold or deny culturally appropriate housing arbitrarily, or exercise any form of arbitrary discrimination against the tenure holder. Inhabitants who have lost their the culturally appropriate housing unjustly or illegally have the right to unobstructed access to legal remedy, including compensation for victims, for which the State bears the corresponding obligation.

✓ Nonretrogression/progressive realization

⁷⁹⁷ As revised in accordance with UN Commission on Human Rights resolution E/CN.4/2003/34 (2003).

⁷⁹⁸ Progress report of the Special Rapporteur, Paulo Sérgio Pinheiro, "Housing and property restitution in the context of the return of refugees and internally displaced persons," E/CN.4/Sub.2/2004/22, 2 June 2004.

General description

ICESCR's Article 2 identifies the State party's obligation to ensure the "progressive realisation" of ESC rights. That is widely interpreted to mean that the State party breaches this provision if it tolerates or causes "regressivity" in the enjoyment of the right. The relevant jurisprudence has established that, even in the case of scarce resources, the State must exert good-faith efforts, including through international cooperation, to advance—and not derogate—the enjoyment of ESC rights, including adequate housing and its constituent entitlements.

The treaty bodies have clarified further that neither political processes, domestic legislation, scarcity of resources, or agreements with other parties can be invoked to justify nonimplementation of human rights treaty obligations.⁷⁹⁹ For example, the binding nature of a treaty obligation is further clarified in the Vienna Convention on the Law of Treaties (1969), clarifying in its Articles 27 and 46, that invoking an internal law is not admissible as a justification for nonimplementation of a treaty obligation.⁸⁰⁰ To harmonize treaty obligations with local implementation, human rights obligations arising from the treaties and case law should guide policy formulation and decision-making processes in law-abiding States. Therefore, a process of realising the rights should not regress, but should ensure "the continuous improvement of living conditions" (Article 11).

This over-riding principle of "nonregressivity" has been reaffirmed in the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights (1986) and Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (1997),⁸⁰¹ as well as numerous cases of international jurisprudence through the monitoring functions of CESCR.

The many examples of globalization-era economic reforms demonstrate how the withdrawal of the State from its obligations to fulfill economic/social/cultural rights can lead to deprivation. The State nonetheless bears a covenanted obligation to ensure that economic policies do not make tenure more precarious and insecure, whether arising from domestic political change or pressures of an external actor, such as an international financial institution. In order to ensure "progressive realization," therefore, it is vital to ensure that the human right to adequate housing forms a part of the overall human rights framework for development policy, especially guiding international cooperation arrangements. This civilizing process requires improved coordination among the relevant government bodies, such as ministries of Justice, Finance and Foreign Affairs. This is not only out of domestic duty toward citizens for States to ensure that development partnerships effect "progressive realization," but also an extraterritorial obligation of the State party under ICESCR, Article 2.

The CESCR has commented also on the "core obligations" of States to implement the human right to adequate housing. It noted that, regardless of the state of development of any country, certain steps must be taken immediately, in addition to the over-riding principles of

⁷⁹⁹ Letter of CESCR Chairperson Mme. Virginia Bonoan-Dandan to S.E. M. Yaakov Levy, Permanent Representative, Permanent Mission of Israel to the United Nations Office and Specialized Agencies at Geneva, 11 May 2001, annex to Letter by the Chairperson of the Committee on Economic, Social and Cultural Rights to the President of ECOSOC (11 May 2001).

⁸⁰⁰ Article 27 (Internal law and observance of treaties): "A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to Article 46." Article 46 (Provisions of internal law regarding competence to conclude treaties) states that: 1. A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance. 2. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith."

⁸⁰¹ Text available at <http://ip.aaas.org/escrdocs.nsf/>.

human rights law. These include abstaining from measures that would impinge upon the right, as well as to engage positively in practices to facilitate the people's processes of groups seeking to improve their living conditions, in accordance with the specific elements outlined above.⁸⁰²

Applied to cultural appropriateness of housing

The State's offices and agents, as well as its guiding policies and legislation should ensure that arrangements affecting the cultural appropriateness of housing are becoming more effective. This means that new laws, plans or policies, as well as trends in official behavior and practice should reflect greater justice for all and protection for those vulnerable or victim to losing their culturally appropriate housing.

✓ International Cooperation

General description

States parties to both Covenants bear an obligation to implement human rights within a context of "international economic cooperation."⁸⁰³ The ICESCR's Article 2.1 requires States party to undertake steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

In the spirit of the numerous multilateral agreements on human rights and development, "progressive realization of ESC rights," as a borderless objective, logically engages "international cooperation" duties for States to conduct themselves accordingly through their relations with other States, nations and peoples:

In fraternity and solidarity
Domestically and extraterritorially
Individually, jointly and/or collectively.

The preamble of the United Nations Charter specifies the purposes of the world organization insofar as "we the peoples of the United Nations" are determined "to promote social progress and better standards of life in larger freedom." Article 1, para. 3 of the Charter sets out one of the UN's purposes as "to achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion."

Linking international cooperation and self-determination as essential to the peaceful order of the United Nations, the Charter's Article 55 reads:

With a view to the creation of conditions or stability and well-being[,] which are necessary for peace and friendly relations among nations based on respect for the principles of equal rights and self-determination of peoples, the United Nations

⁸⁰² "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." General Comment No. 4, para. 10.

⁸⁰³ Common Article 1.2.

shall promote universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

The Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations considers as essential:

the progressive development and codification of the following principles:... (d) the duty of States to cooperate with one another in accordance with the Charter;...(g) the principle that States shall fulfill in good faith the obligations assumed by them in accordance with the Charter, so as to secure their more-effective application within the international community would promote the realization of the purposes of the United Nations;...⁸⁰⁴

The UN States members share a duty to cooperate with one another, irrespective of their differences, to maintain international peace and security and promote international economic stability and progress, the general welfare of nations and international cooperation free from discrimination. To this noble end, the Declaration embodied by UN members commitments such that:

(c) States shall conduct their international relations in the economic, social, cultural, technical and trade fields in accordance with the principles of sovereign equality and nonintervention;

(d) States Members of the United Nations have the duty to take joint and separate action in cooperation with the United Nations in accordance with the relevant provisions of the Charter.

States should cooperate in the economic, social and cultural fields as well as in the field of science and technology and to the promotion of international cultural and educational progress. States should cooperate in the promotion of economic growth throughout the world, especially that of the developing countries.⁸⁰⁵

In addition to its Article 2, ICESCR also sets out to identify the UN systems itself as a vehicle for international cooperation to uphold the Covenant. The Covenant empowers ECOSOC to raise the Covenant-monitoring reports as a guide for UN technical assistance.⁸⁰⁶

Other instruments of international public law are dedicated to specifying norms for international cooperation agreements between and among States. Consistent with human rights norms and other *jus cogens* principles of law, the Vienna Convention, Article 53, provides clarity:

A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, peremptory norm of general international law is a norm accepted and recognized

⁸⁰⁴ Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly in its resolution 2625 (XXV) of 24 October 1970 Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly in its resolution 2625 (XXV) of 24 October 1970

⁸⁰⁵ Ibid.

⁸⁰⁶ Article 22 reads: "The Economic and Social Council may bring to the attention of other organs of the United Nations, their subsidiary organs and specialized agencies concerned with furnishing technical assistance any matters arising out of the reports referred to in this part of the present Covenant which [sic] may assist such bodies in deciding, each within its field of competence, on the advisability of international measures likely to contribute to the effective progressive implementation of the present Covenant."

by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

States parties adhering to the international law principles of international cooperation are required to behave extraterritorially consistent with the progressive realization of economic/social/cultural rights. For our purposes, this extends especially to the human right to adequate housing and land.

As a donor country, a State must ensure that the projects and programs it supports do not erode any of the entitlements contained in their right to adequate housing for inhabitants in beneficiary countries. That includes avoiding any action that leads to forced evictions, confiscation or demolition of housing. In the case of development assistance resulting in dislocation of inhabitants, all aspects of the undertaking are to be the subject of consultation with the affected persons, and the efforts should enhance legal security of tenure as a result within the covenanted human rights framework.

As a recipient country, structural adjustment, deregulated foreign investment, privatization and related measures typified by today's bilateral and multilateral arrangements assistance agreements and programs must be compatible with the human rights obligations of the affected State. Measures that deny or reduce tenure security would be illegal and unaccepted as a condition of the assistance. States parties to the human rights instruments have a self-preserving opportunity and responsibility to uphold their prior treaty obligations as a form of (moral, legal and practical) resistance to negotiation pressures or conditionalities that may derogate the terms of legal security of tenure for inhabitants.

As all human rights implementation ultimately is a local matter, regional instruments can be a source a greater specificity in determining of State obligations and practical measures needed to uphold economic, social and cultural rights. For example, the African Charter on Human and Peoples' Rights (1981) provides a broad agreement on the term of international cooperation in its Article 21: 1, which establishes that:

All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it. 2. In case of spoliation, the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation. 3. The free disposal of wealth and natural resources shall be exercised without prejudice to *the obligation of promoting international economic cooperation based on mutual respect, equitable exchange and the principles of international law*. 4. State Parties to the present Charter shall individually and collectively exercise the right to free disposal of their wealth and natural resources with a view to strengthening African Unity and solidarity. 5. *State Parties to the present Charter shall undertake to eliminate all forms of foreign exploitation particularly that practised by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources.* [Emphasis added.]

States Parties are required to review multilateral agreements on investment, trade-related intellectual property arrangements, poverty-reduction strategy papers (PRSPs), bilateral and multilateral relations in the World Trade Organization context, World Bank lending and assistance terms, and the International Monetary Fund programs operating in, or otherwise affecting the State, in order to ensure consistency with covenanted obligations and avoid either retrogressivity or violations of its citizens' ESC rights. The State party is obliged to

apply the Covenant *a priori* to ensure that any such conditionality would be subject to the ESC rights safeguards for its own inhabitants, and for those of another State party.

Privatization programs may lead to deprivation of the housing rights entitlement to tenure security. In the event of workers living in administrative housing who become laid off as part of a privatization or State-enterprise sell-off arrangement may lose their tenure altogether. Even in cases where local legislation is silent, international treaty obligations remain for the State party to defend the workers' human right to adequate housing by legal and enforceable protection for their secure tenure and all other housing rights entitlements.

As an extreme example of international cooperation conducted in explicit violation of ESC rights applying to adequate housing and secure tenure would be a scenario wherein a State engaged in, or condoning third parties to engage in acts or omissions that would contribute to population transfer or any of its related international crimes, such as mass deportations, ethnic cleansing, destruction of civilian or private property, implantation of settlers and settler colonies, or other forms of demographic manipulation of an internal or external self-determination unit. Duty prohibits States party from allowing public or private resources to accrue to settler colonies in an occupied territory, for example, or engage in any other acts or omissions that would facilitate another State party's violations of the Covenant or Convention in this way. There are numerous examples today in countries where these forms of violation continues unaddressed with the accomplice and collaboration of other States. Impunity still characterizes the conduct of many of these crimes, as the perpetrators have not yet been prosecuted at any level, including at the International Criminal Court.

A State's participation in international economic sanctions or blockades that lead to violations of the ESC rights of persons other than the State Party's own residents, citizens and nationals may lead to conditions that undermine housing rights. CESCR has provided guidance to States parties of the Covenant on ESCRs affected by sanctions regimes and subject to protection measures to avoid regressivity and violation.⁸⁰⁷

Direct provision, or participation in multilateral programs of development and financial assistance actually may lead to violations of rights embodied in the Covenant (e.g., stagnation, deterioration or denial of work, education, health or housing rights, forced eviction, etc.) and constitute a breach of treaty obligations. Specifically, ICESCR and its enshrined rights should guide and govern a State's policies and conduct in any multilateral institution that imposes economic conditionalities on other States or their agents that bring about a negative consequences effect inhabitants housing rights conditions. The legacy of development banks' support for forced evictions of all possible scales and levels of deprivation has become notorious, and States that promote, finance or engage directly or indirectly in making decisions or executing these policies may be in breach of their human rights treaty obligations.

Applied to cultural appropriateness of housing

International development cooperation, as well as trade and investment actually should improve the culturally appropriate features of housing locally. International public law requires that the various forms of assistance and cooperation, including commercial enterprise, respect and preserve cultural rights, including intellectual property. Any cross-border cooperation and investment in human settlements and/or in other sector should not

⁸⁰⁷ See CESCR General Comment No. 8, "the relationship between economic sanctions and respect for ESC rights."

affect the cultural appropriateness of housing negatively, nor homogenize housing at the expense of cultural values.

✓ Other principles of application

The principles discussed above are those explicitly stated in the major international human rights treaties. At the same time, we can consider additional principles and concepts that also guide the application of the human right to adequate housing. These arise from the international jurisprudence of individual State party reviews by the treaty-monitoring bodies, as well as from their General Comments and General Recommendations. They also come to us from popular claims of people's movements, from the political resolutions of the multilateral organizations, from expert opinions found in the legal literature, and from the evolving experience at implementing human rights. Three such principles of application for us to consider are known as the "indivisibility of rights," "minimum core obligations" and "universality."

Indivisibility

The concept of all human rights as indivisible is as practical as it is theoretical. It arises from the realization that, when we unpack the contents of a right, we encounter aspects of the other rights as well.

Take, for example, the "habitability" entitlement contained in the human right to adequate housing. The deterioration of the structural features of the home leaving the inhabitants exposed to the elements, or pollution in the immediate vicinity of the housing surely effect the enjoyment of the human right to "a standard of living adequate for the health and well-being of himself and of his family," as recognized in Article 25 of the 1948 Universal Declaration of Human Rights (UDHR), and codified as the "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health" in Article 12 of the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR).

Likewise, homelessness is a status synonymous with the denial of voting rights in most States, where registration and voting require a *domicile fixe*. Thus, the human right to adequate housing is linked with everyone's "right to take part in the government of his [sic] country, directly or through freely chosen representatives," as promised in UDHR (Article 21), and codified in the Covenant on Civil and Political Rights (ICCPR), in 1966, as everyone's "right to take part in public life, directly or through freely chosen representatives" (Article 25). Incorporating the experience of HIC members and others around the globe, it has become clear that our monitoring methodology calls our attention also to the "congruent" human right to participation and self-expression among the constituent entitlements of the human right to adequate housing.

Sorting, categorizing and distinguishing subjects of any kind can be a useful exercise that makes manageable order out of complexity and facilitates understanding. Human rights are no exception. However, in practice, we find that human rights are interdependent, and categorical separation can become artificial and actually impede understanding. One example is in the division of human rights found in the UDHR into the two, separate Covenants. The reason for adopting two basic Covenants, instead of one, is largely attributed to the divergent Cold War ideologies that dominated the General Assembly when it adopted the Covenants in 1966. Ideology is also the reason that one of the largest and wealthiest industrialized States has failed to ratify the ICESCR until today, and ideology also

prevailed to exclude a “human right to own property” from that Covenant, although that right is included in the UDHR (Article 17). Despite the false impression left by the Covenants dividing human rights into two instruments camps, the ICCPR’s nonetheless recognizes, in its preamble, that:

... in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights.

Without appreciating the over-riding principle of indivisibility, other distortions can arise. With civil and political rights traditionally gaining from more attention and specificity than economic/social/cultural rights (consistent with some Western Bloc preferences), some authors have proposed that we consider “generations” of rights.^{808[1]} Presenting distinct rights in such a priority order perpetuates the historic neglect of economic/social/cultural rights and promotes a logic that may culminate in violations. Nominating civil and political rights in a hierarchical order as “first generation” rights classifies economic/social/cultural rights as secondary: the “second generation” of rights. Group rights, as distinct from individual rights, environmental rights and, in certain cases, self-determination thus become degraded as “third generation.” This view is kept alive by a simple misunderstanding of “progressive” realization, required in ICESCR, such that slow realization of economic/social/cultural rights is acceptable and that all aspects of economic/social/cultural rights, as such, are subject to gradual implementation. The indivisibility of human rights belies such gradualist or generational notions. Therefore, this toolkit cannot accommodate the divisive, generational approach to human rights not for ideological reasons, but for the fact that theories neatly segregating rights are not sustained in practice.

It is with this recognition of the indivisibility of rights that CESCR commented:

...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....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.

^{808[1]} French jurist Karel Vasak is attributed with first proposing the division of human rights into three generations, while at the International Institute of Human Rights (Strasbourg), in 1979. His division adapted the French Revolution’s slogan of *Liberté, Égalité, Fraternité* as ordinal categories. The three generations are subsequently reflected in some of the rubrics of the European Charter of Fundamental Rights.

First-generation human rights deal essentially with liberty. In Vasak’s view, these are seen as fundamentally civil and political in nature and serve to protect the individual from excesses of the State. First-generation rights include, *inter alia*, freedom of speech, the right to a fair trial, and freedom of religion, as enshrined in Articles 3–21 of UDHR and ICCPR.

Second-generation human rights would be those related to equality, and are supposedly the social, economic, and cultural rights. This theory sees these essentially as positive rights; that is, actions that the State is required to provide to the people under its jurisdiction, as opposed to actions from which the State should refrain—e.g., forced eviction—in order to realize rights.

Third-generation human rights correspond with fraternity, or involving “solidarity.” They include group and collective rights, such as self-determination, economic and social development, sovereignty over natural resources, and the right to participate in the common heritage of mankind. Treated as third generation, the generational theory of rights presumes that these rights are not yet binding and dubiously judicial.

In an alternative explanation for the three-generational approach rests on the political divisions of the Cold War, where the West promoted allegedly first-generation (civil and political) rights, and the East promoted second-generation (economic, social and cultural) rights. The Third World (i.e., third priority in the putative hierarchy) promoted (third-generation), solidarity rights, as in the decolonization struggles of the 1970s, including decolonization processes delayed until today.

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.^{809[2]}

Core obligations

Alone, the very general reference to the human rights in treaty texts does not provide the specific guidance needed for States parties around the world to know their precise obligations. ICESCR's English-language version requires States to "take steps." The French texts calls on States "to act" (*s'engage à agir*) and, in Spanish, the Covenant requires States "to adopt measures" (*a adoptar medidas*), but offers little about what those steps/actions/measures should be, except to say that these should be "appropriate," "progressive" (nonregressive/ nonretrogressive), nondiscriminatory (nondiscrimination), involve international cooperation and include legislative measures (rule of law). Therefore, the treaty-monitoring bodies bear the task of issuing General Comments and General Recommendations to supply the needed specificity, based on international public law and the implementation experience of all States parties.

In its General Comment No. 3: "The nature of States parties' obligations,"^{810[3]} CESCR addressed the principle of "minimum core obligations":

...a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party. Thus, for example, a State party in which any significant number of individuals is deprived of ...basic shelter and housing...is, *prima facie*, failing to discharge its obligations under the Covenant. If the Covenant were to be read in such a way as not to establish such a minimum core obligation, it would be largely deprived of its *raison d'être*.^{811[4]}

The General Comment, like the Covenant, takes into consideration material limits of States. However, the Covenant's Article 2 (1) obligates each State party to take the necessary steps "to the maximum of its available resources," and the treaty body has determined that the nature of treaty obligations are such that a State bears a heavy burden of proof to demonstrate that "every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations."^{812[5]}

The "minimum core obligations" also include those appropriate steps to respect, defend, promote and fulfill the human right to adequate housing, like other economic/social/cultural rights, as a matter of immediate application. Among the appropriate measures, in addition to harmonizing domestic legislation with the covenanted rights, is to provide judicial remedies to victims within the national legal system. That would be among the most effective measures to ensure compliance with obligations to implement certain aspects of economic/social/cultural rights *immediately*, such as by ensuring nondiscrimination. The Committee has determined that it is "difficult to sustain" any suggestion that these immediate obligations are inherently non-self-executing. This legal authority is consistent also with the terms of the Vienna Convention on the Law of Treaties (1969), which provides that "A party may not invoke the provisions of its internal law as justification for its failure to perform a

^{809[2]} General Comment No. 4: "the right to adequate housing" (1991), para. 9.

^{810[3]} Adopted by the CESCR in its fifth session (1990), E/1991/23.

^{811[4]} *Ibid.*, para. 10.

^{812[5]} *Ibid.*

treaty.”^{813[6]} The treaty bodies have clarified further that neither political processes, domestic legislation, scarcity of resources, nor agreements with other parties could be invoked to justify nonimplementation of human rights treaty obligations.^{814[7]}

Nondiscrimination is perhaps the most obvious and urgent of the immediate principles in implementing the human right to adequate housing. CESCR has provided specific guidance such that, among other things, “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.”^{815[8]}

The measures needed for States parties to comply with obligations of immediate application include negative obligations. That is, many of the measures to realize the human right to adequate housing would require little more than the State and its agents to refrain from certain harmful practices, such as arbitrary house demolitions and forced eviction, or a meaningful commitment to enabling “self-help” or “social production of habitat” by affected groups. Such changes in State behavior would not require significant expenditure of public resources.

Universality

The principle of human rights’ “universality” is simply expressed in the UDHR’s recognition that “All human beings are born free and equal in dignity and rights” (Article 1). Everyone, without exception, is entitled to human rights by virtue of belonging to the human family. From a moral point of view, the universality of human rights is an essential principle if the human civilization is to advance for the better. In international law, the text of ICESCR also speaks consistently of right of “everyone,” which obliges States not to discriminate in adherence to minimum core obligations. In the field of housing, in particular, States are not permitted to interpret its minimum core obligations to apply selectively, that is, only to citizens, or only certain citizens, but also to ensure the human right to adequate housing is realized also for “everyone,” including residents, immigrants and migrant workers, etc. The only conditionality permitted in law is that the subjects of human rights qualify as members of the human family.

Before the Universal Declaration, the social movements, revolutions, antislavery struggles and intellectual contributions of the past have served as vehicles for the promotion of human rights that eventually have been incorporated into local and international law and practice. However, many of these famous accomplishments were limited in their substance or

^{813[6]} Vienna Convention on the Law of Treaties, signed at Vienna, 23 May 1969; entered into force, 27 January 1980, Article 27: “Internal law and observance of treaties.” The Article also goes on to state that “this rule is without prejudice to Article 46.” Article 46: “Provisions of internal law regarding competence to conclude treaties” states that “1. A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance. 2. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith.”

^{814[7]} Letter of CESCR Chairperson Mme. Virginia Bonoan-Dandan to S.E. M. Yaakov Levy, Permanent Representative, Permanent Mission of Israel to the United Nations Office and Specialized Agencies at Geneva, 11 May 2001, annex to Letter by the Chairperson of the Committee on Economic, Social and Cultural Rights to the President of ECOSOC (11 May 2001).

^{815[8]} General Comment No. 3: “The nature of States parties’ obligations,”^{815[8]} CESCR addressed the principle of “minimum core obligations,” adopted by the CESCR in its fifth session (1990), E/1991/23, para. 11.

^{815[9]} The Vienna Convention sets forth, in Article 27, that “[A] party may not invoke the provisions of its internal law as justification to perform a treaty,” and the customary law principle, arising from Article 8 of the Universal Declaration of Human Rights, states that “everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him [her] by the constitution or by law.”

application, geographically or socially, or were subject to reversal. Social science and philosophy have contributed greatly to the recognition of human rights, but have not carried the force of law. The recognition of the universality of human rights overcomes the shortcomings left by these otherwise-significant accomplishments:

Limits in scope of application:

- The rights and ethics delivered through the worlds moral systems, especially those found in the religions, also are limited in scope by the fact that they apply to adherents to a particular faith group, not applying universally;
- The Magna Carta of 1215 imposed limits on royal impunity that equate as new rights for citizens, especially property-owning citizens. However, this historical achievement had only local application in the geographical realm of the English king.

Exclusion of social sectors and substantive rights:

- The “American Revolution,” in the English colonies that eventually became the original United States of America, realized the right to self-determination as a legal right and *raison d'état*. However, the right to self-determination, as inalienable as it is, applied in the American Revolution case as a right limited only to the white colonizers who identified themselves as a distinct people. The remaining indigenous peoples—whom the settlers mostly largely and replaced—have yet to achieve their self-determination to this day;
- The French Revolution, for all its achievements, realized rights for individuals. French farmers and workers sought recognition of their group rights in the context of the revolution; however, its leadership rejected those expansive notions of rights and insisted on *liberté, égalité and fraternité* with an individual focus;
- The results of the Bolshevik Revolution institutionalized recognition of group rights for workers, etc.; however, rejected a right to property ownership. However ethically grounded the rationale for that omission, the denial of property rights also has emerged as a common tool for depriving persons, communities and entire peoples of their means of subsistence, thereby demonstrating, by its violations, the importance of that neglected human right.

Retgression:

- The antislavery movement in Haiti at the end of the 18th Century resulted in a democratic regime and Constitution under the leadership of former slave and eventual General Toussaint Louverture. However, the same France that produced the world-changing Revolution only 12 years before saw the French General Napoleon I crush the new democracy in 1801 for reasons of imperial interest, reversing the accomplishments of Haitian antislavery democracy, with consequences extending to this day.

Despite their shortcomings, these episodes in the gradual achievement of rights through local struggle all have contributed to the accumulation of human rights recognition as universally applicable. Human rights law today embodies that cumulative recognition into an international and universal code that seeks to leave no human group, geographical region or human need without mutual protection in the multilateral legal regime.

Universality of human rights now means that it is impermissible to neglect certain rights as if they were intended selectively for certain cultures, as if and people of other cultures deserve an inferior standard. Universality also means that no State or government is exempt from its obligations, either for reasons of specificity of local law, as the Vienna Convention has addressed, or to uphold traditional practices that violate rights or their over-riding principles of application.

Interpreting rights consistent with one's own culture (as in the cultural adequacy of housing) means applying locally specific options and idiomatic expressions consistent with the human rights framework. However, practices that preserve or condone unequal rights to secure tenure, inheritance or other entitlements of the human right to adequate housing are not consistent with the present framework and likely to violate both the gender-equality provisions of the Covenant, as well as essential provisions of the Vienna Convention on the Law of Treaties (1969).^{816[9]}

While local experience of application and struggle continue to provide specificity on how to realize human rights, reveal a variety of possible strategies and define emerging rights (such as the rights to water, land and energy), cultural specificity does not mean allowance for the derogation of rights to something short of the over-riding principles and entitlements reflected in this toolkit. As affirmed by moral arguments and legal authority, adequate housing is the right of everyone, everywhere.

Conclusion

The over-riding principles featured in the monitoring steps of this toolkit are those explicitly mentioned in the major human rights treaties. The "Other principles of application" are implied in the human rights instruments or recognized in international jurisprudence, but are not less important to keep in mind.

The HLRN toolkit attempts to go further than merely encouraging the monitor to keep these additional principles in mind, however. The toolkit's design actually incorporates all of these three principles, but without culling them out as additional steps in the monitoring process.

The indivisibility of rights is already present in the 12 entitlements; whereas, the first eight derive directly from the CESCR's General Comment No. 4 specifically on the right to housing. The "Congruent rights" derive from rights whose sources and concepts arise from the ICCPR, Refugee Convention and other instruments. Therefore, the housing rights entitlements themselves embody the indivisibility concept in a practical form.

The core minimum obligations applying in the case of the human right to adequate housing also are consistent with those entitlements outlined in the General Comment No. 4, which are embedded in this methodology (human right to adequate housing entitlements A–H). Naturally, the local specificity as to the nature and level of effort required to realize the human right to adequate housing is precisely your contribution through your monitoring effort, your critical process and by posing your solutions to problems in the field.

The universality of the human right to adequate housing is also inherent to this toolkit, by design. That is manifest in the wide range of international and regional instruments guaranteeing the right and incorporated into the Step 2 presentation of both the Sources in international law and Popular sources.

The good news is that, with these principles integrated in the design of the toolkit, you are able to apply them as a matter of course. Therefore, it would be unnecessary and redundant to create corresponding, additional tasks. By applying the methodology in this Housing and Land Rights Monitoring Toolkit, you will be putting all of these inter-related and interdependent principles into living practice.

8.4. Guarantees

Guarantees of the Human Right to Adequate Housing

We will now determine the existing assets guaranteeing the entitlements of the human right to adequate housing in your country situation. We can begin by making our assessment at the general and international level, then proceeding to the more instrumental and local level. The “guarantees” do not mean only legal provisions, but also institutional, policy and other assets that function to ensure, or at least contribute to implementation of the various contents of our human right to adequate housing.

Therefore, one should assess first the State’s current obligations by its ratification of international (and then regional) treaties recognizing the human right to adequate housing, its over-riding principles and its specific entitlements. Then this method would have us determine any similar guarantees in the national constitution (or equivalent). At the more-specific level of legislation, the inquiry should have us identify which statutes, regulations and even municipal ordinances actually guarantee the right or any entitlement within the right. Presumably, public policies, programs, institutions and budgets in place should form the practical implementation counterparts to complement these legal criteria and the respect, defense, promotion and fulfillment of the human right at the most-localized operational level.



Inquiry Begins Here

Following this logic, our line of inquiry on “guarantees” poses a number of questions for the monitor to provide the answer. Now your role will become more active. Accordingly, we will follow the method of assessing the guarantees in your country situation for implementation of the human right to adequate housing from general to specific, thus, focusing on:

- Ratifications and multilateral commitments:** Obligations arising from multilateral (international and regional) ratification of relevant treaties;
- Constitutional provisions** relevant to the human right to adequate housing and land;
- National legal system:** Legislation and other local law;
- Institutions:** both binding and bonding institutions, whether as a formal structure, or a more-customary, social character;
- Policies:** having nationwide application;
- Programs:** long-term, policy-based and systematic efforts;
- Projects:** having more temporary and localized application; and
- Budgets** of public institutions.

In that order, our line of inquiry will explore these guarantees for each of the twelve entitlements of the human right to adequate housing and land. You will likely find that you may already have the answers to many of these questions from the previous sections on “Sources” and “Over-riding Principles.” For instance, you have already learned about, and

identified many multilateral treaty instruments guaranteeing the human right to adequate housing. Now, you will be able to fill in the rest of the guarantees to complete the picture of how these norms translate into legal and functional assurances locally for this and every entitlement of our human right that you choose to monitor and assess.

This method ensures that the monitor take into consideration also the guarantees of the over-riding human rights principles (as explained above in “Over-riding principles applied to legal security of tenure and freedom from dispossession” in Step 3 of this toolkit). These principles, found in the first Articles of all the major human rights treaties, are to be generally and universally applied in order to ensure a context for the realization of all rights, not least the human right to adequate housing and land. Since these principles over-ride, or sit on top of the human rights framework applied to housing and land, they appear first in the list of questions in our line of inquiry. These questions include a list of legal instruments and commitments by States to guarantee these over-riding principles. (Please note that these are illustrative lists; they are not exclusive lists. You may know of other such guarantees, and you may find that some listed do not apply to your country situation.)

In the same way that we proceed from the general to the specific, the inquiry about the guarantees of the over-riding principles is followed by the more precise, practical guarantees that ensure the human right to adequate housing and land is made real in practice. Therefore, the systematic questions here include a test of (1) the present (general and contextual) guarantees for applying the over-riding principles of international human rights law in the case of the entitlement legal security of tenure and freedom from dispossession (i.e., self-determination, nondiscrimination, gender equality, rule of law, nonregressivity/nonretrogression and international cooperation), as well as (2) the (functional and specific) local guarantees of legal security of tenure and freedom from dispossession deriving from the guaranties listed above.

✓ Guarantees for applying the over-riding principles

Self-determination

Which international treaties has the State ratified, acceded to or succeeded to that guarantee that the principle of self-determination be applied, including in the housing context?

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention on the Elimination of All Forms of Racial Discrimination (1965)
- Convention on the Rights of the Child (1989)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- ILO No. 107 concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (1957)
- ILO Convention No. 169 concerning Indigenous Peoples in Independent Countries (1989)
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee that the principle of self-determination be applied, including in the housing context?

- Declaration on the Right to Development (1986)
- Declaration on Social Progress and Development (1969)
- Habitat II Agenda (1996)
- Istanbul Declaration (1996)
- Social Summit Declaration and Programme of Action (1995)
- Universal Declaration of Human Rights (1948)
- United Nations Commission on Human Rights resolutions
- UN General Assembly resolutions [various]
- Vienna Declaration and Programme of Action (1993)
- Durban Declaration and Programme of Action [of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] (2002)
- Johannesburg Declaration of the World Summit on Sustainable Development and Plan of Implementation (2001)

Which regional treaties has the State ratified, acceded to or succeeded to that guarantee that the principle of self-determination be applied, including in the housing context?

- African Charter on Human and Peoples Rights (1981)
- American Convention on Human Rights (1969)
- American Declaration of Human Rights (1948)
- Arab Charter on Human Rights (1994)
- (European) Convention for Protection of Human Rights and Fundamental Freedoms (1950)
- European Social Charter (1961)

Has the State participated in the adoption of multilateral agreements in the form of regional conferences, summits, or congresses, etc., or voted in favor of resolutions in regional organizations that guarantee that the principle of self-determination be applied, including in the housing context?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (2000)
- Rabat Declaration (1995)

Nondiscrimination

Which international treaties has the State ratified, acceded to or succeeded to that guarantee that the over-riding principle and human right to freedom from discrimination be applied, including also in the housing context?

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention on the Elimination of All Forms of Racial Discrimination (1965)
- Convention on the Rights of the Child (1989)
- International Covenant on Civil and Political Rights (1966)

- International Covenant on Economic, Social and Cultural Rights (1966)
- International Labour Organisation Convention No. 107 concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (1957)
- International Labour Organisation Convention No. 117 *on Social Policy (Basic Aims and Standards)* (1962)
- ILO Convention No. 169 concerning Indigenous Peoples in Independent Countries (1989)
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)
- Refugee Convention (1951)
- Convention relating to the Status of Stateless Persons (1954)
- Convention on the Reduction of Statelessness (1961)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee that the over-riding principle and human right to freedom from discrimination be applied, including also in the housing context?

- Declaration on Asylum (1967)
- Declaration on the Right to Development (1986)
- Declaration on Social Progress and Development (1969)
- Declaration on the Elimination of Violence against Women (1993)
- Habitat II Agenda (1996)
- Declaration on Cities and Other Human Settlements in the New Millennium [Habitat II+5 UNGAR S-25/2] (2001)
- UN Guidelines on Internally Displaced Persons (1998) [vote in favor of adoption in UNHRCR E/CN.4/1998/53/Add.2, dated 11 February 1998]
- International Labour Organisation Recommendation No. 162 concerning Older Workers (1980)
- Istanbul Declaration (1996)
- Rio Declaration and Agenda 21 (1992)
- Social Summit Declaration and Programme of Action (1995)
- Universal Declaration of Human Rights (1948)
- UN General Assembly resolutions [various]
- United Nations Commission on Human Rights resolutions [various]
- Vancouver Declaration Human Settlements (1976)
- Vienna Declaration and Programme of Action (1993)
- Durban Declaration and Programme of Action [of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] (2002)
- Johannesburg Declaration of the World Summit on Sustainable Development Plan of Implementation (2001)

Which regional treaties has the State ratified, acceded to or succeeded to that guarantee that the over-riding principle and human right to freedom from discrimination be applied, including also in the housing context?

- African Charter on Human and Peoples Rights (1981)
- American Convention on Human Rights (1969)
- Arab Charter on Human Rights (1994)
- (European) Convention for Protection of Human Rights and Fundamental Freedoms (1950)
- European Social Charter (1961)

Has the State participated in the adoption of multilateral agreements in the form of regional-level conferences, summits, or congresses, etc., or voted in favor of resolutions in regional organizations that guarantee application of the over-riding principle and human right to freedom from discrimination, including also in the housing context?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (2000)
- Rabat Declaration (1995)

Gender equality

Which international treaties has the State ratified, acceded to or succeeded to that guarantee the application of the over-riding principle of gender equality be applied, including also in the housing context?

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention on the Rights of the Child (1989)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- International Labour Organisation Convention No. 117 *on Social Policy (Basic Aims and Standards)* (1962)
- International Labour Organisation Convention No. 131 Concerning Minimum Wage Fixing, with Special Reference to Developing Countries (1970)
- International Labour Organisation Convention Recommendation No. 115 concerning Workers' Housing (1961)
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee the application of the over-riding principle of gender equality be applied, including also in the housing context?

- Declaration on Asylum (1967)
- Declaration on the Right to Development (1986)
- Declaration on Social Progress and Development (1969)
- Habitat II Agenda (1996)
- Declaration on Cities and Other Human Settlements in the New Millennium [Habitat II+5 UNGAR S-25/2] (2001)
- International Labour Organisation Recommendation No. 162 concerning Older Workers (1980)
- Istanbul Declaration (1996)
- Rio Declaration and Agenda 21 (1992)
- Social Summit Declaration and Programme of Action (1995)

- Universal Declaration of Human Rights (1948)
- United Nations Commission on Human Rights resolutions
- Vienna Declaration and Programme of Action (1993)
- Durban Declaration and Programme of Action [of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] (2002)
- Johannesburg Declaration of the World Summit on Sustainable Development and Plan of Implementation (2001)

Which regional treaties has the State ratified, acceded to or succeeded to that guarantee the application of the over-riding principle of gender equality be applied, including also in the housing context?

- African Charter on Human and Peoples Rights (1981)
- American Convention on Human Rights (1969)
- American Declaration of Human Rights (1948)
- Arab Charter on Human Rights (1994)
- (European) Convention for Protection of Human Rights and Fundamental Freedoms (1950)
- European Social Charter (1961)

Has the State participated in the adoption of multilateral agreements in the form of regional conferences, summits, or congresses, etc., or voted in favor of resolutions in regional organizations that guarantee the application of the over-riding principle of gender equality be applied, including also in the housing context?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (2000)
- Rabat Declaration (1995)

Rule of law

Which international treaties has the State ratified, acceded to or succeeded to that guarantee the State's application of the over-riding principle of the rule of law, which also extends to the housing sphere?

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention on the Elimination of All Forms of Racial Discrimination (1965)
- Convention on the Rights of the Child (1989)
- Rome Statute on the Establishment of the International Criminal Court (1998)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- International Labour Organisation Convention No. 107 concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (1957)

- International Labour Organisation Convention No. 117 on *Social Policy (Basic Aims and Standards)* (1962)
- International Labour Organisation Convention No. 131 Concerning Minimum Wage Fixing, with Special Reference to Developing Countries (1970)
- ILO Convention No. 169 concerning Indigenous Peoples in Independent Countries (1989)
- International Labour Organisation Convention Recommendation No. 115 concerning Workers' Housing (1961)
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)
- Refugee Convention (1951)
- Convention relating to the Status of Stateless Persons (1954)
- Convention on the Reduction of Statelessness (1961)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee the State's application of the over-riding principle of the rule of law, which also extends to the housing sphere?

- Declaration on Asylum (1967)
- Declaration on the Right to Development (1986)
- Declaration on Social Progress and Development (1969)
- Habitat II Agenda (1996)
- Declaration on Cities and Other Human Settlements in the New Millennium [Habitat II+5 UNGAR S-25/2] (2001)
- International Labour Organisation Recommendation No. 162 concerning Older Workers (1980)
- Istanbul Declaration (1996)
- Rio Declaration and Agenda 21 (1992)
- Social Summit Declaration and Programme of Action (1995)
- Universal Declaration of Human Rights (1948)
- United Nations Commission on Human Rights resolutions
- Vancouver Declaration Human Settlements (1976)
- Vienna Declaration and Programme of Action (1993)
- Durban Declaration and Programme of Action [of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] (2002)
- Johannesburg Declaration of the World Summit on Sustainable Development and Plan of Implementation (2001)

Which regional treaties has the State ratified, acceded to or succeeded to that guarantee the State's application of the over-riding principle of the rule of law, which also extends to the housing sphere?

- African Charter on Human and Peoples Rights (1981)
- American Convention on Human Rights (1969)
- American Declaration of Human Rights (1948)
- Arab Charter on Human Rights (1994)
- (European) Convention for Protection of Human Rights and Fundamental Freedoms (1950)
- European Social Charter (1961)

Has the State participated in the adoption of multilateral agreements in the form of regional conferences, summits, or congresses, etc., or voted in favor of resolutions in regional

organizations that guarantee the State's application of the over-riding principle of the rule of law, which also extends to the housing sphere?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (2000)
- Rabat Declaration (1995)

Nonregressivity/nonretrogression

Which international treaties has the State ratified, acceded to or succeeded to that guarantee the State's implementation of the principle of nonregressivity/nonretrogression in the respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human right to adequate housing and land?

- Convention on the Elimination of All Forms of Racial Discrimination (1965)
- Convention on the Rights of the Child (1989)
- International Covenant on Economic, Social and Cultural Rights (1966)
- International Labour Organisation Convention No. 117 *on Social Policy (Basic Aims and Standards)* (1962)
- International Labour Organisation Convention Recommendation No. 115 concerning Workers' Housing (1961)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee the State's implementation of the principle of nonregressivity/nonretrogression in the respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human right to adequate housing and land?

- Declaration on the Right to Development (1986)
- Declaration on Social Progress and Development (1969)
- Habitat II Agenda (1996)
- Declaration on Cities and Other Human Settlements in the New Millennium [Habitat II+5 UNGAR S-25/2] (2001)
- Istanbul Declaration (1996)
- Rio Declaration and Agenda 21 (1992)
- Social Summit Declaration and Programme of Action (1995)
- Universal Declaration of Human Rights (1948)
- United Nations Commission on Human Rights resolutions
- Vancouver Declaration Human Settlements (1976)
- Vienna Declaration and Programme of Action (1993)
- Durban Declaration and Programme of Action [of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] (2002)
- Johannesburg Declaration of the World Summit on Sustainable Development and Plan of Implementation (2001)

Which regional treaties has the State ratified, acceded to or succeeded to that guarantee the State's implementation of the principle of nonregressivity/nonretrogression in the respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human right to adequate housing and land?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (200)
- Rabat Declaration (1995)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee the State's implementation of the principle of nonregressivity/nonretrogression in the respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human right to adequate housing and land?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (2000)
- Rabat Declaration (1995)

International Cooperation

Which international treaties has the State ratified, acceded to or succeeded to that guarantee the State's implementation of the principle of international cooperation to ensure respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human rights to adequate housing and land?

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention on the Elimination of All Forms of Racial Discrimination (1965)
- Convention on the Rights of the Child (1989)
- Rome Statute on the Establishment of the International Criminal Court (1998)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- International Labour Organisation Convention No. 107 concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (1957)
- International Labour Organisation Convention No. 117 *on Social Policy (Basic Aims and Standards)* (1962)
- International Labour Organisation Convention No. 131 Concerning Minimum Wage Fixing, with Special Reference to Developing Countries (1970)

- ILO Convention No. 169 concerning Indigenous Peoples in Independent Countries (1989)
- International Labour Organisation Convention Recommendation No. 115 concerning Workers' Housing (1961)
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)
- Refugee Convention (1951)
- Convention relating to the Status of Stateless Persons (1954)
- Convention on the Reduction of Statelessness (1961)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee the State's implementation of the principle of international cooperation to ensure respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human rights to adequate housing and land?

- Agenda 21 (1992)
- Declaration on Environment and Development (1992)
- Declaration on Asylum (1967)
- Declaration on the Right to Development (1986)
- Declaration on Social Progress and Development (1969)
- Habitat II Agenda (1996)
- Declaration on Cities and Other Human Settlements in the New Millennium [Habitat II+5 UNGAR S-25/2] (2001)
- International Labour Organisation Recommendation No. 162 concerning Older Workers (1980)
- Istanbul Declaration (1996)
- Rio Declaration and Agenda 21 (1992)
- Social Summit Declaration and Programme of Action (1995)
- Universal Declaration of Human Rights (1948)
- United Nations Commission on Human Rights resolutions
- Vancouver Declaration Human Settlements (1976)
- Vienna Declaration and Programme of Action (1993)
- Durban Declaration and Programme of Action [of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] (2002)
- Johannesburg Declaration of the World Summit on Sustainable Development and Plan of Implementation (2001)

Which regional treaties has the State ratified, acceded to or succeeded to that guarantee the State's implementation of the principle of international cooperation to ensure respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human rights to adequate housing and land?

- African Charter on Human and Peoples Rights (1981)
- American Convention on Human Rights (1969)
- American Declaration of Human Rights (1948)
- Arab Charter on Human Rights (1994)
- (European) Convention for Protection of Human Rights and Fundamental Freedoms (1950)
- European Social Charter (1961)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international

organizations that guarantee the State's implementation of the principle of international cooperation to ensure respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human rights to adequate housing and land?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (2000)
- Rabat Declaration (1995)

What additional multilateral commitments has the State made to guarantee nondiscrimination in the respect, protection, promotion and fulfillment of the human right to adequate housing and, by extension, cultural appropriateness?

Do not forget that the body of the binding international treaties that the State already has ratified contains binding human rights obligations that take precedence over nonbinding declarations of mere intent or political will. Monitoring these obligations is the covenanted task of the treaty parties [ratifying States], which has been delegated to neutral treaty-monitoring bodies that are supported in their task by government and civil-society monitors. Keep in mind also that some multilateral declarations and many agreements with international financial and development institutions may contain standards less protective of human rights and freedoms than those of a binding nature under human rights treaties. Those agreements may even impede the enjoyment of economic/social/cultural rights. Such agreements are to be evaluated subject to prior human rights treaty obligations—not vice versa.

✓ Local guarantees

Ratifications and international commitments

Which international treaties has the State ratified (acceded or succeeded to) that guarantee the human right to adequate housing, in particular cultural appropriateness?

Constitutional provisions

- Does the State have a Constitution, or equivalent, guaranteeing the right to human right to housing and land, including cultural appropriateness?
- Does the State have a Constitution, or equivalent, guaranteeing the right to local self-determination?
- Does the State have a Constitution, or equivalent, guaranteeing the right to freedom from discrimination?
- Does the State have a Constitution, or equivalent, guaranteeing gender equality?
- Does the State have a Constitution, or equivalent, guaranteeing the rule of law, including access to justice and democratic participation and representation?

- Does the State have a Constitution, or equivalent, guaranteeing the right to the continuous improvement of living conditions?
- Does the State have a Constitution, or equivalent, providing that international relations be conducted within the framework and objectives of human rights, including economic, social and cultural rights?

National legal system

- Is the right to adequate housing, including cultural appropriateness recognized as a distinct right in the country's legal system?
- Is national and local legislation consistent with the human rights right to housing and land, including cultural appropriateness?
- Is national and local legislation consistent with the principle of local self-determination?
- Is national and local legislation consistent with the right to freedom from discrimination? What statutes has the State/government legislated, and are in force, to ensure nondiscrimination in the respect, defense, promotion and implementation of the human right to adequate housing, in particular, cultural appropriateness?
- Do the concerned persons or community have the sense that the terms of their entitlement to cultural appropriateness of housing are equal and consistent with others'?
- Does national and local law maintain the principle of gender equality, particular as it relates to housing, land and cultural appropriateness of housing?
- Do local and national laws and regulations uphold the rule of law, including access to justice and democratic participation and representation in matters related to housing, land and cultural appropriateness of housing?
- Does the State's legal system maintain the right to the continuous improvement of living conditions?
- Are the laws and regulations of the State consistent with the principle that international relations, including international entities operating locally, conduct themselves within the framework and objectives of human rights, including economic, social and cultural rights, in particular, the human right to adequate housing and land, including cultural appropriateness of housing?
- Does the performance of the law-enforcement services guarantee the practice and enforcement of the respect, defense, promotion and implementation of the human right to adequate housing, including cultural appropriateness of housing?
- Are judges and lawyers performing sufficiently and consistently to uphold the human right to adequate housing, including the entitlement of cultural appropriateness? What are some examples?

Institutions

- Is there a sense in the community that the State and government institutions represent their aspirations to self-determination?
- What State and public institutions exist as a guarantee of nondiscrimination in the respect, defense, promotion and implementation of the human right to adequate housing, in particular, cultural appropriateness?
- Do the concerned persons or community have the possibility to exercise an effective role in determining the terms and conditions of cultural appropriateness of housing?
- What State and public institutions exist as a guarantee of gender equality in the defense, promotion and implementation of the human right to adequate housing, in particular, cultural appropriateness?
- What private and nongovernmental institutions exist as a guarantee of gender equality in the defense, promotion and implementation of the human right to adequate housing, in particular, cultural appropriateness?
- What informal institutions (including social norms) function so as to help implement the human right to adequate housing and, in particular, cultural appropriateness?⁸¹⁷
- What social institutions and consistent social practices exist as a guarantee of gender equality in the defense, promotion and implementation of the human right to adequate housing, in particular, cultural appropriateness?
- How have these institutions actually improved capacity to protect, or actual protection of cultural appropriateness of housing for those in need?

Policies

- What statewide policies are in place and implemented to guarantee of the human right to adequate housing and, in particular, cultural appropriateness?

Keep in mind that the body of the binding international treaties that the State has ratified contain provisions that call for human rights to be implemented in the presence of the over-riding principles of self-determination, nondiscrimination, gender equality, the rule of law, international cooperation in the implementation of human rights, and progressive realization (nonregressivity/ nonretrogression) and the continuous improvement of living conditions.

- How have national policies enhanced local self-determination so as to ensure acceptable levels of cultural appropriateness of housing?
- How have national policies to ensure nondiscrimination positively affected cultural appropriateness of housing in the country?

⁸¹⁷ The operative concept of institutions here encompasses both bonding and bridging institutions. "Institutions," in this sense, involve the rules of the game under which formal and informal activity is conducted, and include public institutions, private institutions, collective practices and norms, as well as changing norms (e.g., brought about through the youth, technology, economic or demographic shifts, and other emerging behaviours). According to Douglas C. North, 1993 Nobel economics laureate, institutions are "humanly devised constraints that shape human interaction."

- How have national gender policies led to improvements in the conditions of cultural appropriateness in the housing sphere, especially for those in need?
- How have the State's policies on access to justice enhanced conditions of cultural appropriateness of housing, especially for those in need?
- How have national housing policies ensured the continuous improvement of living conditions, in particular the housing rights entitlement of cultural appropriateness, especially for those in need?
- In what ways have national housing policies ensured that international relations and international entities operating within the country respect, defend, promote and fulfil the human right to housing, in particular the entitlement of cultural appropriateness for those in need?
- To what extent have external parties positively influenced your country's official policies or practices in guaranteeing the entitlement to cultural appropriateness of housing?

Programs

- What progressive steps has the State made on a national scale in the past period (year[s], or since your last assessment) to improve housing rights, especially the entitlement of cultural appropriateness? (These may include: law reforms, improved infrastructure, more effective implementation methods, population registry programs, programs to consider ratification of international covenants, and evaluations of housing rights implementation, etc.)

Keep in mind that the body of binding international treaties that the State has ratified contain provisions that call for human rights to be implemented in the presence of the over-riding principles of self-determination, nondiscrimination, gender equality, the rule of law, international cooperation in the implementation of human rights, and progressive realization (nonregressivity/ nonretrogression) and the continuous improvement of living conditions.

- What private-sector or NGO programs are in place and implemented to guarantee the human right to adequate housing and, in particular, cultural appropriateness?
- How have these national programs enhanced local self-determination in a way that has improved the conditions of cultural appropriateness of housing?
- What national programs are completed, ongoing, or planned to ensure nondiscrimination positively affected cultural appropriateness of housing in the country?
- Are there any national gender programs completed, ongoing or planned with the purpose and effect of improving the conditions of cultural appropriateness in the housing sphere, especially for those in need? Do they cover land rights and inheritance issues?
- What are have the State's recent, present or future programs to enhance access to justice that are intended to improve housing and living conditions, especially for those in need? How have those programs implemented to date succeeded in enhancing cultural appropriateness of housing?

- How have national housing programs ensured the continuous improvement of living conditions, in particular the housing rights entitlement of cultural appropriateness, especially for those in need?
- In what ways have national housing programs ensured that international relations and international entities operating within the country respect, defend, promote and fulfil the human right to housing, in particular the entitlement of cultural appropriateness for those in need?
- Has the government in the concerned State cooperated with other State or non-State parties to find identify and adapt good practices locally to improve cultural appropriateness of housing for all those living there?

Projects

- What progressive actions has the State undertaken in the way of limited-scale or pilot projects in the past period (year[s], or since your last assessment) to improve housing rights, especially the entitlement of cultural appropriateness?
- What private-sector or NGO projects are in place and implemented to guarantee the human right to adequate housing and, in particular, cultural appropriateness?
- How have such local projects enhanced local self-determination in a way that has improved the conditions of cultural appropriateness of housing?
- What projects completed, ongoing, or planned to ensure nondiscrimination positively affected cultural appropriateness of housing in the country?
- Are there any gender-based projects completed, ongoing or planned with the purpose and effect of improving the conditions of cultural appropriateness in the housing sphere, especially for those in need? Do they cover land rights and inheritance issues?
- What are have the State's recent, present or future projects to enhance access to justice that are intended to improve housing and living conditions, especially for those in need? How have those programs implemented to date succeeded in enhancing cultural appropriateness of housing?
- How have these projects ensured the continuous improvement of living conditions, in particular the housing rights entitlement of cultural appropriateness, especially for those in need?
- In what ways have public or private projects ensured that international relations and international entities operating within the country respect, defend, promote and fulfil the human right to housing, in particular the entitlement of cultural appropriateness for those in need?
- Has the government in the concerned State cooperated with other State or non-State parties to find identify and adapt good practices locally through projects that actually improve cultural appropriateness of housing for all those living affected?
- Are there foreign State or foreign private interests operating projects affecting the housing and human settlements sector in the country and affecting the situation under

review? Are their roles positively affecting the enjoyment of cultural appropriateness of housing?

Budgets

- What public budgets are in place to guarantee the human right to adequate housing and, in particular, cultural appropriateness? How does the budget correspond to actual spending and implementation targets?
- Is the necessary public budget information available to conduct a multiyear assessment of the financial performance of policies, programs and projects affecting housing and living conditions of those vulnerable and needy inhabitants of the country?
- Does the public have access to the budgets of private companies and organizations operating in the housing sphere and having an effect on the housing rights entitlement of cultural appropriateness?
- Does the reliable budget information support the public claims of those responsible for the budgets intended for improvement of living conditions of the needy, particularly in the housing rights entitlement of cultural appropriateness?
- What international obligations and commitments affect the public budget with ramifications on the housing sector, including the entitlement of cultural appropriateness?
- What national obligations and commitments affect the public budget with ramifications on the housing sector, including the entitlement of cultural appropriateness?
- What financial policies affect the public budget with ramifications on the housing sector, including the entitlement of cultural appropriateness?

8.5. Obstacles, impediments, barriers

At the present stage in the monitoring process, you have well identified the elements arising from the human right and legal concept of adequate housing. You have completed the necessary review of international minimum standards that codify the right, along with the corresponding obligations on the ratifying State. Your process has taken you through the moral arguments of social movements and others, who are the very source of human rights throughout history. Those sources fill legal gaps and provide specificity to local human rights priorities and application. In your context, you also have identified which of the binding instruments and other theoretical guarantees apply to the case at hand.

At this point, you are advancing beyond the theoretical dimensions of the human right to adequate housing, its constituent elements and its guarantees. As a housing-and-land-rights monitor, you will now enter the practical dimension and assess the most difficult challenge in the field of human rights: implementation. The following sample questions guide the monitor to prepare needed data and arguments by detailing the present obstacles, impediments, barriers, threats and constraints that have brought about, or threaten to bring about a violation or deprivation of the right and the element of cultural adequacy of housing, which you are currently addressing.

When monitoring documenting any stage of this toolkit inquiry, or assessing the conditions affecting any right, it is essential to ensure the highest quality of information possible. It has been said often that information is power. In our case, this is especially true, but the degree of that power will depend largely on the following qualities of your information:

- Completeness
- Level of detail and specificity
- Date (freshness) of the information
- Integrity of the information (i.e., lack of contradictions)
- Effective (articulate, concise, understandable and correct) use of language
- Relevance: linkage to the question of housing and land rights implementation
- Credibility of source (reputation, effective presentation, link to issue and community)

In order to begin assessing the compatibility of the theoretical affirmations of the human right to housing and land with the local reality, you will determine now whether, and to what extent barriers, contradictions, obstacles, and impediments contribute to actual and/or potential violations of the entitlement to cultural adequacy of housing. This process is aided with the following battery of questions:

- Does deprivation of the housing rights entitlement to cultural adequacy derive from the denial of standards of privacy as a cultural value? [See the housing rights entitlement of "**Security and privacy**" in this toolkit.]
- Do the values of the concerned community involve cultural identity linked to a land of which they have been deprived? [See also the housing rights entitlement of "**Environmental goods and services**" in this toolkit.]
- Are the conditions of resettlement or the implantation of settlers introducing living conditions or practices incompatible with those of the indigenous population? [See also the housing rights entitlement of "**Resettlement, movement, nonrefoulement, return and restitution**" in this toolkit.]
- Are the prevailing terms and conditions of decision-making processes affecting housing and community development contradictory to the traditional institutions of the community? [See also the housing rights entitlement of "**Participation and self-expression**" in this toolkit.]

✓ **Obstacles to the over-riding principles**

Self-determination

- Are the people dissatisfied with the terms of their cultural adequacy of housing?
- Do the concerned persons or community lack the possibility to exercise an effective role in determining the terms of cultural adequacy of housing?
- Does the community lack sufficient information or capacity sufficiently to enjoy the human right to adequate housing, in particular, the entitlement of cultural adequacy? [See the "**Information, education, capacity and capacity building**" entitlement in this toolkit.]

- Is illiteracy an impediment to the community's access to sufficient information to enjoy the human right to adequate housing, in particular cultural adequacy? [See the "**Information, education, capacity and capacity building**" entitlement in this toolkit.]

Nondiscrimination

- To what extent is discrimination an issue in realizing the entitlement to cultural adequacy of housing?
- Is there (does the affected community report) any type of discrimination practiced randomly, occasionally or on the social level, or institutionalized in some form, affecting cultural adequacy of housing?
- What are the nature of the discrimination and its effects of the entitlement of cultural adequacy of housing?

Gender equality

- Is there any gender-based discrimination applied in realizing the entitlement to cultural adequacy of housing?
- Is the discrimination practiced randomly, occasionally or on the social level, or is it institutionalized in some form such that affects cultural adequacy of housing?
- Does local law on inheritance, divorce or other specialization fail to provide equal rights to males and females of all ages? How?

Rule of law

- Has the State failed to ratify any of the relevant international or regional treaties guaranteeing the human right to adequate housing?
- Has the State issued any reservations, declarations or understandings to international or regional treaties that possibly limit the affect of human right to adequate housing guarantees, particularly so as to affect the entitlement of cultural adequacy of housing?
- Has the State government failed to conduct a legal evaluation of housing rights implementation?
- Has the State government failed to present timely reports to the relevant treaty-monitoring bodies covering the human right to adequate housing?
- Has the State and its government failed to implement in good faith the Concluding Observations of the various treaty bodies concerning implementation of the human right to adequate housing?
- Do the three branches of government (judiciary, legislative and executive) operate with autonomous authority?
- Do the three branches of government coordinate to uphold and enforce a single system of law?

- Does the State lack a Constitution, or equivalent, guaranteeing gender equality?
- Does the State lack a Constitution, or equivalent, guaranteeing the rule of law, including access to justice and democratic participation and representation?
- Does the State lack a Constitution, or equivalent, guaranteeing the right to the continuous improvement of living conditions?
- Does the State lack a Constitution, or equivalent, providing that international relations be conducted within the framework and objectives of human rights, including economic, social and cultural rights?
- Does the country's legal system lack recognition of the human right to adequate housing, including cultural adequacy of housing?
- Do legal or procedural shortcomings impede the admissibility of claims invoking international treaty obligations in the defense of human right to adequate housing, in particular, the entitlement to cultural adequacy?
- Has the State failed to ratify the Rome Statute on the International Criminal Court, limiting the options to seek justice and remedy for gross violations of the human right to adequate housing?
- Does the political system in the country lack coordination among branches of executive, legislative and judicial government?
- Does the State lack a Constitution, or equivalent, guaranteeing the rule of law, including access to justice and democratic participation and representation?
- Has the legislature failed to harmonize national laws with international human rights treaty obligations in the formulation of policies affecting the human right to adequate housing, in particular, with affect on cultural adequacy?
- Are there contradictions in the national law affecting cultural adequacy of housing?
- Is there insufficient enforcement of laws and/or policies against arbitrary eviction enforced, including safeguards for vulnerable groups, such as: women, children, orphans, etc.?
- Do local authorities fail to recognize explicitly the application of the international human rights treaties that the State has signed and/or ratified and that guarantee the human right to adequate housing, including the entitlement of cultural adequacy of housing?
- Is national and local legislation inconsistent with the human rights right to housing and land, including cultural adequacy of housing?
- Is law enforcement inadequate to ensure enjoyment of the entitlement of cultural adequacy of housing?
- Are law enforcement officers in need of training in, and information about the human right to adequate housing in order to uphold the entitlement of cultural adequacy of housing?

- Do lawyers, prosecutors and/or judges lack awareness and training in the housing and land rights law in order to uphold and defend the entitlement of cultural adequacy of housing?
- Has the national court system failed in any way to admit claims of housing and land rights victims, including those whose entitlement to cultural adequacy of housing has been violated?
- Do the rule-of-law, regulations, or their enforcement fail to govern market forces effectively to ensure the respect, protection, promotion and fulfilment of the right to adequate housing (e.g., governing monopolies, procedures for legal redress)? How does fact affect the enjoyment of the housing rights entitlement to cultural adequacy of housing?
- Does local law restrict civil society associations from advocating rights or providing services that would advance the respect, defense, promotion and fulfillment of the human right to housing, including cultural adequacy?

Nonregressivity / nonretrogression

- Has the State failed to take steps to improve housing rights, especially affecting cultural adequacy of housing, in the past period (year[s], or since your last assessment)?
- Have new laws degraded protection of human right to adequate housing in the recent period, particularly affecting cultural adequacy of housing?
- Have new policies degraded protection or enjoyment of human right to adequate housing in the recent period, particularly affecting cultural adequacy of housing?
- Have national programs led to a decline in the enjoyment of human right to adequate housing in the recent period, particularly affecting cultural adequacy of housing?
- Have infrastructure or physical features of the built or natural environment led to a decline in the enjoyment of human right to adequate housing, particularly affecting cultural adequacy of housing?
- Have nationwide programs failed to improve, or led to a decline in, the enjoyment of human right to adequate housing, in particular the terms of cultural adequacy of housing?
- Have local projects supported by State or local authorities failed to improve, or led to a decline in, the enjoyment of human right to adequate housing, in particular the terms of cultural adequacy of housing?
- Have public budget allocations failed to improve, or led to a decline in, the enjoyment of human right to adequate housing, in particular the terms of cultural adequacy of housing?
- To what extent has the State government's efforts fallen short in the improvement the terms of cultural adequacy of housing, especially of the poor, vulnerable and minorities?

International cooperation

- Are foreign State or non-State interests operating in the housing and human settlements sector in the country and affecting the entitlement of cultural adequacy of housing? Are their roles negatively affecting the enjoyment of cultural adequacy of housing?
- To what extent have external parties (States, or international financial institutions) negatively influenced your country's official policies or practices in guaranteeing the right to cultural adequacy of housing?
- Has the State neglected to take steps, "individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources" and capacities to ensure (especially poor and vulnerable) people's cultural adequacy of housing?



✓ Local obstacles

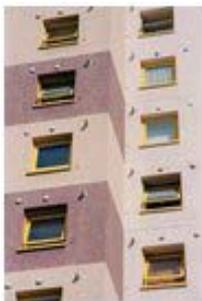
Institutions

- As far as human right to adequate housing and cultural adequacy of housing are concerned, are there gaps or shortcomings in the State, government and other public institutions positioned to improve living conditions, including the housing-rights entitlement of cultural adequacy of housing?
- Has there been a recent decrease in the quantity or quality of civil society institutions upon which the community now relies.
- Do the concerned private and nongovernmental institutions fail to guarantee gender equality in the defense, promotion and implementation of the human right to adequate housing, in particular, cultural adequacy of housing?
- What informal institutions (including social norms) function so as to impede the enjoyment of the human right to adequate housing and, in particular, cultural adequacy of housing?⁸¹⁸
- Do these institutions actually lack the will or capacity to protect legal cultural adequacy of housing for those in need?
- Do these institutions actually lack the will, knowledge or capacity to use the relevant treaty body Concluding Observations in work of monitoring and lobbying officials

Policies

⁸¹⁸ The operative concept of institutions here encompasses both bonding and bridging institutions. "Institutions," in this sense, involve the rules of the game under which formal and informal activity is conducted, and include public institutions, private institutions, collective practices and norms, as well as changing norms (e.g., brought about through the youth, technology, economic or demographic shifts, and other emerging behaviours). According to Douglas C. North, 1993 Nobel economics laureate, institutions are "humanly devised constraints that shape human interaction."

- Do the relevant ministries omit to incorporate international human rights treaty obligations in the formulation of policies affecting the human right to adequate housing, in particular, with affect on cultural adequacy?
- What statewide policies are still needed to guarantee of the human right to adequate housing and, in particular, cultural adequacy of housing?
- Have the relevant national policies neglected to ensure acceptable levels of self-determination in determining the terms and conditions of cultural adequacy of housing? How and why?
- Have national policies failed to reach their targets (even despite announcements of official intent) positively to affect cultural adequacy of housing? How and why?
- Have national gender policies led to improvements in the conditions of legal cultural adequacy of housing in the housing sphere, especially for those in need? How and why?
- Have the State's policies on access to justice failed to improve conditions of legal cultural adequacy of housing, especially for those in need?
- Have national housing policies failed to ensure the continuous improvement of living conditions, in particular, by stagnating or degrading the housing rights entitlement of cultural adequacy of housing, especially for those in need? How and why?
- Do national housing policies lack consideration of, and/or reference to the international human rights instruments relevant to the human right to adequate housing and cultural adequacy of housing, and to which the State is bound?



- To what extent have external parties negatively influenced your country's official policies or practices in guaranteeing the cultural adequacy of housing?
- Have State housing-policy implementing institutions omitted to seek international cooperation in the human right framework by conditioning international entities operating within the country also to respect, defend, promote and fulfil the human right to housing, in particular the entitlement of cultural adequacy of housing?

Programs

- What negative steps has the State taken on a national scale in the past period (year[s], or since your last assessment) to improve housing rights, especially the entitlement of cultural adequacy of housing? These may include declining legal assistance laws, deteriorating infrastructure without repair, declining implementation efforts?
- What related private-sector or NGO programs have failed to enhance the enjoyment of the human right to adequate housing, in particular, cultural adequacy of housing?
- Is there a lack of, and need for national gender programs completed, ongoing or planned with the purpose and effect of improving the conditions of legal cultural adequacy of housing in the housing sphere, especially for those in need?

- Do existing programs omit to cover land and inheritance rights?
- Have the intergovernmental relations declined between your State and others leading to a decline on options for international cooperation in advancing the respect, defense, promotion and/or fulfilment of the human right to adequate housing, in particular cultural adequacy of housing?
- Has the government in the concerned State declined to cooperate with other States, intergovernmental agencies, or foreign non-State parties to identify and adapt good practices locally to improve the entitlement to cultural adequacy of housing?

Projects

- What relevant State actions or omissions have led to the failure of limited-scale or pilot projects in the past period (year[s], or since your last assessment) to improve housing rights, especially the entitlement of cultural adequacy of housing?
- What private-sector or NGO projects have failed to seek, or fallen short of their intended goal to guarantee the human right to adequate housing and, in particular, cultural adequacy of housing?
- Have such local projects undermined local self-determination with negative effect on the conditions of cultural adequacy of housing? How and why?
- Are foreign State or foreign private interests operating projects negatively affecting the housing and human settlements sector in the country and affecting the entitlement of cultural adequacy of housing? How and why?
- Have projects conducted by local or international entities in the country privatized the provision of housing or public services replaced the role and responsibility of the State and local authorities to fulfil the human right to adequate housing, in particular the entitlement of cultural adequacy of housing for those in need?



Budgets

- Are there obstacles to obtaining adequate information about public expenditures in the housing sector, or in areas affecting the enjoyment of the human right to adequate housing, including cultural adequacy of housing?
- Is there a lack of legal and actual protection of the right to information, including information and documentation on public budget expenditures in the housing sphere related to the entitlement of cultural adequacy of housing?
- Are public budgets inadequate to guarantee the human right to adequate housing and, in particular, cultural adequacy of housing?

- Is there underspending of the budget such that impedes the achievement of policy, program or project implementation targets, affecting cultural adequacy of housing?
- Do public budget items and actual financial performance reflect a lack of sufficient priority given to implementing policies, programs and projects to improve housing and living conditions, affecting also cultural adequacy of housing, of those vulnerable and needy inhabitants of the country?
- Does the public have access to the budgets and financial performance data of private companies and organizations operating in the housing sphere and having an effect on the housing rights entitlement of cultural adequacy of housing?
- Does the reliable budget information contradict the public claims of officials and institutions responsible for the continuous improvement of living conditions of the needy, particularly in the housing rights entitlement of cultural adequacy of housing?
- Do international obligations and commitments negatively affect the public budget with ramifications on the housing sector, including with negative affect on the entitlement of cultural adequacy of housing?
- What national obligations and commitments affect the public budget with ramifications on the housing sector, including the entitlement of cultural adequacy of housing?
- What financial policies constrain the public budget with negative consequences on the housing sector, including the entitlement of cultural adequacy of housing?
- Is the achievement of cultural adequacy of housing accompanied by an inordinate economic burden?
- Is the State failing to regulate effectively the terms and conditions of housing market, so as to avoid corruption, collusion, fraud, discrimination, nepotism and any arbitrary criteria? How is this affecting the entitlement of cultural adequacy of housing?
- Is the State prohibiting or impeding individual and community initiatives toward obtaining cultural adequacy of housing, individually as well as collectively?
- Are State authorities permitting other parties to interfere with community efforts toward obtaining cultural adequacy of housing, individually as well as collectively?
- Are present government mechanisms and structures inefficient at assisting the needy population from gaining access to cultural adequacy of housing?
- Does the State lack needed resources to ensure cultural adequacy of housing, especially for the poor, vulnerable and needy?
- Does national political disharmony impede enjoyment of the human right to adequate housing and cultural adequacy of housing?
- Is there armed conflict in the country impeding the private and/or public institutions from carrying out development and delivering services that safeguard and improve cultural adequacy of housing conditions?

- ❑ Has a natural disaster inflicted parts of the country, creating conditions that negatively affect the human right to adequate housing, including the entitlement to cultural adequacy of housing? Do these conditions impede relief or reconstruction assistance by public and private actors?

8.6. The victims and vulnerable persons: the actors

At this step in the housing and land rights monitoring process, you will have to provide relevant facts and figures concerning the people who already have been affected and those who remain vulnerable. You should also identify and describe precisely which part of the population is affected.

Those affected (victims or vulnerable) individuals and groups could be, for example, an indigenous community historically undergoing discriminatory treatment and land confiscation. It is essential to report the number of affected people, among them proportions of children, women and other groups having special needs, such as the elderly, who may be particularly affected.

In your inquiry into the identities of the victims and the vulnerable inhabitants, it is vital that you determine the place and time, as well as the characteristics of the affected persons in the case. The numbers and any demographic data of the composition of the affected population are critical to understanding the case and characterizing the type of violations. The violation or vulnerability may be multidimensional (or intersectional), involving more than one form of discrimination. Knowing the victims and vulnerable persons can help determine which combinations of housing rights elements are simultaneously affected. In describing the population, knowing the particular vulnerabilities and special needs of the affected persons or community (whether arising from historical factors, gender, age or other demographics) complete the picture that you eventually will present to your intended audience.

✓ Distinguishing between the victims and vulnerable

It is also important for the monitor to distinguish between those victims, whom already have been violated, and those who are vulnerable to future violation or deprivation. Of course, this distinction will be strategically important later in the process, when the housing and land rights monitors and defenders choose an action in response to the violation. You will have to determine then if your intervention is to be remedial or preventive. In any case, an eye to those who remain vulnerable even after the principal violation, as well as after a particular solution to a case, will maintain the monitors focus—as necessary—on the further interventions needed toward the ultimate realization of the human right to adequate housing and land.

The following sample questions guide the monitor to prepare needed data and arguments, in the case of any present obstacles, but focusing on the human dimension in the case of a violation of the housing rights entitlement of cultural adequacy of housing.

Victims

- ❑ Identify the type and form of violation of the entitlement to cultural adequacy of housing:
Homelessness
 - Forced eviction
 - Arbitrary demolition

- Denial of equal inheritance rights
 - Confiscation of property by public officials and bodies
 - Confiscation by private actors (criminal gang, settlers, armed groups)
- Who has been affected by the violation of the entitlement of cultural adequacy of housing?
- How many people have been affected in the same way in the last year (any time period)? Does it demonstrate a pattern?
- Identify and provide demographic details of the victims:
- Numbers and proportions of refugees
 - Numbers and proportions of migrant workers
 - Numbers and proportions of minority persons
 - Numbers and proportions of males and females
 - Numbers and proportions of indigenous and/or tribal and semitribal people
 - Numbers and proportions of elderly, disabled, medically challenged persons with special needs
 - Numbers and proportions of members of groups subject to (current and historic) discrimination
 - Numbers and proportions of impoverished inhabitants, including those subject to discrimination on the basis of their economic status or work (e.g., Dalits)
 - Numbers and proportions of any other relevant group identity of victims
- Where does the violation of this right mostly occur (i.e., rural, urban, slums)?
- When does this violation mostly occur? Day or night? Weekend? Certain times of the year? Why does the violator choose this timing?

Vulnerable individuals and groups

- Identify the type and form of vulnerability to future violation of the entitlement to cultural adequacy of housing:
- Homelessness
 - Forced eviction
 - Arbitrary demolition
 - Denial of equal inheritance rights
 - Confiscation of property by public officials and bodies
 - Confiscation by private actors (criminal gang, settlers, armed groups)
- Who are the populations most likely to experience the violation of the right to cultural adequacy of housing? Why are they vulnerable?
- Identify and provide demographic details of the concerned vulnerable persons or groups:
- Numbers and proportions of refugees
 - Numbers and proportions of migrant workers
 - Numbers and proportions of minority persons
 - Numbers and proportions of males and females
 - Numbers and proportions of indigenous and/or tribal and semitribal people
 - Numbers and proportions of elderly, disabled, medically challenged persons with special needs

- Numbers and proportions of members of groups subject to (current and historic) discrimination
 - Numbers and proportions of impoverished inhabitants, including those subject to discrimination on the basis of their economic status or work (e.g., Dalits)
 - Numbers and proportions of any other relevant group identity of vulnerable persons
- Explain the insecurity of their situation and give details about the naturally vulnerable populations (women, children, indigenous, slum dwellers, refugees, workers/migrant workers, farmers, etc.).

Focus on multidimensional / intersectional affects

Your case will be enhanced when your information includes emphasis on the particular types of victimization or vulnerability by focusing on the social groups typically subject to multidimensional, or intersectional types of deprivation. The monitor should identify such multiple forms of deprivation for each of the groups already identified in this section (above). This step allows you to identify the nature and causes of the particular affects on certain groups who may be made vulnerable already in addition to, or in advance of the specific housing land rights violation, or anticipated violation. The following sample questions will lead you to clarify this point.

Women

- Are women in the given community or case subject to deprivation of their entitlement to cultural adequacy of housing?
- What are the reasons for this condition? Is it by some custom, religion or other ideological motivation?
- Does the practice of domestic or social violence against women somehow impede women's enjoyment of their entitlement to cultural adequacy of housing?
- Are the formal or informal terms of inheritance already biased against women in a way that negatively affects the enjoyment of the entitlement to cultural adequacy of housing?

Children

- Do housing conditions impede acceptable access to public goods and services as an element of the RAH, so as to obviate violence and abuse, including psychological & sexual abuse, within the home or community?
- Are housing conditions, in particular, the rights element of cultural adequacy of housing, suitable for children to carry out their studies?
- Are housing conditions, including cultural adequacy of housing, conducive to achieving the highest attainable standard of physical and mental health?

Racial, ethnic or other groups

- Who are the victims or vulnerable persons or community subject to discrimination that includes denial of cultural adequacy of housing?

- Have the affected persons or groups (either the vulnerable or the victims) been denied their right to suitable housing, and particularly to cultural adequacy of housing, because they belong to a specific minority, ethnic or indigenous group?
- How has historic discrimination, if any, affected the current situation?

✓ **Victims' case documentation form**

8.7. Losses/consequences

✓ **Quantification methodology**

Quantifying violations to the right to adequate housing: a tool for evaluating the effects of demolitions, confiscations and forced evictions

The purpose of this tool is to help determine the value of costs and losses that victims incur as a consequence of the violation their housing rights. Using this tool will aid in the various necessary stages of proper monitoring of specific violations of the right to housing, including:

1. Documentation and recording
2. Monitoring and reporting
3. Quantifying/evaluating
4. Identifying and solving problems
5. Follow-up assessments
6. Fact-finding missions
7. Public information and campaigns
8. Social mobilization
9. Media work
10. Compensation efforts
11. Legal defense and prosecution
12. Monitoring international obligations

The quantification methodology and “Loss Matrix” are designed to aid human rights workers responsible for each stage in the monitoring process, including interventions that are both preventive and remedial. These stages may involve the same individual human rights worker at each stage, or may involve a division of team labor. In either case, this tool also can serve as a vehicle for organizing tasks in a coordinated and complementary way, when more than one individual or organization is involved in the process. For instance, if different teams or organizations are specializing in respective geographical areas, applying this tool commonly aids the process to avoid duplication and the discrediting contradiction of facts.

Whether or not your monitoring objective is legal defense, policy analysis, compensation or public information, the quantification of the effects of the violation strengthen your argument and, consequently, help mobilize support for the movement to end, redress and compensate/obtain restitution for the violations. In particular, your findings will substantiate the assertion that many housing rights violations actually widen and deepen poverty, having a de-development effect on the community and country.

The material and otherwise-calculable costs resulting from the violation are determined for each unit (household) affected and then totaling them. Alternatively, in the case of multiple

units affected, a representative sample should be obtained to determine the average values, which then are to be multiplied by actual numbers of units affected.

Other incalculable losses still have to be recorded and reported in narrative terms. Such narrative explanation and analysis will be useful as an accompaniment to this quantification table.

Both short-term and long-term values are to be assessed. (You can follow examples of traffic dispute jurisprudence, or the law pertaining to insurance or divorce cases in your country to come up with a methodology of determining personal injury and pain-and-suffering damages claims for compensation purposes.) Accurate and thorough quantification of costs and losses calls for both a great deal of cooperation between the monitor and the affected community, and a continuous relationship over time. In order to capture many of the values, sustained monitoring and calculation are required over time. It is, therefore, recommended that such monitoring effort be undertaken or coordinated by those who maintain a program and commitment to the affected community over the long term.

This tool seeks to quantify the costs of victims, as well as public, or social costs. For our purposes, the principal victim(s) would be those persons whose property and lives are directly affected by the act, be it a demolition, confiscation and/or eviction, etc. (This tool would be used for any and all categories of violation.) Ancillary or indirect victims would be those who undergo the cost or other harm as a result of an act intended or directed at others. The indirect victims' losses and damage should be included in the overall assessment of the violation's effects.

The middle column, entitled "Methodology," in the quantification table found at the "**Loss Matrix**" link contains commentary on the contents of the calculated costs/losses and provides guidance on how to calculate them. It is there where you will record in your applied version of the "Loss Matrix" the type of items or values totaled under the particular type of cost/loss. There, too, you could cite whether or not the values are losses/costs to the principal victims only, or include those of indirect victims, such as those enduring collateral damage from a house demolition. The "Methodology" description should be as complete but concise as possible, within a short line or two.

It is possible to modify "Loss Matrix" to the user's discretion. (However, we emphasize that any modifications be shared among the community of monitors to ensure compatibility of findings.) For example, certain direct and indirect victims' losses may need to be separately calculated for some reason. In that case, an additional column can be added. In any case, however, it is important to arrive at a global cost figure for the violations under review. The column at the far right under each category of cost should be totaled using the imbedded Excel formula.

Follow the links to access the details of the quantification methodology and "**Loss Matrix**."

- Victim's material losses
- Victim's nonmaterial losses
- Other than victim's material losses (public costs)
- Other than victim's nonmaterial losses (including social costs)

Contents and methodology for determining each category of loss/costs

Victims' Material Losses

The Structure

The fair market value of the house, shelter or other structure(s). This is probably greater than the cost, as indicated in official records of the most recent tax assessment, for example. That price may be a guide, but is likely to be out of date with the value that would be obtained if the property were to be sold on the market. The market value would also likely be less than the “speculative value,” which is considered to be that value (price) that a speculator, investor or other interested party would anticipate after the demolition/eviction and after converting the structure—if partially retained—for eventual exchange or reassessment. The reference for determining the market value would be reliable real estate agents, banks, or other parties involved in the sale and exchange of such properties. The standard methodology would involve collecting three quotes/estimates and selecting the average, or taking the middle quote as the fair market value.

In the likely event that no such property market is actively issuing quotes on the value of the affected property. The remaining alternative method for determining market value would be the estimated cost of replacing the property at current market values.

Note that the victim incurring the loss in this case would be the owner(s) and or title holder(s), including those owning the property individually, or collectively, under formal title, or by traditional tenure systems.

Plot

The plot and the structure are considered separately in this methodology to accommodate systems where the two aspects of property value are determined separately, or by different methods. For example, a cooperative arrangement may provide for outright title to the structure, but a “share” of the land area under it. It also allows for disaggregating these values in the event of a dispute over one and not the other. In the event that the structure and the land are both held in title by the same owner and the values are customarily assessed in combination, the structure and plot values could be combined in the matrix.

The eviction and/or demolition may not involve the dispossession of land title or ownership of the plot on which the structure stands. In that case, the evaluator would proceed to the next categories and not enter a value for the plot. However, in some cases, such as in Israel, the land plot under a demolished structure may, perforce, be assumed by, or “revert to” the state as “state land” or “national land.” The evaluator must be familiar with the local laws and regulations to determine if that is the case in the event of an eviction or demolition. That may determine whether or not a value is entered in this category of the matrix or not.

In the case of a housing plot being confiscated by the state, determining the value of that plot may be difficult if, again, no market value can be determined for the affected area. In that case, the methodology would involve determining the cost at current market value of a comparable site in another location.

Contents

Each affected party should cooperate with the field workers to provide and inventory of the actual contents lost and damaged in the demolition. The value of those contents for this quantification purpose is the **replacement value** of the items, not the market value. The contents (furniture, clothing, foodstuffs, electronics, housewares items, etc.) would be subject to depreciation and the resale or fair-exchange values would not be sufficient to

cover the cost of replacement. The replacement value represents the actual cost of repurchasing items comparable in quality to those lost or damaged by the demolition. (For heirlooms and other items sentimental value, a replacement costs should be included in this category; however, the nonmaterial loss or irreplaceability should be expressed in the “Victims’ Nonmaterial Losses” section of the matrix, with a narrative either included in the matrix or attached to it.

Collateral damage

This section of the matrix allows for inclusion of the material losses to the indirect victims in particular, including neighbors’ and public property that are affected by the act. In cases of violent eviction or demolition, using bulldozer or explosives, for example, nearby property can be damaged in various degrees, or destroyed.

Infrastructure

This section refers to services and other infrastructure lost in the demolition/eviction/confiscation that would have to be replaced after the event. For example, electricity provided at the original site may have to be replaced by a generator or purchasing energy from an alternate source. Water, previously available from installed or nearby facilities may have to be replaced by purchasing water or hauling it from another source. The resulting added cost—including the relative cost of labor at the going rate of such work for hire, which is beyond the existing regular costs of obtaining same—is the value to be calculated here.

Business losses

If the demolition/eviction/confiscation results in the loss of a business, or a portion of business, that cost is to be included here. Those losses are the subject of subcategories to be detailed below.

Equipment/inventory

This includes the value of machinery and equipment, other installations, such as furnishings and built ins, as well as all stock and supplies. This should include also the property belonging to others lost or damaged in the event. For example, a laundry or repair service would hold clients’ property to be processed and returned. The values of those items are also to be included in this figure.

Prospective income

The loss resulting from inability to deliver goods and services, and the anticipate profit from existing stores, orders, contracts, etc. that would be unfulfilled due to the event. The short-term and long-term affects are to be calculated by different methods. This category of loss follows the method developed locally for determining “goodwill” as an asset, which would include the projected income from a pattern of business developed through the lifetime of the enterprise. [Refer to insurance law methods.]

Mortgage, other debts and penalties

The demolition/eviction/confiscation removes the owner's relationship with the land and/or structure, contents, livestock, inventory and other matters of material value, such as materials and work performed for physical improvement to the property. However, the event does not relieve the owner from responsibility to repay for those values obtained on a credit basis. Those values, including any penalties and increased interest resulting from the event, are to be included here for both the short-term and long-term. If a situation prevails, as in many legal systems, that a debtor relinquishes claims (as in a natural disaster, for example), then that cost should nonetheless be calculated and listed under the category of "Other than Victim's Losses."

Livestock

The value of livestock lost and the treatment of those injured by the event is calculated here. This would include also the labor costs for time spent in rounding up dispersed livestock at the rate of pay for such work for hire. The calculus for these values includes the loss of anticipated returns from normal sale of, and/or produce from the animals, including their normally anticipated progeny over the short-term and long-term. In the case of the animals' value as beasts of burden, the returns on their labor are to be included in the figures provided under lost revenue, increased transportation costs, returns from crop loss, or other appropriate category.

Land

The landed property not associated with the affected structure itself is to be calculated on the basis of fair market value, as with the structure and its plot entered above. This could be land adjacent to the dwelling or other affected structure, or land confiscated separately. This land could be lost entirely through confiscation, or its value could be reduced as a result of the eviction or demolition. In the case of eviction, land title might not be lost outright, but the conditions created by the eviction may prevent the owner(s) from returning to or reclaiming their land. In that case, the land in question would be calculated as an outright loss.

Trees/crops

The value of a lost or damaged nonfruit-bearing, or otherwise unharvestable tree or other vegetation would be determined by the cost of purchasing and replanting a comparable replacement. The nonmaterial, aesthetic, or sentimental value of the tree or other vegetation would be included by narrative in the Victim's Nonmaterial Losses item under Environment or Heritage, as appropriate. The value of harvestable trees and crops would include the value of the replacement itself for fruit-bearing trees and crops, as well as the (short-term and long-term) value of the harvest. The loss of timber would be calculated accordingly also, with the value being the anticipated return from the harvesting or sale of the tree itself.

The ecological loss of vegetation, depending on the nature of the event—if by demolition were by fire or other destructive means—also carries a value. Ecological damage is calculated on the basis of the restoration costs entailed. Collateral damage to wildlife and other natural assets, owing to the damage and the time required to restore it, may be of both a calculable and incalculable loss. Where possible, such calculable values should be included here. Otherwise, those losses are to be recorded in the narrative section of both the Victim's and Nonvictim's Nonmaterial Losses, for those losses would be of a more public nature.

Lost/decreased wages/income

The loss of a home, including subsequent short-term or long-term resettlement, may involve the loss of livelihood, whether that livelihood is linked to the dwelling and/or land lost. In any event, wages would inevitably be lost (to victim or her/his employer) for nonproductive time attending to the event and its aftermath. Resettlement can lead to loss of a job or jobs altogether, or necessitate securing alternative employment, especially if temporary or long-term resettlement is far from the regular workplace. To calculate that value, one would subtract the short-term and long-term wages and other income of affected persons from the normal, anticipated wages and other income before the event. Since obtaining new employment and other income involves a loss of certain benefits, such as accumulated vacation leave, seniority and other benefits, the relative loss of those values should be included here if calculable. Job seniority may not be calculable value in monetary terms if it involves merely standing vis-à-vis colleagues. However, if that seniority arguably would have led to promotion with material effect in the short or long terms, that value is to be factored here as well.

Health care

The event itself or its aftermath may have negative health consequences. Social science has recorded the effects of eviction and resettlement upon the increased mortality and morbidity rates of the affected communities. While these notable consequences belong among the Victim's Nonmaterial Losses, the care for these consequences has clearly calculable values. The loss of life, limb and other health effects are the subject of the laws of states for the purposes of calculating victim compensation in insurance and other cases involving law suits. A sample of such methods taken from such statutes could form a composite methodology for calculating victims' health losses here.

The overcrowding, such as in interim or alternative housing arrangements, often leads to negative health consequences for those evicted, as well as for those providing the alternative shelter in their own quarters. The care and treatment of these health consequences (such as influenza, scabies, malnutrition, etc.) are an additional value added to these health care costs.

Interim housing

Eviction, confiscation and demolition victims often seek alternative housing with relatives or friends, either within the community or elsewhere. This housing has a value, which is to be calculated on the basis of fair rental rates for such shelter, whether rent is paid or not. It remains a cost and value that is subsidized in one form or another. It also can lead to an actual expanded definition of what constitutes the victim, for persons and groups offering assistance in various forms can be counted as second tier victims by virtue of the loss—voluntary or otherwise—incurred as a result of servicing the persons directly affected by the eviction, confiscation or demolition.

Bureaucratic and legal fees

While under threat of a violation, such as eviction, demolition and confiscation, the eventual victim would likely undergo costs related to both time spent and out-of-pocket costs in order to restrain or defend against the impending violation (if the threat is known in advance). Both the time and monetary costs incurred by both bureaucratic processes and legal advice and

defense work should be quantified. Even if the legal advice given is free of charge to the affected person(s), those rendering the advice (NGO, CBO, other *pro bono* service) should put a value on that service for the purposes of this costing exercise. (The costs of bureaucratic efforts by public personnel is determined below under “Other than Victims’ Nonmaterial Costs.”)

Before the victim(s) can restore their proper housing, s/he conventionally undergoes a procedure and cost toward obtaining a license to rebuild or otherwise restore a dwelling. The costs incurred in this process, including fees, legal service, bribes and other out-of-pocket expenses should be included as a category in its own right.

Alternative/replacement housing

The cost of securing comparable housing on a permanent basis is represented here. (Temporary lodging costs are treated above under “Interim housing.”) The comparable housing is meant to include a dwelling with similar spatial dimensions, infrastructure, location and services as the home lost in the violation. This may involve calculation of the replaceable features of the original dwelling with some adjustments, depending on circumstances. For instance, a comparable dwelling space may be found near the source of livelihood, but may be in a differently priced market, and the adjusted figure would account for that. That dwelling may be comparable in most aspects, but lack services or infrastructure. In that case, the cost of obtaining the replacement services or infrastructure at the local rate would have to be added. Likewise, if the replacement housing is comparable to the original dwelling lost, but its location is less convenient for commuting to one’s source of livelihood or family and original community members, that additional transportation cost would be included in the “Transportation” item below.

Since this category of cost is of a more-or-less permanent nature, it should be cited in the “Long-term” cost column of the matrix. Typically, obtaining permanent replacement housing is a lengthy process; therefore, calculating this costs would be a subject for, and a further argument for follow up monitoring of violation cases.

Resettlement

The expenses of traveling and transport of goods to both interim and replacement housing sites form part of the resettlement cost. This, too, would likely involve the efforts and time on the part of several persons—with equivalent values—in order to locate and secure the short-term and long-term housing alternatives. All related costs should be calculated as much as possible.

Transportation costs

This category is the amount of difference between the amounts spent on transportation as a result of the eviction, demolition or confiscation and the amounts spent (if any) on transportation in the normal conduct of life at the original place of residence. Such values include expenses *and* time spent commuting to and from the source of livelihood, visiting family and community members, going to market, carrying out cultural and religious activities, visiting grave sites, conducting other official or private business, etc.

Victims’ nonmaterial losses

Health

In addition to the cost of medical treatment, the loss of health has a value seldom calculated in monetary terms. Methods for calculating the values of losses of life and limb can be found in local legal practice concerning divorce, traffic and insurance. This loss will have to be described in some detail in order to make your case.

Living space

A reduction in living space can have negative physical and emotional effects, as when an evicted family takes refuge with friends and relatives in small, temporary quarters. Consequences may include nervousness, loss of sleep or skin ailments. Be sure to describe this situation as part of the victim's experience.

Reconstruction licensing

Long waiting and frustration may result from the search for a license to rebuild after demolition, eviction or confiscation. This loss can be measured in time and stress, and should be included here.

Psychological harm

The victims may suffer mental stress and psychological harm, especially in the context of violence during eviction, or the trauma that accompanies homelessness after the violation. Children are particularly susceptible. Their story needs to be told. You may find criteria for quantifying the value of pain and suffering from the specialized practice of local law on traffic and insurance.

Disintegration of family

Displacement and other violations of adequate housing could lead to separation of family members and the deterioration of family relationships. With the psychological depression arising from housing and land loss, some victims may engage in antisocial behavior, such as violence or substance abuse that harms family relations.

Loss of community

Eviction, resettlement or land loss can fragment communities and reduce social capital built up over time. It can separate people from support systems (including child-care arrangements, domestic division of labor, etc.) upon which they depend for livelihood and social activities, while women bear an extra burden of maintaining an uprooted home.

Investment in infrastructure

Even—and especially—the most-impooverished communities have to invest in local infrastructure (e.g., electricity, water, transport, roads), particularly if the municipal institutions exclude them. Separation from these facilities by forced eviction, confiscation or demolition means a total loss of that investment, which may not be quantified, partly because they are the product of volunteer labor.

Investment in sanitation and waste-management systems

A community may provide its own waste-management solutions, however simple it may be, especially in the absence of public services. The vital functions of waste management may no longer be possible because of the separation, causing a loss of labor divisions or disposal options and spell a deterioration in the quality of life, including entitlements to environmental health as a result of the violation.

Investment in security protection systems

Informal communities are typically forced to seek their own security arrangements, since civil police may fail to serve them, or deteriorating living conditions may coincide with increased social violence.

Investment in educational infrastructure

Local communities' arrangements for popular education may be curtailed with eviction, leading also to the disruption of formal education (e.g., lost school days). Each home also is a locus of educational infrastructure, especially where children carry out their homework.

Heritage

For heirlooms and other items of sentimental value, as for land-based identity and culture, a replacement cost should be included in this category. However, the incalculable nonmaterial dimension, or irreplaceability should be expressed in the "Victims' Nonmaterial Losses" section of the matrix, with a narrative either included in the matrix or attached to it.

Victims' nonmaterial costs

Environment/ecology

Various forms of housing rights violation can spell the loss of environmental safety, health and recreation. Displacement and eviction sever the relationship between the inhabitants and their habitat. It may also force them to live in precarious or unsafe environments as a consequence.

Standing/seniority

A home owner who loses her/his housing also loses the status that comes with the property and securely tenured lifestyle. The formerly real or perceived capacity of the victims to advise and support others dissipates with the violation of their right to adequate housing, especially through land loss.

Relocating long-standing communities to new areas makes them low-status newcomers in competition with new, indigenous neighbors. Environmental degradation or rezoning may affect the status of a community negatively, leading to intangible—but sometimes also quantifiable—losses.

Political marginalization

Homeless people in many States are denied the right to vote for lack of a fixed address. Resettlement renders inhabitants politically weak vis-à-vis new neighbors, especially without the benefit of local connections and established relationships.

Social marginalization

Losing one's home and place to live often means losing also the social integration once enjoyed in the former residence. Spatial marginalization to the outskirts of the city may be synonymous with exclusion from social services and infrastructure.

Further vulnerabilities

The loss of home, land and social capital (i.e., productive relations within the community) can leave the victim(s) without protection from the natural elements, and/or without livelihood and sources of income. The homeless woman becomes further vulnerable to threats against her personal security and integrity long after the housing-rights violation.

Other-than-victims' material costs (public costs)

Police

The law enforcement officials engaged in either committing or remedying a housing and land rights violation, for example, represent a cost to the public purse. You can calculate their number, multiplied by the hours/days engaged and by corresponding wages and benefits to derive an estimate of the public costs incurred.

Bulldozers

In some cases (e.g., in Israel), courts issue orders to targeted inhabitants and communities to demolish their own homes. If they do not comply, the State carries out the deed and charges the victim for the service. In other cases, the housing rights monitor would have to calculate the cost of using the equipment and the wages of the operator to determine the public expenditure in carrying out that part of the violation.

Legal practitioners

Lawyers, either arguing against or defending housing and land rights, as well as judges, prosecutors and court staff dedicate time and materials that are covered from public budgets. Their level of effort and cost per unit of time (hours or days) could form a method of calculating these public costs.

Army

Military personnel and equipment used in the violation (or defense against a violation) also represent a cost. Quantifying these costs may be a more-elusive exercise, but it may be useful to pose estimates for your public's consideration.

Other forces

The public bodies may subcontract tasks and functions to private parties; however, those expenditures related to the case at hand would factor among the nonvictim's material costs.

Bureaucratic and personnel costs

The inspection, administrative processing, clerical and other desk work in public institutions may be carried out in connection with your case and paid by the tax payer. Your educated estimate of these values forms part of the public cost scenario.

Other-than-victims' nonmaterial costs

Social costs

Housing rights violations can be a cause or consequence of social unrest in a country. Depressed living conditions within a community often coincide with increased social violence, and dislocation often generates new adversary relations among inhabitants competing over territory and property, either at the original site, or in resettlement. Squalid living conditions also could give rise to practices and pathogens that bear a social cost in the form of declining public health.

Civic order

Linked to adequate housing and other economic and social rights, civic order typically deteriorates commensurate with the deprivation of living conditions. Resistance to eviction and forced relocation, demolitions and dispossession by any party is the natural response to a breakdown in civic order, including that characterized by the State omitting to implement its obligation to respect, defend, promote and fulfill the human right to adequate housing and land.

Political legitimacy

Depending on the facts and scale of a particular situation, a housing and land rights violation could undermine the legitimacy of the political party, government or even State in whose name the violation is committed. Alternatively, resolving and remedying a violation could have the opposite effect of recovering the loss of official credibility and legitimacy.

✓ **Loss matrix**

✓ **Housing contents inventory**

8.8. Duty holders

The professional monitor of the human right to adequate housing should provide a list as complete as possible of the duty holders both legally and morally responsible. This legal duty holder (i.e., the State and its agents) may be operating in conjunction with others in either the violation or the potential solution. The audience of your eventual action, whether they are the general public, journalists, or a prosecutor or judge, will need a clear and complete picture of the legal personalities, those who are responsible for their acts of commission and/or acts of omission, and who does what to whom, from the beginning to the present.

As borne out in the foregoing sections on sources of law and guarantees, the concerned State is always the principal duty holder. The State is the legal personality that is treaty bound by the obligation to respect, protect, promote and fulfil human rights, but also to aid those who have been deprived of them. The State's duties are threefold:

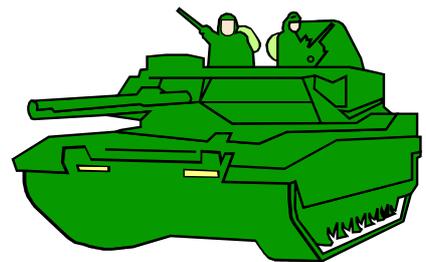
- To avoid deprivation,
- To protect and defend those facing deprivation,
- To provide remedy in the forms of assistance and justice to those deprived.

You may find that the State, as duty holder, has committed acts that cause deprivation, or omitted to protect or remedy a deprivation through the obstacles identified above. One might also find that the duty holder is constrained by other actors or factors, such as natural disaster, or global economic recession.

Identifiable institutions and man-made forces, either internal or external, may be known to contribute to a violation. These may include actors such as the International Monetary Fund (IMF), the World Bank, a multinational corporation or national planners. You may find that these parties are either directly or indirectly responsible for the deprivation, or conditions leading up to it. So, too, are factors such as debt or traditional social practices. Especially when the role of the State is passive (i.e., by denial or failure to protect and ensure remedy to the victims), other actors may come to the fore. Private companies, including multinational corporations, for instance, regularly acquire assets and carry out projects that involve forced evictions and land confiscation. In some cases, the regional and international development banks have their well-articulated policies on compensation/relocation. However, these companies may be the right hand of State policies, or implementers of international public projects. That is why it can be crucial to record the relations between the different actors forming a whole chain of duty holders.

One must not overlook the possibility that duty holders, particularly as violators owing remedy and restitution to victims, might also be members of the community, or even family members of the victim(s). Where does the State duty lie in such a situation?

As the legal personality obliged to respect, defend, promote and fulfil the human right to adequate housing, the State's duty lies squarely in the execution of its human rights obligations to regulate behavior of legal persons within its jurisdiction (and areas where it exercises effective control) in order to uphold rights. The human rights treaties and other instruments provide the guidance on how States—and statecraft—should address human rights violations by third parties not only as matters of civil or criminal law, but also as means to ensure the legitimacy of the concerned government, or even State itself.



To have a full outline of questions for identifying the duty holders and the applicable legal obligations, you can use this "Toolkit" very effectively, since each element of the right to adequate housing that you have identified as relevant to your case has corresponding duty holders.

Primary duty holders: State authorities

- Has the State failed to take to prevent the violation of housing rights, especially cultural adequacy of housing? What are those neglected steps?

- Has the State protected the impoverished and vulnerable inhabitants and aided the victims (e.g., by prosecution, return, compensation, etc.) in the violation of housing rights, especially cultural adequacy of housing? Which are the particular bodies responsible for these preventive and remedial steps?
- Has the State taken sufficient measures to promote the entitlement of cultural adequacy of housing (e.g., human rights education, campaigns, public-service announcements, awareness-raising publications, etc)? Which are the specific bodies responsible for those measures?
- What is the State's relationship with other duties holders regarding the assessed violations? Explain the nature of that relationship. Is it a contract, foreign aid package, nepotism, political patronage, etc.?

Secondary: Have other actors affected the denial of cultural adequacy of housing?

- Are other local, non-State actors somehow engaged in the denial of cultural adequacy of housing? Who are they and what is their role?
- What role do international financial institutions (IFIs) such as the World Bank, IMF, a regional development bank, or the World Trade Organisation have in determining the policies or conditions affecting cultural adequacy of housing in the affected community/country?
- What role and influence do multinational corporations or international development agencies have in determining the policies or conditions of cultural adequacy of housing in the affected community/country?
- How are these secondary duty holders responsible for the violation of the right to cultural adequacy of housing? To what extent do they influence State policies, programs, and laws having an effect on the violation?
- Do the secondary duty holders have internal policies/codes of conduct regarding housing rights, especially affecting the entitlement to cultural adequacy of housing? If so, are they publicly accessible?
- What are the relevant details of those policies or codes? How do they protect the human right to adequate housing and the entitlement of cultural adequacy of housing?
- Are these conditions part of an implementation contract or other cooperative agreement with State bodies or other partners?
- Before implementation, do they study the impact the projects will have or consider the possible unintended consequences?
- If there are several secondary duty holders, what is their relationship to each other, and how do they share responsibility for the assessed violation of the entitlement to cultural adequacy of housing? What is the relationship between each of them and the State?

- Do local authorities lack sufficient autonomy in housing and community development to apply locally relevant options to ensure the human right to adequate housing, especially cultural adequacy of housing?
- Do local authorities use their autonomy to protect and influence the central authorities of the State in a positive way, or do they participate in the violation and denial of the State's obligations and national policies?

Assessment

- To what extent is the State responsible for the vulnerability or violation of the housing rights entitlement to cultural adequacy of housing?
- To what extent are non-State actors responsible for the vulnerability or violation of the housing rights entitlement to cultural adequacy of housing?

8.9. Actions

The following table of actions (comprised of both preparation and implementation tasks) arranges a variety of possible problem-solving options for you by categorizing them for organizational and selective decision-making purposes. It is not an exhaustive set of options, but merely part of an array of possibilities for you to undertake with the affected community, depending on the present strengths (assets), weaknesses (liabilities), opportunities and threats.

Before selecting your actions, you should conduct a strategic planning exercise. For guidance click [here](#).

Footnotes shown here refer to relevant manuals, training materials, expertise, trainers, recorded experiences and/or methodologies already available to guide your chosen action toward a desired goal/result/solution. Toolkit users are encouraged to consult the HIC-HLRN website regularly for updates and further reference (www.hlrn.org) on constantly evolving updates, including strategies and practices arising from experiences throughout the global HIC and HIC-HLRN community.

Action		Solution
Preparation	Implementation	
Alternative tenure options		
Gather information for community to consider	Develop "limited equity cooperatives" ⁸¹⁹	Legal secure tenure in adequate housing and

⁸¹⁹ The limited-equity cooperative is a form of housing tenure in which shareholder residents manage their buildings, within limits imposed by a charter, and have the right to get back what they have paid for their shares plus an allowance for improvements, if and when they decide to leave. See Duncan Kennedy, "The Limited Equity Coop as a Vehicle for Affordable Housing in a Race and Class Divided Society," 46 Howard Law Journal 85-125, 85 (Fall 2002).

tenure options	Inform and train community in pursuing land-tenure options ⁸²⁰	sustainable land
Community capacity building		
Conduct training for community on their human right to adequate housing ⁸²¹	Mobilize community in local and national human rights campaigns	Greater community participation in projects, programs and policy formulation with well-defined human rights orientations
Legal service organizations and centers provide legal advice and representation to disadvantaged individuals and communities ⁸²²	Organize popular resistance to HRAH violations (demonstrations, petitions, sit-ins, street theater, etc.) ⁸²³	Community blocks housing rights violations by State and non-State entities
<i>Pro bono</i> (volunteer) lawyers provide legal advice and representation to disadvantaged individuals and communities	Organize national campaign on RAH ⁸²⁴	Coordinated community action and reaction to influence State authorities on housing policies
Build capacity of community-based and other civil society organizations to manage projects and campaigns ⁸²⁵		CBOs and NGOs more capable to support the affected people in responding rapidly and effectively to crises/violations
Train communities (in HRAH, strategic planning, technical skills, etc.) ⁸²⁶	Public agencies provide adequate technical, marketing and research assistance to disadvantaged community	Community better able to mount specific alternatives to official plans

⁸²⁰ Luanne Warnock, *Sharing the Cost of Land Tenure and Stewardship* (Davis CA: Sustainable Agriculture Research and Education Program, University of California, 1996).

⁸²¹ See Circle of Rights (Washington: 2000); Jules N. Pretty, Irene Guijt, John Thompson and Ian Scoones, *Participatory Learning and Action, A Trainer's Guide* (London: International Institute for Environment and Development, 1995), available from Earthprint at www.earthprint.com; also materials of Peoples' Movement for Human Rights Education, <http://www.pdhre.org>.

⁸²² Gridley Hall and Burton Fretz, "Legal Services in the Third World," *Clearinghouse Review* (December 1990); Jose Diokno, *Developmental Legal Aid in Rural Asean: Problems and Prospects* (Washington: 1981); Richard J. Wilson and Jennifer Rasmussen, *Promoting Justice: A Practical Guide to Strategic Human Rights Lawyering* (Washington: Human Rights Law Group: 2001).

⁸²³ Morjane Baba, *Guérilla Kit* (Paris: La Découverte, 2003) ; Mike Prokosh and Laura Raymond, *The Global Activist's Manual: Local Ways to Change the World* (New York: Nation Books, 2002).

⁸²⁴ "Global Struggle and National Focus Note" (Geneva: HIC, 1996).

⁸²⁵ Kaplan, Allan, *The Development of Capacity* (Geneva: UN Nongovernmental Liaison Service, 1999); Goggey, Shirley, *Rural Community Resource Centers: A Guide for Developing Countries* (London and Basingstoke: MacMillan, 1988).

⁸²⁶ Barrameda, Teresita V. and Lea I. Espallardo, *Learning, Reflecting and Acting for a Human Rights Future: A Training Manual for the Education of the Human Right to Housing in Urban Communities* (Quezon City: Process, Inc. and New York: PDHRE, 2000).

	on an affirmative-action basis	
Raise public awareness toward social mobilization through public education ⁸²⁷	Mobilize peaceful public protests to housing rights violations	Prevent forced evictions
Enhance monitoring-and-documentation skills and methods (e.g., archiving, statistics, multimedia, etc.) to build strong argumentation ⁸²⁸	Urgent Action appeals (organize regional and/or international mobilization) ⁸²⁹	Convince public of violations and need for resolution
	Public-information campaigns ⁸³⁰	
Design and implement alternative planning (community generated techniques in the people's initiative to design their own living environment) ⁸³¹		Participatory alternative housing projects adapted to the community's needs
Conduct an inventory (enumeration) of community human resources and social capital ⁸³²	Organize and divide volunteer labor of affected communities; and to areas to develop alternative plans	Community housing and built environment upgraded on-site as alternative to relocation.
	Community representatives lobby officials and legislators to cooperate with/approve community-proposed alternatives	Obtain adequate relocation site with suitable location, environmental conditions and livelihood options
Community organizing		

⁸²⁷ Writing for change: An interactive guide to effective writing, writing for science, writing for advocacy [CD and user's guide] (Oxford: fahamu and IDRC, 2000); International Human Rights Internship Program, Ripple in Still Water: Reflections by Activists on Local- and National- Level Work on Economic, Social and Cultural Rights (Washington: University of Minnesota Human Rights Resource Center, 1997), Chapter 6, online at <http://www1.umn.edu/humanrts/edumat/IHRIP/ripple/toc.html>; Allan McChesney, Promoting and Defending Economic, Social and Cultural Rights: A Handbook (Washington: AAAS and HURIDOCS, 2000) Chapter 7 online at: <http://shr.aaas.org/escr/handbook/>.

⁸²⁸ For guidance and methodology in documenting housing rights cases, see HLRN, Urgent Action! HLRN Guide to Practical Solidarity for Defending the Human Right to Adequate Housing [Arabic, English, French and Spanish versions] (Cairo: HLRN, 2003); and HIC Housing and Land Rights Network website: www.hlrn.org.

⁸²⁹ For guidance and methodology in building housing rights cases argumentation and mobilise solidarity, see HLRN, Urgent Action! HLRN Guide to Practical Solidarity for Defending the Human Right to Adequate Housing [Arabic, English, French and Spanish versions] (Cairo: HLRN, 2003); and HIC Housing and Land Rights Network website: www.hlrn.org.

⁸³⁰ Strategic Campaigning (London: Amnesty International, 2003).

⁸³¹ Youth in Unity for Voluntary Action--YUVA and University of Tasmania, "Settlement Upgrading Manual) [Sakkardara alterantive plan] (October 2000); UNCHS, Human Settlements Development through Community Participation (Nairobi, UNCHS, 1991); Nick Waters, The Community Planning Handbook: How People Can Shape Their Cities, Towns and Villages in Any Part of the World (London: Earthscan, 2001).

⁸³² Ibid.

Consult with community representatives and conduct an inventory (enumeration) of community human resources and social capital	Establish a tenants union ⁸³³	Community presents a common position in defense of its rights and interests
Identify and locate absentee landlord ⁸³⁴		
Cooperate and negotiate ⁸³⁵		
Learn/use conflict resolution techniques and, including alternative dispute resolution ⁸³⁶	Decriminalize actions taken to obtain elements of HRAH	Administrative recognition of tenure and the human right to adequate housing of people without economic access
Mobilize inhabitants	Organize squatter actions and squatter-empowerment interventions ⁸³⁷	
Cooperate with National Human Rights Institutions ⁸³⁸	Propose and lobby for the implementation of National Plans of Action for Human Rights ⁸³⁹	National housing shortage, upgrading needs and land conflicts addressed in a National Plan of Action with provision for law and policy reform

⁸³³ Tenant organizing resources” on the National Alliance of HUD Tenants website: <http://www.saveourhomes.org/>. Practical steps for forming a tenants union can be found on http://www.radio4all.org/aia/pro_tenant.html.

⁸³⁴ “Who is my landlord anyway?” (Seattle: The Tenants Union, 2004), go to <http://www.tenantsunion.org/research.html>.

⁸³⁵ For a collection of popular experiences in government-nongovernment cooperation in the field of human settlements, see Habitat International Coalition, Building the City with the People: New Trends in Community Initiatives with Local Governments (Mexico City: Habitat International Coalition, 1997), contents also available on line at HIC General Secretariat website, at <http://www.hic-net.org/library.asp>.

⁸³⁶ American Arbitration Association (AAA), Grievance Mediation Procedures (New York: AAA, 1992); AAA, Resolving Your Disputes (New York: AAA, 1993); American Bar Association, Alternative Dispute Resolution: An ADR Primer (Washington: Standing Committee on Dispute Resolution, 1989); Carpenter, Susan L. and W.J.D. Kennedy, Managing Public Disputes: A Practical Guide to Handling and Reaching Agreements (San Francisco: Jossey-Bass Publisher, 1988); Cochrane, Michael G. ed., Attorneys General and New Methods of Dispute Resolution (Washington: American Bar Association, 1990); Costantino, Cathy, A. and Merchant, Christina, S. Designing Conflict Management Systems (San Francisco: Josey-Bass Publisher, 1996); Edelman, Lester, Frank Carr, and James L. Creighton, The MiniTrial (Ft. Belvoir VA: U.S. Army Corps of Engineers Institute for Water Resources, 1989); Edelman, Lester, Frank Carr, Charles Lancaster, and James L. Creighton, Non-Binding Arbitration (Ft. Belvoir VA: U.S. Army Corps of Engineers Institute for Water Resources, 1990); Fine, Erika S. and Elizabeth S. Plapinger, eds. for the CPR legal Program, Containing Legal Costs: ADR Strategies for Corporation, Law Firms, and Government (Butterworth Legal Publishers, 1988); ; Folberg, Jay and Alison Taylor, Mediation: A Comprehensive Guide to Resolving Conflicts without Litigation (San Francisco: Jossey-Bass Publishers, 1984). For a bibliography and resources guide on alternative dispute resolution, see Office of Personnel Management website: <http://www.opm.gov/er/adrguide/Section7.asp>.

⁸³⁷ Diana Mitlin and David Satterthwaite eds., Empowering Squatter Citizen: Local Government, Civil Society and Urban Poverty Reduction (London: International Institute for Environment and Development, 2004), available from Earthprint at www.earthprint.com.

⁸³⁸ OHCHR, National Institutions for the Promotion and Protection of Human Rights [Human Rights Series No. 19] (Geneva: OHCHR, undated), at <http://www.unhcr.ch/html/menu6/2/fs19.htm>.

⁸³⁹ Office of the High Commissioner for Human Rights, Handbook on National Human Rights Plans of Action [Professional Training Series No. 10] (Geneva and New York: OHCHR, 2002), at: <http://www.ohchr.org/english/about/publications/docs/nhrap.pdf>.

Negotiate with municipal authorities to include the community/civil society as a partner ⁸⁴⁰	Increase community participation in design, planning, implementation and maintenance of housing ⁸⁴¹	Maintained and upgraded social housing
Train in negotiation and mediation skills ⁸⁴²	Negotiation toward reconciling evictions/removals and land grabbing ⁸⁴³	Indigenous peoples regain historic land claims
Develop community/local government cooperation	Monitor transparency in decision-making processes	Obtain social housing (provided by government), based on need, with amortization based on minimum wage level (affordability)
	Design infrastructure projects	
	Reform public policy toward providing affordable housing	
	Propose and implement National Shelter Strategy ⁸⁴⁴	
	Design national (comprehensive) development plans	
Develop the cooperative sector	Promote cooperative sector initiatives to provide affordable housing	
Use/lobby/cooperate with the international human rights system (interventions with factual, legal and political mechanisms of the UN and regional human	Undertake negotiations at international/ multilateral level (whereby negotiators representing the State assert their prior obligations under international human	Obtain/ensure continuous regulation of housing market practices (e.g., to ensure tenure security, accessibility of housing, building materials, direct investment, etc.)

⁸⁴⁰ Janelle Plummer, *Municipalities and Community Participation: A Sourcebook for Capacity Building* (London: Earthscan, 2001); Janelle Plummer, ed., *Focusing Partnership: A Sourcebook for Municipal Capacity Building in Public-Private Partnerships* (London: Earthscan, 2002); Diane Warburton, ed., *Community and Sustainable Development: Participation in the Future* (London: Earthscan, 200X).

⁸⁴¹ UNCHS, *Human Settlements Development through Community Participation* (Nairobi: UNCHS, 1991).

⁸⁴² Scott Beattie, "Is Mediation a Real Alternative to Law? Pitfalls for Aboriginal Participants," *Australian Dispute Resolution Journal* 8 (1997) 57; Larissa Behrendt, *Aboriginal Dispute Resolution: A Step towards Self-Determination and Community Autonomy*. (Sydney: Federation Press, 1995).

⁸⁴³ Michael Asch and Norman Zlotkin, "Affirming Aboriginal Title: A New Basis for Comprehensive Claims Negotiations," in Michael Asch, ed., *Aboriginal and Treaty Rights in Canada: Essays on Law, Equality, and Respect for Difference* (Vancouver: University of British Columbia Press, 1997).

⁸⁴⁴ UNCHS, *Developing a National Shelter Strategy: Lessons from Four Countries* (Nairobi: UNCHS, 1990); OHCHR, *Handbook on National Human Rights Plans of Action* (Geneva: OHCHR, 2001)

⁸⁴⁵ See "NGO participation in the activities of the Committee on Economic, Social and Cultural Rights," UN doc. E/C.12/2000/6, 7 July 2000, website: <http://www.hchr.un.ch>; and "Revised general guidelines regarding the form and

rights systems) ⁸⁴⁵	rights treaty law against IFI [World Bank, regional development bank, IMF, etc.] and WTO conditionalities leading to housing rights regressive / retrogressive violations) ⁸⁴⁶	End to practices of land confiscation through foreclosure, adverse possession and eminent domain without adequate, consensual alternatives
Develop / reform / enforce law ⁸⁴⁷		
Initiate/reform legislation and regulatory processes in compliance with the human-right-to-adequate - housing framework	Undertake class action suits (with minimum of [e.g., at least 15] physical or legal persons undertaking a litigation action, generally in the name of a whole group of the population), or public-interest litigation (e.g., India) ⁸⁴⁸	Law and policy enforced to respect, defend, promote and fulfill housing rights
Collect sufficient data to determine material and nonmaterial losses to victims of housing and land rights violations		Law enforcement officers protect population from and implied protection
Conduct national housing and land rights assessment ⁸⁴⁹	Lobby parliament	Violators prosecuted and punished
	Raise test cases, constitutional challenges through court system	Victims receive restitution and full compensation for violation and material and nonmaterial losses
		Law promotes housing and land acquisition and retention in disadvantaged communities consistent with international commitments to

contents of reports to be submitted by states parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights," UN doc. E/C.12/1991/1, 17 June 1991.

⁸⁴⁶ INCHRITI, Trade, Investment, Finance and Human Rights: Essential Documents (Geneva: INCHRITI, 2001).

⁸⁴⁷ Mario Rosário, "Action "Tsimá Ga Ku Aka" to build together" (1996); Janeth López, "Asesoría en vivienda para el proceso de reinserción en Colombia" (1996); K.A. Jayaratne, "Collaborative Partnership to Improve the Low Income Neighbourhoods," (1996); Michael Shapcott, "Rupert Pilot Project. A self-Help and Community Rehabilitation Project in Canada" (1996); Leopold Mutembei, "Struggles of the urban poor to improve their living conditions" (1996); Leonard Chileshe Mulenga, "The case of Bauleni Upgrading" (1995); Johan Silas, "The Improvement of Low Cost Housing and Environment" (1996); in Habitat International Coalition, Building the City with the People: New Trends in Community Initiatives with Local Governments (Mexico City: Habitat International Coalition, 1997), contents also available on line at HIC General Secretariat website, at <http://www.hic-net.org/library.asp>.

⁸⁴⁸ "Public interest litigation" (PIL) is a form of litigation filed in a court of law, for the protection of "public interest." Most prominently used in the Indian context, it is not defined in any statute or act. It has been interpreted by judges to consider the intent of public at large. Although, the main and only focus of such litigation is public interest, PIL can be filed in cases involving, e.g., such issues as pollution, "terrorism," road safety, constructional hazards, violated human rights of the poor, the content or conduct of government policy, to compel municipal authorities to perform a public duty, etc. See, for example: Upendra Baxi, "Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India" [revised], in Upendra Baxi, ed., Law and Poverty: Critical Essays (Bombay: Tripathi 1988); Mario Gomez, In the Public Interest: Essays on Public Interest Litigation and Participatory Justice (Colombo: Legal Aid Centre, University of Colombo, 1993); Sampat Jain, Public Interest Legislation (New Delhi, Deep & Deep, 2002); Shri. V.S.Vadivel, "Public Interest Litigation (PIL) A Boon or Bane?" (Legal Services India, 2004),

<http://www.legalserviceindia.com/articles/pil.htm>; see also Help Line Law website:

<http://www.helpline.law.com/docs/main.php3?id=PIL1>.

⁸⁴⁹ Apply this HIC-HLRN Housing and Land Rights Monitoring Toolkit on a national scale to all elements of the human right to adequate housing.

	Develop laws on properties left without will and testate in order to narrow the class of heirs and prevent fractionation of the ownership	promote just patterns of land distribution
	Nationwide constitutional review campaign	Constitutional reform ⁸⁵⁰
Institutional reform		
Establish and maintain an effective Land Trust to support communities subject to discrimination and dispossession		Land ownership expanded for disadvantaged communities on an affirmative-action basis
Monitor and survey practices of public and private lending institutions for discrimination practices and patterns	Lobby for disciplinary action and rehabilitation of institutions to end discriminatory practices	Institutions apply uniform criteria in housing and community development programs, policies and transactions
International human rights system interventions		
Prepare and present collective parallel report to human rights treaty bodies (or submit cases under individual complaints procedures under Optional Protocols)		UN treaty body Concluding Observations coincide with community's evaluation of housing rights conditions and proposals for solutions
Raise cases and submit briefs before regional human rights courts and commissions ⁸⁵¹		State compelled to implement its treaty obligations to respect, defend, promote and fulfill the human right to adequate housing and land
Use Concluding Observations in public information and media campaigns, litigation		

⁸⁵⁰ See, for example, "The history of constitutional reform in Kenya," World History Archives (2004), <http://www.hartford-hwp.com/archives/36/index-bbh.html>.

⁸⁵¹ Litigating Economic, Social and Cultural Rights: Achievements, Challenges and Strategies (Geneva: COHRE, 2004), available at <http://www.cohre.org/library/Litigating%20ESCR%20Report.pdf>; Amicus Curiae in Grupo Interdisciplinario por los Derechos Humanos v. Colombia [submitted by COHRE to Inter-American Commission on Human Rights on case of housing destruction by paramilitary groups in Ituango and El Aro, Colombia], on line at <http://www.cohre.org/downloads/amicuscolombia1.doc>; Amicus Curiae in Justiça Global, et al. v. Government of Brazil, Inter-American Commission on Human Rights [submitted by COHRE on actual and threatened violations of housing rights, including forced evictions, with the planned Alcântara Spaceport expansion, in Brazil] available at <http://www.cohre.org/downloads/amicusbrazil1.doc>; Amicus Curiae in CELS & CEJIL v. Argentina, Inter-American Commission on Human Rights [submitted by COHRE to Inter-American Commission on Human Rights on case local authorities conducting forced evictions in Barrio Ejército de los Andes, Provincia de Buenos Aires, Argentina], available at <http://www.cohre.org/downloads/amicusargentina1.doc>. See also COHRE Case Law Database on line at <http://www.cohre.org/ltframe.htm>; Case law database for economic, social and cultural rights available on the ESCR-Net website at <http://www.escr-net.org/>; found in "Case Law" at http://www.escr-net.org/EngGeneral/Case_law.asp, or "Jurisprudencia" at http://www.escr-net.org/EspGeneral/Case_law.asp.

Submit cases to UN Commission on Human Rights 1503 Procedure		States intervene to resolve impasse in housing rights violation case
Submit question/case to UNESCO complaints procedure		States intervene to resolve impasse in housing rights violation case
Legal defense		
Develop and deliver legal literacy and litigation strategy training ⁸⁵²	Provide legal-aid services to defend individual and community housing and land rights	Judicial rulings include legal precedents for future litigation and law reform to ensure individual and group rights to adequate housing and land
Collect detailed data on violations, perpetrators, values of losses and other consequences ⁸⁵³	Present admissible evidence in litigation on behalf of victims ⁸⁵⁴	Crimes and perpetrators prosecuted and punished
		Judicial remedies, including legal precedents for future litigation and law reform to ensure gender equality
Develop gender-awareness and gender-justice training for communities, police, lawyers, prosecutors and judges ⁸⁵⁵	Provide legal-aid services to defend equal rights to housing and land for women and gender-discrimination victims	Victims receive restitution and full compensation for violation and material and nonmaterial losses ⁸⁵⁶
Develop judicial procedures and expertise to provide for land-consolidation courts	Consolidate and reduce unstable “in-common” tenancy to maintain family and community land retention, especially to uphold land base for minority groups and indigenous peoples	Communities restore and retain their land base

⁸⁵² Margaret Schuler and Sakuntala Kadirgamar-Rajasingham, *Legal Literacy: A Tool for Women's Empowerment* (Washington: Women, Law and Development, OEF International, 1992).

⁸⁵³ See “Housing and Land Rights Violation Case Documentation Form” in this toolkit.

⁸⁵⁴ Domestic Implementation of International Human Rights: Litigating Economic, Social and Cultural Rights, on Human Rights Internet website at http://www.hri.ca/fortherecordCanada/vol1/guide-part_11.htm; Case Law Database for Economic, Social and Cultural Rights available on the ESCR-Net website at <http://www.escr-net.org/>; found in “Case Law” at http://www.escr-net.org/EngGeneral/Case_law.asp, or “Jurisprudencia” at http://www.escr-net.org/EspGeneral/Case_law.asp.

⁸⁵⁵ Shelter Rights Initiative, *Gender Specific Rights Litigation and Protection Strategies* (Lagos: SRI, 1998); SRI, *Manual on Judicial Protection of Economic, Social and Cultural Rights* (Lagos: SRI, 2000).

⁸⁵⁶ “Seminar on the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms,” *Netherlands Quarterly on Human Rights Special Issue* (1993); S. Nadasen, “Restitution, Reconstruction, Reconciliation and Restitution: Land Reform—Balancing the Interests of the Dispossessed, the Homeless and Development,” *Stellenbosch Law Review* (1997), 360–77. For a bibliography of global restitution and compensation experience, go to: <http://userpage.fu-berlin.de/~theissen/biblio/>.

Media cooperation and campaigns		
Conduct training for media professional in the human right to adequate, corresponding obligations, interviewing victims, quantifying victims' losses and community follow-up ⁸⁵⁷	Meet journalists and media professionals to follow-up on training and present new documentation and information on developments	Informed public supports community alternative-development and/or anti-eviction proposals
Provide media outlets with economic analyses of various possible alternatives (on-site upgrading v. relocation)		
Provide media outlets with alternative plans and community proposals for their development		
Policy reform		
Reverse and prosecute discriminatory practices toward disadvantages individuals and communities by both public and private lending institutions		Fairness-in-lending policy formulated and enforced for housing and land purchase, rehabilitation and sustainability
Expand public-private initiatives to stimulate investment and multipurpose development communities		Integrated development with low-cost housing on public and donated lands
Provide housing and relief		
Exchange expertise in temporary housing and relief provision	Organize emergency relief (immediate provision of housing and/or housing resources at no cost to those denied: water, medical services, economic relief, housing resources and building materials, etc.)	Eviction and displacement victims receive emergency (temporary) housing
Resource mobilization		

⁸⁵⁷ HIC-HLRN training module on "Housing and Land Rights for Media Professionals."

Conduct an inventory (accounting) of community (human and material) resources	Design, adapt and implement alternative-finance schemes; (e.g., small savings toward common projects) and self-financing for needy inhabitants (with freehold tenure options) ⁸⁵⁸	Upgrading and generally improved living conditions on site, as alternative to relocation
	Establish and operate nonbank institutions as lenders and builder of adequate, low-income housing ⁸⁵⁹	
	Organize self-help cooperation through rotating community credit (building & upgrading infrastructure, social production of housing ⁸⁶⁰)	
	Immediate, diligent and effective increase in advice-and-lending services, on an affirmative-action basis within public lending institutions	

⁸⁵⁸ Alternative Financing Models: Hybrids of Homeownership Mutual Housing (The Enterprise Foundation, 2003); "Capitalizing on Collaboratives: New Partners for Comm. Dev. Finance" (Washington: Center for Policy Alternatives, July 1996); Enrique Ortiz, FONHAPO: The Experience of the National Fund for Low Income Housing in Mexico (London: International Institute for Environment and Development, 1998), available from Earthprint at www.earthprint.com.

⁸⁵⁹ Jeffrey Carmichael and Michael Pomerleano, The Development and Regulation of Non-Bank Financial Institutions (Washington: World Bank, 2002); Indonesia: Housing Finance for the Urban Poor (Manila: Asia Development Bank, 2001); Peer Smet, "Indian Housing Finance Alliances and the Urban Poor," Global Built Environment Review Vol. 2, No. 1, 58–66, <http://www.edgehill.ac.uk/gber/pdf/vol2/issue1/Eight.pdf>.

⁸⁶⁰ Joseph Schechla, ed., *Anatomies of a Social Movement* (Cairo: HIC-HLRN, 2004); Habitat International Coalition, *Building the City With the People. New Trends in Community Initiatives in Cooperation with Local Governments* (Mexico City: Habitat International Coalition, 1997); Prem Pangora, *Citizen's Initiatives for environmental improvements: The case of River Sabarmati, Ahmedabad, India* (Mexico City: Habitat International Coalition, 1997); Joël Audefroy, *Construyendo la Ciudad con la Gente. Nuevas tendencias en la colaboración entre las iniciativas comunitarias y los gobiernos locales* (Mexico City: Coalitón Internacional para el Habitat, 1998); Gustavo Romero, La producción social del hábitat: reflexiones sobre su historia, concepciones y propuestas (2000), available on line at http://www.hic-net.org/online/Romero_PSH-intro.pdf; Eike Jacob, *Social Production of Habitat in Latin America* (2003); Habitat International Coalition-América Latina, "Social Production of Habitat. Conceptual framework" (2003); Enrique Ortiz, Social Production of Habitat: Marginal option or reality-transforming strategy? (2003), available on line at http://www.hic-net.org/online/Ortiz_SPH.pdf; Enrique Ortiz, *Vivitos y Coleando. 40 años trabajando por el hábitat popular en América Latina* (2002).

	Develop microcredit schemes (for upgrading and construction, but with social and legal components providing HRAH content) ⁸⁶¹	
Analyze economic costs of the various possible alternatives (on-site upgrading v. relocation)		
Raise material support (raise funds) from private, public and intergovernmental donors), including microcredit ⁸⁶²		
Plan/undertake reconstruction, ⁸⁶³ upgrading and general improvement of living conditions (with multiple parties cooperating)		
Restoration and increase housing subsidy programs for low-income people, including by tax reform (e.g., reversal of tax cuts for the wealthiest tax payers)		Low-income people pay no more than 30% of monthly incomes for adequate housing
Conduct an inventory of community financial and material resources	Develop community savings schemes	Social production of habitat: Community/self-financed upgrading of housing and improvement of living conditions

⁸⁶¹ Nazrul Islam, [Grameen Bank Bangladesh. A credit institution for housing](#) (1996); Jaffer Murtaza, [The Tanzania-Bondeni Community Lands Trust](#) (1996).

⁸⁶² Nazrul Islam, [Grameen Bank Bangladesh. A credit institution for housing](#) (1996); Jaffer Murtaza, [The Tanzania-Bondeni Community Lands Trust](#) (1996).

⁸⁶³ See York University Postwar Reconstruction and Development Unit, website: <http://www.york.ac.uk/depts/poli/prdu>.

Conduct public budget analysis from the housing rights perspective ⁸⁶⁴	Develop participatory budgeting ⁸⁶⁵ (ensuring that necessary programs and projects are budgeting according to housing rights obligations)	Public budgets comply with State's housing rights obligations to ensure "progressive realization" with "maximum of available resources"
Training other actors (outside community)		
Train civil servants in HRAH (including international treaty obligations upon the State and local authorities)	Reform urban/land planning criteria, procedures and objectives to harmonize with local community needs and criteria ⁸⁶⁶	Physical planning integrates human rights obligations, language and priorities directed to needy and vulnerable communities
Train lawyers in HRAH, (including international treaty obligations upon the State, as well as litigation strategies) ⁸⁶⁷	Legal argument, litigation and judicial decisions invoke international norms and treaty obligations	Legal recognition of traditional legal and tenure systems and provision of secure title ⁸⁶⁸
		Legal recognition of tenure and the human right to adequate housing of people without economic access

⁸⁶⁴ Ravikant Joshi, *A Case for Reform: how municipal budgets can change our cities* (Mumbai: YUVA Books, 2001); Maria Socorro I. Diokno, "A Rights-based Approach towards Budget Analysis" (Washington: International Human Rights Internship Program, 1999); Institute for Development Policy Analysis and Advocacy—IDPAA (Atiur Rahman et al.), *Alternative Budget Analysis: A Series of Studies on the National Budget for the Perspective of Poverty Eradication* [three volumes: Budget and the Poor, The Budget-making Process, People's Budget: An Alternative Exercise Using Participatory Tools] (Dhaka: University Press Ltd., 2002).

⁸⁶⁵ Rebecca Abers, 1998, "From clientelism to cooperation: Local government, participatory policy, and civic organizing in Porto Alegre, Brazil"; *Politics and Society*. 26(4)c 511–37; Rebecca Abers, *Inventing Local Democracy: Grassroots Politics in Brazil* (Boulder: Lynne Rynner, 2000); Baierle, Sergio, 1998, "The Explosion of Citizenship: The Emergence of a New Ethical-Political Principal in Popular Movement in Porto Alegre, Brazil," in Sonia E. Alvarez, Evelina Dagnino and Arturo Escobar, *Cultures of Politics/Politics of Cultures: Revisioning Latin America Social Movements* (Boulder: Westview Press, 1998); Sousa Boaventura de Santos, "Participatory Budgeting in Porto Alegre: Toward a Redistributive Democracy." *Politics and Society* 26(4) (1998), 461-509; *Quem é o público do Orçamento Participativo: se perfil, porque participa, e o que pensa do processo* (Porto Alegre: Cidade de Porto Alegre, 1999); Luciano Fedozzi, *Orçamento Participativo: Reflexões sobre a experiência de Porto Alegre* (Porto Alegre: Tomo Editorial, 1998); Pedro Jacobi and Macro Antonio Carvalho Teixeira, "Orçamento Participativo: co-responsabilidade na gestão das cidades," *São Paulo em Perspectiva*, 10 (3) (1996) 119–28; Brain Wampler, "Orçamento Participativo: Os paradoxos da participação e governo no Recife," *Cadernos de Estudos Sociais*, 15(2) (1999), 343–73; Brian Wampler, *A Guide to Participatory Budgeting* (October 2000). Internet sources: Participatory budget: The Case of Porto Alegre (Brazil) at:

<http://www.goethe.de/br/poa/buerg/en/framebag.htm> (2004);

World Bank: http://www.worldbank.org/html/fpd/urban/urb_age/porto.htm,

<http://www.worldbank.org/wbiep/decentralization/Topics13.7.htm>, <http://www.worldbank.org/participation/>; Inter-American Development Bank: <http://www.iadb.org/exr/IDB/stories/2000/eng/JAN00E/c200c1.htm>,

<http://www.iadb.org/exr/idb/sidebars/2000/eng/c200c4.htm>; Conference Proceedings on Participatory Budgeting:

<http://www.idre.ca/lacro/docs/conferencias/stren.html>, <http://www.ssc.wisc.edu/~wright/deliberative.html>,

<http://www.pqualc.org>.

⁸⁶⁶ UNCHS, *Developing a National Shelter Strategy: Lessons from Four Countries* (Nairobi: UNCHS, 1990); OHCHR, *Handbook on National Human Rights Plans of Action* (Geneva: OHCHR, revised draft May 2001).

⁸⁶⁷ Shelter Rights Initiative, *Gender Specific Rights Litigation and Protection Strategies* (Lagos: SRI, 1998); SRI, *Manual on Judicial Protection of Economic, Social and Cultural Rights* (Lagos: SRI, 2000).

⁸⁶⁸ Peter R. Grose, "An Indigenous Imperative: The Rationale for the Recognition of Aboriginal Dispute Resolution Mechanisms." *Mediation Quarterly* 12 (4) (summer 1995), 327–38.

		Judge issues restraining orders halting forced evictions and removals, land confiscation, property destruction and other housing and land rights
Train judges in HRAH (including international treaty obligations upon the State) ⁸⁶⁹		Judicial decision orders return, restitution and compensation for evictees, IDPs, refugees ⁸⁷⁰
Train law enforcement officials in the human right to adequate housing (including international treaty obligations upon the State)	Quantify losses/costs of housing rights violations	Victims compensated for losses ⁸⁷¹
Transitional justice (post conflict) ⁸⁷²		
Document details on violations, perpetrators, values of losses and other consequences ⁸⁷³	Present evidence to truth (and reconciliation) commission ⁸⁷⁴	Public aware of population transfer, mass dispossessions and other crimes committed during conflict

⁸⁶⁹ Shelter Rights Initiative, Manual on Housing Rights Protection Strategies for Lower Court Judges (Lagos: SRI, 2000).

⁸⁷⁰ UNCHS, Housing and Property Rights in Kosovo (Pristina: UNCHS, March 2000).

⁸⁷¹ For elaboration of the principles of compensation to victims of human rights violations, see Theo Van Boven, "Basic Principles and Guidelines on the Right to Reparation for Victims of Gross Violations of Human Rights and Humanitarian Law, Appendix 8 ("The van Boven Principles"), Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, E/CN.4/Sub.2/1996/17; also E/CN.4/1997/104, annex and subsequently revised as "Basic principles and guidelines on the right to a remedy and reparation for victims of violations of international human rights and humanitarian law," by Cherif Bassiouni, independent expert, Commission on Human Rights (E/CN.4/2000/62, annex). John Dugard, "Is the Truth and Reconciliation Process Compatible with International Law? An Unanswered Question," South African Journal on Human Rights Vol. 13, 258–68. For quantification methodology, see HIC-HLRN Loss Matrix in this Housing and Land Rights Monitoring Toolkit, or go to www.hlrn.org; for implementation, see to UNCHS, Housing and Property Rights in Kosovo (Pristina: UNCHS, 2000).

⁸⁷² For a general bibliography on transitional justice, go to <http://www.peacemakers.ca/bibliography/bib26reconciliation.html> or <http://userpage.fu-berlin.de/~theissen/biblio/> (on experiences of Germany and South Africa).

⁸⁷³ Use "Housing and Land Rights Violation Case Documentation Form" in this toolkit.

⁸⁷⁴ Kerry Able, and Jean Friesen, eds., Aboriginal Resource Use in Canada: Historical and Legal Aspects (Winnipeg: University of Manitoba Press, 1991); Alfred, Gerald R., and Franke Wilmer. "Indigenous Peoples, States and Conflict," in D. Carment and P. James, eds., Wars in the Midst of Peace: The International Politics of Ethnic Conflict (Pittsburg: University of Pittsburgh Press, 1997); Michael Coyle, "Claims Resolution: A Healing Process?" in J. Oakes, R. Riewe, K. Kinew and E. Maloney, eds., Sacred Lands: Aboriginal World Views, Claims and Conflicts (Calgary: Canadian Circumpolar Institute, 1998); Robert Rotberg and Dennis Thompson, eds., Truth v. Justice: The Morality of Truth Commissions (Princeton: Princeton University Press, 2000); Truth and Reconciliation Commission of South Africa Report, Vols. 1–5 (Cape Town: Juta, 1998); Theo van Boven, "Study Concerning the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms" [final report of Special Rapporteur] (Geneva: Commission on Human Rights, Subcommission on Prevention of Discrimination and Protection of Minorities) E/CN.4/Sub.2/1993/8. For an extensive bibliography of sources, go to: <http://userpage.fu-berlin.de/~theissen/biblio/>.

	Issue amnesty for past crimes and perpetrators of forced evictions/removals ⁸⁷⁵	Social reconciliation
	Present evidence to Truth and Justice Commission	Social reconciliation
		Crimes and perpetrators prosecuted and punished
Present evidence to “mixed courts”	Return, restitution and compensation for evictees, IDPs, refugees ⁸⁷⁶	

Of course, an illustrative list of potential interventions does not sufficiently convey the wealth of local governmental and nongovernmental experience available for review and exchange. Moreover, it is, as always, at the local level of implementation where human rights, including the human right to adequate housing, are transformed from moral suasion and legal theory to implementable reality. Therefore, both the practical, case-based perspective and the theoretical-and-comparative perspective become mutually dependent, mutually reinforcing and, hence, equally needed.

8.10. Evaluation & follow-up

Evaluation of any action you choose should be an ongoing function parallel to the events and development as they happen. This note offers some simple guidance on the specific evaluation tasks you will face. They are described in stages, with particular emphasis on the final stages and the vision for the future.

For our purposes, evaluation and follow-up imply two levels of assessment: (1) evaluation the action and (2) following the situation after the action concludes. The former is internal in nature and helps your organization, community or network become a learning institution by building on the lessons (successes, near-successes, failures and unanticipated results) of your efforts. The latter enables you, your organization, community or network to test the outcome to ascertain whether or not it has tangible benefits for those persons, communities, populations and peoples affected and targeted in your action. Ultimately, the follow-up process should lead you to the necessary conclusion as to what, if anything, to do next.

✓ Evaluating the action

⁸⁷⁵ John Dugard, *Dealing with Crimes of a Past Regime: Is Amnesty Still an Option?* [The Third Manfred Lachs Memorial Lecture] (1999); Carla Edelenbosch, “Human Rights Violations - A Duty to Prosecute?” *Leiden Journal of International Law* Vol. 7, No. 2 (1994), 5–22; Dianne F. Orentlicher, “Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime,” *The Yale Law Journal* Vol. 100, No. 8 (1991) 2537–615.

⁸⁷⁶ Uma Dhupelia Mesthrie, *The Truth and Reconciliation Commission and the Commission on Restitution of Land Rights: Some Comparative Thoughts* [“The TRC: Commissioning the Past” conference] (Johannesburg: University of the Witwatersrand, 1999); S. Nadasen, “Restitution, Reconstruction, Reconciliation and Redistribution: Land Reform: Balancing the Interests of the Dispossessed, the Homeless and Development,” *Stellenbosch Law Review* (1997) 360–77; David B. Southern, “Restitution or Compensation: The Land Question in East Germany,” *International and Comparative Law Quarterly* Vol. 42, No. 3 (1993), 690–97; David B. Southern, “Restitution or Compensation: The Open Property Question,” *German Politics* Vol. 2, No. 3, 436–49. For a bibliography of global restitution and compensation experience, go to: <http://userpage.fu-berlin.de/~theissen/biblio/>.

Evaluation your action includes three integrated but conceptually distinct processes: (1) monitoring progress, (2) formative evaluation and (3) measuring the development impact.

1. Monitoring implementation progress

Monitoring the implementation of your action is the most frequent—indeed constant—aspect of the learning process. This should involve periodic reports on production of outcomes, financial accounting and levels and nature of inputs (e.g., technical assistance, training, social production of habitat). The periodicity of the reporting could be quarterly, if the action is expected to proceed for a year or more. Alternatively, reporting could be more frequent, especially if it is a short-term action, or if it takes place in a fast-paced environment such as a threatened eviction or natural disaster situation, and particularly if extreme deprivation of human well-being is at stake.

The responsibility for monitoring is to be shared by a group of actors. Remembering that, like in the “Toolkit” guide for strategic planning, the more participation, the more-favorable the result (“more participation = more dignity”).

Reporting on the action, based on the monitoring of implementation progress, should be specifically assigned, most probably to the coordinator of the action or the chief executive officer of the principal body organizing the action. The audience of the reports should be both internal, for the benefit of those engaged, and external, depending on the obligations you have to supporters, members and/or funders. The assignment of duties, division of labor and timing of evaluation events should be completed also in the planning stage of your activity (see [“Strategic planning”](#) link above).

2. Formative Evaluation Indicators of Accomplishments

Midway in the process of your action, you should conduct an assessment of the *quality and adequacy* of the tasks undertaken by assessing the actual outcomes against the standard of expected results you already have set out for yourselves.

You should develop an evaluation plan and data collection instruments as part of the project implementation. That means, you should plan ahead to collect information that will verify your intended results, whether that be in the form of documents, press reports, opinion surveys, affidavits, water-quality test results, etc. The formative evaluation activities probably will require site visits, rapid assessment and low-cost data collection techniques such as focus groups, interviews, training evaluation forms, and simple targeted studies to identify key issues for action management.

3. Development-impact Assessment and Indicators

Development-impact assessments that you and your organization/community undertake less frequently, perhaps on an annual basis, will track changes in the outcomes, in order to determine the degree to which the larger environment of the human right to adequate housing is improving—or deteriorating, as the case may be.

Your action could—and should—produce an initial baseline report at the initial stage that coincides with your first inventory, site visits and/or assessment arising from your first use of this “Toolkit.” That report should record what you consider to be the key assumptions going into the activity, and will serve you in the subsequent stages of your action, especially at the

final stages, to test those assumptions and adjust strategies to incorporate the knowledge you have created.

For the purpose of your organization's integrity and the tactical responses you may require in the future, your action should be seen critically in the light of the purposes and goals you set out in your planning process (see "[Strategic planning](#)" link above). Some sample questions to include in your evaluation include the following:

- How does the action relate to your purpose statement of your organization/ community?
- How does the action relate to the goals(s) of your organization/community?
- Was the action planned or spontaneous?
- What was the expected result?
- Was that result achieved? If not, why?
- Were unintended results achieved?
- What were the lessons learned from this activity?
- How did this activity build/strengthen/develop your organization? What gains did you and others realize?
- How did your organization/community record and report the experience?
- How did your organization/community share and exchange the experience and lessons learned with others? Who? When? Where? What was the result?
- Has there been follow-up? Why? What? Who? When? Where?
- Click on "Following up the situation" for guidance on the last point.

✓ **Following up the situation**

Each successful or unsuccessful action needs to be tested further for at least two reasons: (1) in order to determine if the achievement is real or merely theoretical and (2) to determine what your next move is going to be.

The now famous *Irene Grootboom and Others v. Oostenberg Municipality*⁸⁷⁷ case before the South African Constitutional Court (1999) found in favor of the plaintiffs by applying the principles of international law on the human right to adequate housing and the legal strictures on the practice of forced eviction. The Court ordered the Western Cape Provincial Government and the Oostenberg Municipality to grant housing and utilities to the 390 adults and 510 children wrongfully evicted community at Wallacedene their right to return and remain and to benefit from public services corresponding to that right. Until today, that decision has not been fully implemented.

Likewise, the landmark case of *Qa'dan v. Katzir*,⁸⁷⁸ in Israel, resulted in the 2000 High Court ruling that Katzir (a settlement built on Palestinian land, directed and funded in large part by the Jewish Agency) acted unlawfully when discriminating on the basis of "nationality" by excluding a non-Jewish from obtaining housing there. Until this day, that decision has not been honored, the indigenous Adil and Iman Qa'dan family of Arab citizens of Israel do not have their home in Katzir, and the Jewish Agency continues to provide land and housing benefits only to those holding "Jewish nationality," and to the exclusion of others.

⁸⁷⁷ Irene Grootboom and Others versus Oostenberg Municipality, Cape Metropolitan Council, the Premier of the Province of the Western Cape, National Housing Board, and Government of the Republic of South Africa, Constitutional Court of South Africa Case No: 6826/99..

⁸⁷⁸ Qa'adan versus Israel Lands Administration (ILA), Ministry of Construction and Housing, Tal-Iron Local Municipal Council, Jewish Agency for the Land of Israel (JA), KATZIR: Cooperative Association for Community Settlement in Samaria Ltd., and the Farmers Association; Case No. 6698/95 of the Israeli Supreme Court, sitting as the High Court of Justice.

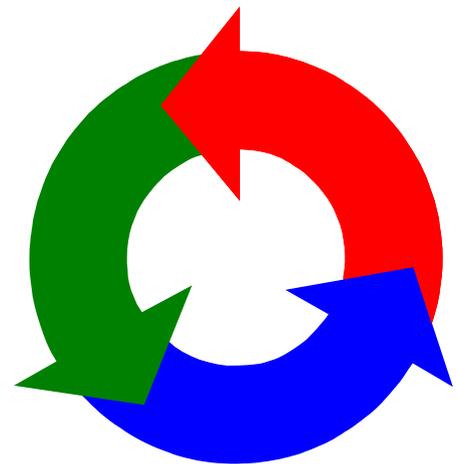
There are numerous examples of slum clearance and resettlement that result in the promised secure tenure of housing, but fail to comply with other elements of the human right in their implementation. [Note: HLRN and this “Toolkit” do not advocate slum clearance or resettlement.] Inhabitants in resettlement often lack access to public goods and services, suitable location, are denied compensation for losses and are subject to a process inconsistent with the over-riding principle of self-determination.⁸⁷⁹

All such gaps and shortcomings in the outcome of any housing rights defense effort remain to be addressed, even though some advocates and service-providing NGOs may consider these developments to be victorious at some level. The true test remains, however, to determine the tangibility of the results within the framework of the human right to adequate housing, and over the long term.

With all of its emphasis on the law, this “Toolkit” is intended to assist in the realization of the human right to adequate housing as a complement to the theoretical elaboration of the right in law. Implementation is the ultimate objective of human rights, as well as this “Toolkit.” Therefore, the tools provided here should serve also as the final evaluation criteria to examine whether or not the composite dimensions of the human rights are implemented and present or not.

You should use the elements (entitlements) of the human right to adequate housing here as your guide; these are also the binding criteria for all State parties and their representatives to apply as well. If you and your organization/community determine that certain criteria have been breached or neglected, then, alas, further remedial action will be required.

The bad news, perhaps, is that there may yet be more work to be done. However, even if one has to go back to the drawing board, at least the needed tools are available to the cyclical task. So, now, you can just do it.



⁸⁷⁹ See Housing and Land Rights Network, *Restructuring New Delhi's Urban Habitat: Building an Apartheid City?* (HIC-HLRN: New Delhi, 2002).

9. Information, Education, Capacity & Capacity building

9.1. Concept and meaning

Individuals and communities must have access to appropriate data, documents and intellectual resources that impact upon their right to obtain adequate housing. Having access to appropriate data means being informed about potential industrial and natural hazards, infrastructure, planning design, availability of services and natural resources and other factors that affect the right. The state has the obligation to ensure that laws and policies facilitate such access and ward against denial of the right to adequate housing. Unimpeded opportunity and reasonable means for public debate and expression with respect of the process of government, administration and finance procedures, market mechanisms and the activities of the private sector and others engaged in the housing sphere are presupposed in a democratic society.

Individuals and communities should have access to technical assistance and other means to enable them to improve their living standards and fully realise their economic, cultural and social rights and development potential. The state, for its part, should endeavour to promote and provide for catalysts and mechanisms for the same, including efforts to ensure that all citizens are aware of procedural measures available toward defending and realizing her/his right to adequate housing. This concept is sometimes also referred to as "empowerment," which is defined as "a process that enhances the ability of disadvantaged ('powerless') individuals or groups to challenge and change (in their favour) existing power relationships that place them in subordinate economic, social and political positions" [Agarwal 1994: 39].

9.2. Sources

In this section, your **Step 2**, the HLRN "Toolkit" provides the most important international legal basis and the popular claims that ground each element of the human right to adequate housing. This compilation attempts to be as comprehensive as possible; however, additional popular sources and legal developments will augment this inventory in the future.

It is vital to establish both the established sources in international law and the popular claims. The authority of the legal sources carries corresponding obligations on most States, and applies universally to all people on the planet as *human* rights. The popular sources advance claims that are "emerging" with human rights language eventually to be codified in the law. All legally established human rights norms originated as popular claims carried forth through various forms of historic struggle.

The Legal Authority

Please note that the legal instruments cited here carry differing levels of obligation, and they are organized for you accordingly. Customary law is made up of those norms and principles that legal opinion and interstate institutions consider so basic and so repeatedly affirmed as to be binding on all legal personalities. The Universal Declaration of Human Rights, the antecedent to all subsequent human rights treaties, is the most relevant example of customary law for our purposes, even though it does not establish a monitoring and enforcement mechanism to ensure compliance.

The ratified treaties (Covenants, Charters, Conventions, etc.) are binding on all their ratifying States parties, and each establishes an independent body to monitor and guide implementation. The treaty-monitoring process provides an opportunity for civil society, States and the international legal bodies each to play a role. These international treaties are also characterized as hard law (*lex lata*), because of their binding nature. Treaty law, by

definition, is any agreement between two or more States. The treaties considered here are those of both international and regional nature.

The “soft-law” instruments (*lex feranda*) include the Declarations, Basic Principles, Minimum Rules, General Comments, etc., that are the multilateral commitments arising from international conferences, assemblies, summits, congresses and other specialised meetings. Also included in this category are the general and country-specific guidance that the treaty-monitoring bodies issue to guide and specify treaty obligations, as well as those instruments of inter-State agreement (decisions and resolutions) arising from the various political bodies of the international system (e.g., UN Commission on Human Rights, International Labour Organisation General Assembly, etc.). These instruments contain standards that are declaratory of already-binding international law, reflect the collective political will of States and provide specificity to the general Articles in the binding instruments. However, these form legal and policy guidance without the corresponding obligations of treaty law and without the corresponding legal monitoring mechanisms.

Thus, the list of legal sources in this section of the HLRN “Toolkit” maintains a corresponding priority order such that presents the binding instruments first (in chronological order of their adoption), and follows with the nonbinding, declaratory sources (in their chronological order):

- ***International Treaty Law***
- ***Regional Treaty Law***
- ***Declaratory Instruments and Jurisprudence***

The Moral Argument

The popular sources are useful especially in demonstrating ground-level recognition of the various elements of adequate housing as rights in and of themselves, but also provide a list of human rights that reflect common human needs, but await codification as *bona fide* rights. The “emerging rights” include elements inextricable from the human right to adequate housing: water, land and energy, among others. The popular sources are indicators of the ever-evolving specificity of human rights law and the legal and problem-solving horizons toward which social movements and the human rights community are heading.

The relevant excerpts from these collective moral are listed in the “Toolkit” Sources (Step 2) as *Popular Sources*. These are moral, rather than legal, in nature. However, as claims, they bear legal dimensions in the sense that they are the substance of future legal standards. We continue to include these claims in the HLRN “Toolkit” as they emerge from popular struggles, natural and social sciences, nongovernmental forums, social movements, campaigns and labour action (strikes), as well as other forms of popular and collective problem-solving initiatives.

In this “Toolkit,” *Popular Sources* are distinguished from the legal sources by their presentation in *italic* script.

Another source of the human right with a legal dimension is the jurisprudence of course-based decisions on cases involving housing and land rights. These also could provide the basis for legal argument even in distant jurisdictions. Examples include the case-specific—but internationally relevant—rulings in famous decisions in favor of housing rights claims such as those arising from legal struggles in Cyprus, Palestine/Israel and South Africa:

Qa’adan versus Israel Lands Administration (ILA), Ministry of Construction and Housing, Tal-Iron Local Municipal Council, Jewish Agency for the Land of Israel (JA), KATZIR:

Cooperative Association for Community Settlement in Samaria Ltd., and the Farmers Association; Case No. 6698/95 of the Israeli Supreme Court, sitting as the High Court of Justice.

Irene Grootboom and Others versus Oostenberg Municipality, Cape Metropolitan Council, the Premier of the Province of the Western Cape, National Housing Board, and Government of the Republic of South Africa, Constitutional Court of South Africa Case No: 6826/99 (1999).

Loizidou versus Turkey (Article 50 and Merits), European Court of Human Rights Case 40/1993/435/514 (18 December 1996).

✓ Legal sources

Information

Customary International Law

Universal Declaration of Human Rights (UDHR) (1948)

Article 19. “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

International Treaty Law

International Covenant on Economic, Social and Cultural Rights (1966)

15.1(a) & (b) “The States Parties to the present Covenant recognize the right of everyone to take part in cultural life; to enjoy the benefits of scientific progress and its applications.”

International Covenant on Civil and Political Rights (1966)

Article 19.2 “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

Regional Treaty Law

African Charter on Human and Peoples’ Rights (1981)

Article 9.1. “Every individual shall have the right to receive information.”

Declaratory Instruments and Jurisprudence

World Summit on Sustainable Development Plan of Implementation (2002)

11(e) “Support local authorities in elaborating slum upgrading programmes within the framework of urban development plans and facilitate access, particularly for the poor, to information on housing legislation.”

Declaration on Cities and Other Human Settlements in the New Millennium (Habitat II +5 United Nations General Assembly resolution S-25/2 [2001])

38. “Also resolve to empower the poor and vulnerable, *inter alia* through...enabling better access to information and good practices, including awareness of legal rights.”

Commission on Human Rights resolution 2000/13, “Women’s equal ownership of, access to and control over housing”

7. “Also encourages Governments, specialized agencies and other organizations of the United Nations system, international agencies and nongovernmental organizations to provide ... concerned persons, as appropriate, with information and human rights education concerning women's equal ownership of, access to and control over land and the equal rights to own property and to adequate housing...”

Declaration on the Rights and Responsibilities of Individuals and Groups (1999)

Article 6(a-c) “Everyone has the right, individually and in association with others: to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems; as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.”

Article 13. “Everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means, in accordance with Article 3 of the present Declaration.”

Habitat Agenda, adopted by the second United Nations Conference on Human Settlements (Habitat II) (1996)

Article 45(k) “Promoting equal access to reliable information, at the national, subnational and local levels, utilizing, where appropriate, modern communications technology and networks.”

Arab Declaration on Sustainable Development for Human Settlements (Rabat Declaration) (1995)

General Principles and Goals...

5. The youth are the main element of society’s development and production, must be provided with wide-ranging opportunities to exercise their right to education and training, and to secure work and adequate housing in order to start and maintain families. They must be enabled for effective and collective participation in all activities of sustainable development....

Desertification Convention (1994)

Article 10.2(e) “National action programmes shall specify the respective roles of government, local communities and land users and the resources available and needed. They shall, *inter alia*...promote policies and strengthen institutional frameworks which develop cooperation and coordination, in a spirit of partnership, between the donor community, governments at all levels, local populations and community groups, and facilitate access by local populations to appropriate information and technology...”

Education

Customary International Law

Universal Declaration of Human Rights (1948)

Article 26 (1) “Everyone has the right to education....Technical and professional education shall be made generally available...” **(2)** “Education shall be directed to the full development of the human personality and the strengthening of respect for human rights and fundamental freedoms.”

International Treaty Law

Convention on the Rights of the Child (1989)

Article 28.1. “States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

- a) Make primary education compulsory and available free to all;
- b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
- c) Make higher education accessible to all on the basis of capacity by every appropriate means;
- d) Make educational and vocational information and guidance available and accessible to all children;
- e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.”

International Covenant on Economic, Social and Cultural Rights (1966)

Article 13.1. “The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

- a) Primary education shall be compulsory and available free to all;
- b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
- c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

- d)** Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
- e)** The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.”

Article 14. “Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.”

Regional Treaty Law

European Charter of Fundamental Rights (2000)

Article 14. Right to education

1. “Everyone has the right to education and to have access to vocational and continuing training.
2. “This right includes the possibility to receive free compulsory education.
3. “The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.”

African Charter on Human and Peoples’ Rights (1981)

Article 17.1. “Every individual shall have the right to education. **2.** Every individual may freely take part in the cultural life of his community. **3.** The promotion and protection of morals and traditional values recognized by the community shall be the duty of the State.”

Charter of the Organization of American States (1948)

Article 49. “The Member States will exert the greatest efforts, in accordance with their constitutional processes, to ensure the effective exercise of the right to education, on the following bases:

- a.** Elementary education, compulsory for children of school age, shall also be offered to all others who can benefit from it. When provided by the State it shall be without charge;
- b.** Middle-level education shall be extended progressively to as much of the population as possible, with a view to social improvement. It shall be diversified in such a way that it meets the development needs of each country without prejudice to providing a general education; and
- c.** Higher education shall be available to all, provided that, in order to maintain its high level, the corresponding regulatory or academic standards are met.”

Declaratory Instruments and Jurisprudence

Declaration of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (2001)

34. “We recognize that people of African descent have for centuries been victims of racism, racial discrimination and enslavement and of the denial by history of many of their rights... Recognition should therefore be given to their rights to... the protection of their traditional knowledge and... active participation in the design, implementation and development of

educational systems and programmes, including those of a specific and characteristic nature; and where applicable to their ancestrally inhabited land;”

96. “We recognize that quality education, the elimination of illiteracy and access to free primary education for all can contribute to more inclusive societies, equity, stable and harmonious relations and friendship among nations, peoples, groups and individuals, and a culture of peace, fostering mutual understanding, solidarity, social justice and respect for all human rights for all;”

121. “*Urges* States to commit themselves to ensuring access to education, including access to free primary education for all children, both girls and boys, and access for adults to lifelong learning and education, based on respect for human rights, diversity and tolerance, without discrimination of any kind;”

122. “*Urges* States to ensure equal access to education for all in law and in practice, and to refrain from any legal or any other measures leading to imposed racial segregation in any form in access to schooling...”

Committee on Economic, Social and Cultural Rights General comment No. 13, “the right to education” (art. 13) (1999)

6. While the precise and appropriate application of the terms will depend upon the conditions prevailing in a particular State party, education in all its forms and at all levels shall exhibit the following interrelated and essential features:

(a) Availability: functioning educational institutions and programmes have to be available in sufficient quantity within the jurisdiction of the State party. What they require to function depends upon numerous factors, including the developmental context within which they operate; for example, all institutions and programmes are likely to require buildings or other protection from the elements, sanitation facilities for both sexes, safe drinking water, trained teachers receiving domestically competitive salaries, teaching materials, and so on; while some will also require facilities such as a library, computer facilities and information technology;

(b) Accessibility: educational institutions and programmes have to be accessible to everyone, without discrimination, within the jurisdiction of the State party. Accessibility has three overlapping dimensions:

Nondiscrimination: education must be accessible to all, especially the most vulnerable groups, in law and fact, without discrimination on any of the prohibited grounds...;

Physical accessibility: education has to be within safe physical reach, either by attendance at some reasonably convenient geographic location (e.g. a neighbourhood school) or via modern technology (e.g. access to a “distance learning” programme);

Economic accessibility: education has to be affordable to all. This dimension of accessibility is subject to the differential wording of Article 13 (2) in relation to primary, secondary and higher education: whereas primary education shall be available “free to all,” States parties are required to progressively introduce free secondary and higher education;

(c) Acceptability: the form and substance of education, including curricula and teaching methods, have to be acceptable (e.g., relevant, culturally appropriate and of good quality) to students and, in appropriate cases, parents; this is subject to the educational objectives required by Article 13 (1) and such minimum educational standards as may be approved by the State (see art. 13 (3) and (4));

(d) Adaptability: education has to be flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings.

7. When considering the appropriate application of these “interrelated and essential features” the best interests of the student shall be a primary consideration.

15. Technical and vocational education (TVE) forms part of both the right to education and the right to work (art. 6 (2)). Article 13 (2) (b) presents TVE as part of secondary education,

reflecting the particular importance of TVE at this level of education. Article 6 (2), however, does not refer to TVE in relation to a specific level of education; it comprehends that TVE has a wider role, helping “to achieve steady economic, social and cultural development and full and productive employment.”

Manama Declaration on Cities and human Settlements in the New Millennium (2000)

10. We reaffirm once more our commitments to the following: **(b)** Working toward full and progressive realization of the right to adequate housing as stipulated in the Habitat Agenda and international legal instruments within the framework of local legislation....**(e)** Working toward enabling and further enhancing the role of women in the decision-making process.

Arab Declaration on Sustainable Development for Human Settlements (Rabat Declaration) (1995)

General Principles and Goals...

5. The youth are the main element of society’s development and production, must be provided with wide-ranging opportunities to exercise their right to education and training, and to secure work and adequate housing in order to start and maintain families. They must be enabled for effective and collective participation in all activities of sustainable development....

Declaration on the Right to Development (GAR 41/128 [1986])

Article 8.1. States should undertake, at the national level, all necessary measures for the realization of the right to development and shall ensure, *inter alia* , equality of opportunity for all in their access to basic resources, education,... housing...

Article 9.1. All the aspects of the right to development set forth in the present Declaration are indivisible and interdependent and each of them should be considered in the context of the whole.

Declaration on Social Progress and Development, Proclaimed by General Assembly resolution 2542 (XXIV) of 11 December 1969

Part II. Objectives

“Social progress and development shall aim at the continuous raising of the material and spiritual standards of living of all members of society, with respect for and in compliance with human rights and fundamental freedoms, through the attainment of the following main goals: **(e)** The eradication of illiteracy and the assurance of the right to universal access to culture, to free compulsory education at the elementary level and to free education at all levels; the raising of the general level of life-long education...”

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol Of San Salvador" (1988) [not in force]

Article 13. “Right to Education

1. “Everyone has the right to education.”

2. “The States Parties to this Protocol agree that education should be directed towards the full development of the human personality and human dignity and should strengthen respect for human rights, ideological pluralism, fundamental freedoms, justice and peace. They further agree that education ought to enable everyone to participate effectively in a democratic and pluralistic society and achieve a decent existence and should foster understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups and promote activities for the maintenance of peace.”

3. "The States Parties to this Protocol recognize that in order to achieve the full exercise of the right to education: **a.** Primary education should be compulsory and accessible to all without cost; **b.** Secondary education in its different forms, including technical and vocational secondary education, should be made generally available and accessible to all by every appropriate means, and in particular, by the progressive introduction of free education; **c.** Higher education should be made equally accessible to all, on the basis of individual capacity, by every appropriate means, and in particular, by the progressive introduction of free education; **d.** Basic education should be encouraged or intensified as far as possible for those persons who have not received or completed the whole cycle of primary instruction; **e.** Programs of special education should be established for the handicapped, so as to provide special instruction and training to persons with physical disabilities or mental deficiencies."
4. "In conformity with the domestic legislation of the States Parties, parents should have the right to select the type of education to be given to their children, provided that it conforms to the principles set forth above;"
5. "Nothing in this Protocol shall be interpreted as a restriction of the freedom of individuals and entities to establish and direct educational institutions in accordance with the domestic legislation of the States Parties."

Capacity & Capacity Building

International Treaty Law

International Covenant on Economic, Social and Cultural Rights (1966)

13.1. "The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace."

Convention on the Elimination of All Forms of Racial Discrimination (1965)

Article 5. "...States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of... **(e) (v)** The right to education and training..."

International Labour Organisation Convention No. 117 on Social Policy (Basic Aims and Standards) (1962)

4(d) "The measures to be considered by the competent authorities for the promotion of productive capacity and the improvement of living of agricultural producers shall include: (d) the supervision of tenancy arrangements and of working conditions with a view to securing for tenants and labourers the highest practicable standards of living..."

Declaratory Instruments and Jurisprudence

World Summit on Sustainable Development Plan of Implementation (2002)

8. "Take joint actions and improve efforts to work together at all levels to improve access to reliable and affordable energy services for sustainable development sufficient to facilitate the achievement of the millennium development goals, including the goal of halving the

proportion of people in poverty by 2015, and as a means to generate other important services that mitigate poverty, bearing in mind that access to energy facilitates the eradication of poverty. This would include actions at all levels to:

(a) by intensifying regional and international cooperation in support of national efforts, including through capacity-building, financial and technological assistance and innovative financing mechanisms, including at the micro and meso levels, recognizing the specific factors for providing access to the poor;

(f)...by facilitating the creation of enabling environments and addressing capacity-building needs, with special attention to rural and isolated areas, as appropriate;...

39(a) Mobilize adequate and predictable financial resources, transfer of technologies and capacity-building at all levels..."

Declaration of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (2001)

158. "Recognizes that these historical injustices [against people of African descent] have undeniably contributed to the poverty, underdevelopment, marginalization, social exclusion, economic disparities, instability and insecurity that affect many people in different parts of the world, in particular in developing countries. The Conference recognizes the need to develop programmes for the social and economic development of these societies and the Diaspora, within the framework of a new partnership based on the spirit of solidarity and mutual respect, in the following areas:...Human resource development, including capacity-building;"

Habitat Agenda, adopted by the second United Nations Conference on Human Settlements (Habitat II) (1996)

Article 45. "We further commit ourselves to the objectives of:

(d) Supporting progress and security for people and communities, whereby every member of society is enabled to satisfy his or her basic human needs and to realize his or her personal dignity, safety, creativity and life aspirations...

(f) Promoting gender-sensitive institutional and legal frameworks and capacity-building at the national and local levels conducive to civic engagement and broad-based participation in human settlements development;

(g) Encouraging the establishment of community-based organizations, civil society organizations, and other forms of nongovernmental entities that can contribute to the efforts to reduce poverty and improve the quality of life in human settlements...

(i) Fostering capacity building and training for human settlements planning, management and development at the national and local levels that includes education, training and institutional strengthening, especially for women and persons with disabilities."

Arab Declaration on Sustainable Development for Human Settlements (Rabat Declaration) (1995)

General Principles and Goals...

5. The youth are the main element of society's development and production, must be provided with wide-ranging opportunities to exercise their right to education and training, and to secure work and adequate housing in order to start and maintain families. They must be enabled for effective and collective participation in all activities of sustainable development....

Commitments...

15. To build up and develop capacities and skills relevant to housing, management of human settlements and lands, infrastructures, construction, and self-help housing through training, rehabilitation and orientation programs.

American Declaration of the Rights and Duties of Man (1948)

Article XII. "...every person has the right to an education that will prepare him to attain a decent life, to raise his standard of living, and to be a useful member of society. The right to an education includes the right to equality of opportunity in every case, in accordance with natural talents, merit and the desire to utilize the resources that the state or the community is in a position to provide. Every person has the right to receive, free, at least a primary education."

✓ Popular sources

Information

The European Charter for Human Rights in the City (2000)

Article XI. "Right to Information **1.** The right of the citizens is recognised to have information of various kinds and from various sources in relation to the social, economic, cultural and local administrative life, limited by a respect for the privacy of the individual and the protection of small children and young people. **2.** The municipal authorities offer the means by which the circulation of information which may affect the people is made accessible, effective and clear. For this purpose they encourage the learning of computer technology, access to it and its regular updating."

Article XXII. "Principle of Openness **1.** The signatory cities guarantee the openness of the administrative activity. The citizens must be able to know their political and administrative rights and obligations through publicity of the municipal regulations, which must be comprehensible and regularly brought up to date. **2.** The citizens have a right to have a copy of those administrative acts of the local administration which refer to them, except where there are special obstacles or reasons in the public interest or in reference to other people's right to privacy. **3.** The obligation of clarity, publicity, impartiality and nondiscrimination in the action of the municipal powers is applied to: The conclusion of municipal contracts, in application of a rigorous management of municipal spending; The selection of officials and other municipal personnel, governed by the principles of merit and capacity.

4. The municipal authorities guarantee openness and rigorous control of the use of public funds."

Jerusalem Declaration (1995)

(Draft Charter of the Palestinian Housing Rights Movement)

2. "...Empowerment requires that all actions with regard to housing, services and infrastructure include all the population, especially women, in orientation and key decisions. This means:

Guaranteeing the exercise of fundamental civil and political rights, including the right to information and to freedom of movement, expression, assembly and association."

Declaration of Latin American and Caribbean NGO's World Forum, Vienna +5 (1998)

"We propose...**9.** The instrumentation of human right to communicate and gain access to information and knowledge, as needed elements to secure civil participation and to reaffirm the democratic vocation of society. Organizations and networks of human rights, as well as all of society, must have access to the media and receive accurate and timely information and must have the freedom to express their proposals and ideas, in equity"

Education

The European Charter for Human Rights in the City (2000)

Article XIII. *“Right to Education 1. The citizens have the right to education. The municipal authorities provide access to primary education for children and young people of school age. They encourage adult education in a context of accessibility and respect for democratic values. 2. The cities contribute to making available to everyone the spaces and educational, school and cultural centres, in a multicultural framework of social cohesion. 3. The municipal authorities contribute to increasing the level of citizenship through educational teaching, especially with reference to the struggle against sexism, racism, xenophobia and discrimination, implanting principles of tolerance and hospitality.”*

Capacity & Capacity Building

Jerusalem Declaration (1995)

(Draft Charter of the Palestinian Housing Rights Movement)

2. *“...Empowerment requires that all actions with regard to housing, services and infrastructure include all the population, especially women, in orientation and key decisions. This means: ...Guaranteeing the exercise of fundamental civil and political rights, including the right to information and to freedom of movement, expression, assembly and association.”*

The Capabilities Framework of Amartya K. Sen

Popular thought and social science have evolved with more-nuanced and sophisticated views of poverty, development and rights. Understanding the roots causes of poverty and deprivation of rights now goes well beyond the simple notion that impoverished living conditions are a factor of low income. Poor living conditions are specific and local and, with few exceptions, are relative to the capacity of society to meet the needs of its people without discrimination.

Access to information and skills, that is capacity building and capabilities, is an essential entitlement in the realization of the human right to adequate housing, as indeed other rights. The “popular source” of this claim comes to us from social science. Conceived by Amartya Sen, Nobel Laureate in Economics, the “capability approach” has been developed in different directions by Amartya Sen, Martha Nussbaum and a growing group of others. The approach has provided the intellectual foundation for human development and provides strong arguments for the right to development, which is the composite of a bundle of rights, including participation, human well-being and freedom as the central features of development. This line of argument has spawned considerable research in moral philosophy, economics, political theory, education, health, food security, ecosystems, empowerment, and other areas. Development actors from NGOs to multilateral institutions engage with this approach, drawing out multidisciplinary insights.

For further reference, see:

Sen, Amartya Kumar. *Development as Freedom* (New York: Alfred A. Knopf, 2000)
----- . *Commodities and Capabilities* (Oxford: Oxford University Press, 1999);
----- . *Poverty and Famines: An Essay on Entitlement and Deprivation* (Oxford, Clarendon Press, 1981);
----- . *On Economic Inequality* (Oxford: Clarendon Press, 1973);
----- . *Collective Choice and Social Welfare* (San Francisco: Holden Day; also London: Oliver and Boyd, 1970) [reprinted Amsterdam: North-Holland].

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Sen, Amartya Kumar. *Poverty and Famines; An Essay on Entitlement and Deprivation*, (Oxford, Clarendon Press, 1981);

Sen, Amartya Kumar. *On Economic Inequality* (Oxford: Clarendon Press, 1973);

Sen, Amartya Kumar. *Poverty and Famines: An Essay on Entitlement and Deprivation* (Oxford: Clarendon Press, 1981);

Sen, Amartya Kumar. *Collective Choice and Social Welfare* (San Francisco: Holden Day; also London: Oliver and Boyd, 1970) [reprinted Amsterdam: North-Holland].

9.3. Over-riding principles

Principles found in the initial Articles common to all the major international human rights treaties affirm standards of justice arising from the major legal systems of the world. These include principles of immediate application, such as the inalienable rights to self-determination; non-discrimination, in general; gender equality; and the rule of law, including access to justice and domestic application of the human rights contained in each treaty, particularly by adopting legislative measures.

In the case of economic, social and cultural rights, the International Covenant on Economic, Social and Cultural Rights (ICESCR) is the principle source of these rights in treaty form. The Covenant also clarifies that the State party's treaty obligation entails ensuring the "progressive realisation" of the rights "to the maximum of its available resources" (Article 2.1), including the human right to adequate housing (Article 11). Therefore, a process of realising the rights should not regress, but should ensure "the continuous improvement of living conditions" (Article 11).

The ICESCR's Article 2.1 also requires States to undertake steps, individually and through international assistance and cooperation, especially economic and technical, progressively to achieve the full realization of the covenanted rights by all appropriate means. Thus, States party to the Covenant bear an obligation to apply these principles extraterritorially and in their international relations. Therefore, "international cooperation" forms an important practical aspect of ESC rights application and, therefore, one of the principles over-riding States' duties to implement human rights.

Comprehensive monitoring of the human right to adequate housing requires assessing each entitlement (element) in light of the rights and corresponding obligations arising from these over-riding legal principles:

- **Self-determination**
- **Nondiscrimination**
- **Gender equality**
- **Rule of law**
- **Progressive realization (nonregressivity/nonretrogression)**
- **International cooperation**

The normative approach provided in the international human rights system prevails upon the monitor to pose a number of relevant questions related to implementation not only of the specific content of the particular right, but also these over-riding principles common to the

principal human rights treaties and applicable to all rights. This section will guide the monitor in applying these six over-riding principles in the respect, defense, promotion and fulfilment of the human right to adequate housing and land.

✓ Self-determination

General description

The principle of equal rights and self-determination of peoples is considered to have been a general principle of international law arising from common State practice already at the founding of the League of Nations. However, self-determination was first codified in the Charter of the United Nations in 1945, which sets forth the purposes of the United Nations as:

2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace...⁸⁸⁰

The Charter's Article 55 stipulates further:

With a view to the creation of conditions of stability and well-being, which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

- a. higher standards of living, full employment, and conditions of economic and social progress and development;⁸⁸¹
- b. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and
- c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

Every State has the duty, therefore, through unilateral, bilateral and multilateral action to promote universal respect for, and observance of human rights and fundamental freedoms in accordance with the Charter. Its Article 2.2 clarifies the universal duty of State membership such that:

All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with the present Charter.

The principle of self-determination has been progressively reaffirmed and legally defined throughout the UN system since its founding.⁸⁸² The material significance of self-determination is further elaborated in the Covenants on human rights adopted in 1966.⁸⁸³ The common Article 1(2) of both the ICCPR and ICESCR sets forth that:

⁸⁸⁰ Charter of the United Nations, 26 June 1945, Article 1(2).

⁸⁸¹ *Ibid.*, Chapter IX, "International Economic and Social Co-operation," Article 55.

⁸⁸² For example, see Declaration on the Granting of Independence to Colonial Countries and Peoples (1960), preamble and Article 7; "Permanent sovereignty over natural resources," General Assembly resolution 1803 (XVII) (1962), preamble and paras. 1–2, 5–7; International Convention on the Elimination of All Forms of Racism and Racial Discrimination (1965), Articles 1 and 5; Declaration on Social Progress and Development (1969), Articles 2, 3 and Part II; Declaration on Principles of International Law (1970), preamble and, esp., "The principle of equal rights and self-determination of peoples"; ECOSOC Declaration on Race and Racial Prejudice (1978), Articles 1, 3, 5 and 9; Declaration on the Right to Development (1986) preamble and Article 1, 6 and 8.

⁸⁸³ International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI), 16 December 1966 (entered into force 3 January 1976 in accordance with Article 27); Covenant on Civil and Political Rights, adopted and opened for signature, ratification and

All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

How concerned persons/communities exercise an effective role in determining the terms by which they realize the human right to adequate housing is also a subject of the inalienable right of self-determination. Self-determination is the right of peoples, not of States. It is the State, however, that is the legal personality obliged to ensure the protection, defense, promotion and fulfillment of self-determination as a duty under international public law, as well as the essential legitimizing factor of the State itself.⁸⁸⁴

The concept of, and right to self-determination manifest in a spectrum of types and expressions of effective local control over developments and relations within a community and territory may involve either external or internal self-determination; that is, national independence as in the formal distinction of a self-determination unit with its own internationally recognized borders, a self-determination unit within the internationally recognized borders of a unitary State, or a community's⁸⁸⁵ effective control over developments and relations affecting it as an independent State.⁸⁸⁶

In its General Comment No. 12 on "the right of self-determination of peoples" (1984), The UN Human Rights Committee (HRC) gave its guidance on the corresponding obligations of States, with the following:

1. In accordance with the purposes and principles of the Charter of the United Nations, Article 1 of the International Covenant on Civil and Political Rights recognizes that all peoples have the right of self-determination. The right of self-determination is of particular importance because its realization is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights. It is for that reason that States set forth the right of self-determination in a provision of positive law in both Covenants and placed this provision as Article 1 apart from and before all of the other rights in the two Covenants.

2. Article 1 [of ICCPR] enshrines an inalienable right of all peoples as described in its paragraphs 1 and 2. By virtue of that right they freely "determine their political status and freely pursue their economic, social and cultural development". The Article imposes on all States parties corresponding obligations. This right and the corresponding obligations concerning its implementation are interrelated with other provisions of the Covenant and rules of international law.

accession by General Assembly resolution 2200 A (XXI), 16 December 1966 (entered into force 23 March 1966 1976 in accordance with Article 49).

⁸⁸⁴ Consistent with the principle of the Universal Declaration of Human Rights, Article 21, which states that "the will of the people shall be the basis of the authority of government."

⁸⁸⁵ While a standard legal definition of nation and people remains a subject of debate, the International Court of Justice has offered criteria for a community, having distinct rights as "a group of persons living in a given country or locality, having a race, religion, language and traditions of their own and united by the identity of race, religion, language and traditions in a sentiment of solidarity, with a view to preserving their traditions, maintaining their form of worship, insuring the instruction and upbringing of their children in accordance with the spirit and traditions of their race and rendering mutual assistance to each other," Permanent Court of International Justice, The Greco-Bulgarian "Communities" Advisory Opinion No. 17, 13 July 1939 (Leyden: Sijthoff, 1930), 21.

⁸⁸⁶ For a comprehensive consideration of the human right of self-determination and its applications, see Hurst Hannum. *Autonomy, Sovereignty, and Self-Determination: The Accommodation of Conflicting Rights* (Philadelphia: University of Pennsylvania Press, 1996).

3. Although the reporting obligations of all States parties include Article 1, only some reports give detailed explanations regarding each of its paragraphs. The Committee has noted that many of them completely ignore Article 1, provide inadequate information in regard to it or confine themselves to a reference to election laws. The Committee considers it highly desirable that States parties' reports should contain information on each paragraph of Article 1.

4. With regard to paragraph 1 of Article 1, States parties should describe the constitutional and political processes which in practice allow the exercise of this right.

5. Paragraph 2 affirms a particular aspect of the economic content of the right of self-determination, namely the right of peoples, for their own ends, freely to "dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence." This right entails corresponding duties for all States and the international community. States should indicate any factors or difficulties which prevent the free disposal of their natural wealth and resources contrary to the provisions of this paragraph and to what extent that affects the enjoyment of other rights set forth in the Covenant.

6. Paragraph 3, in the Committee's opinion, is particularly important in that it imposes specific obligations on States parties, not only in relation to their own peoples but *vis-à-vis* all peoples which have not been able to exercise or have been deprived of the possibility of exercising their right to self-determination. The general nature of this paragraph is confirmed by its drafting history. It stipulates that "The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations". The obligations exist irrespective of whether a people entitled to self-determination depends on a State party to the Covenant or not. It follows that all States parties to the Covenant should take positive action to facilitate realization of and respect for the right of peoples to self-determination. Such positive action must be consistent with the States' obligations under the Charter of the United Nations and under international law: in particular, States must refrain from interfering in the internal affairs of other States and thereby adversely affecting the exercise of the right to self-determination. The reports should contain information on the performance of these obligations and the measures taken to that end.

7. In connection with Article 1 of the Covenant, the Committee refers to other international instruments concerning the right of all peoples to self-determination, in particular the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, adopted by the General Assembly on 24 October 1970 (General Assembly resolution 2625 (XXV)).

8. The Committee considers that history has proved that the realization of and respect for the right of self-determination of peoples contributes to the establishment of friendly relations and cooperation between States and to strengthening international peace and understanding.

Self-determination applied to communities

The over-riding principle of self-determination in this “Toolkit” is inspired by classic (customary and treaty) law criteria, as well as popular claims to the same. In both senses, the claim is legally fixed in the common Article 1 of the human rights treaties. Using the ICESCR as a basic and integrated instrument, the “ToolKit” especially applies this over-riding principle to Article 11, which guarantees the human right to housing.

In making the case for ultimate "self-determination" at the community level, this “Toolkit” draws on a number of popular instruments (mostly written and collectively endorsed statements, but also those rooted in oral traditions) asserting the "right" of communities to determine their own destiny. "Community" also enjoys a legal definition (see below).

Self-determination becomes as vital as any other need that grounds other human rights, including those other over-riding principles of rule of law, nondiscrimination, gender equality and international cooperation consistent with all human rights. In their collective dimension, these all become community "needs" and, consequently, "rights" insofar as their absence leads to erosion and violation of a bundle of individual, stand-alone rights and can lead to the deprivation or demise of a community as such.

It should be noted that States and others have recognized the real problem of “ethnocide” and “cultural genocide” resulting from assimilation policies so as to compel the rewriting of the International Labour Organisation (ILO) Convention No. 107 on Indigenous and Tribal Populations in Independent Countries (1956), eventually to adopt the Indigenous and Tribal Peoples Convention No. 169 (1989). Relevant to the practice of self-determination is the question of land tenure, which ILO Convention No. 169 treats in Articles 13–19, while at the same time disclaiming that the term “people” in the Convention does not convey implications as a term of international law (i.e., conferring the right of self-determination).

However, it is the human consequence of the deprivation, rather than the legal "peoplehood," that makes self-determination vital for any putative victims. Therefore, collective self-determination becomes the right of communities as necessary, even if they are not (or not yet) internationally recognized as a "people" or "nation," the category To avoid the horrendous consequences of demise and deprivation, and to ensure survival of communities as a "right"—especially marginal and otherwise vulnerable ones such as those facing ethnic cleansing and/or elimination through military, administrative, globalization, forced eviction or development measures—local self-determination is vital, no matter what assimilationist governments individually or jointly say. In human rights, it is the human who has the first and final subject of respect, protection, promotion and fulfillment.

That having been said, and recognizing that self-determination can be either internal or external, the international public law term of art "internal self-determination unit" applies in the case of group or community, and is subject to case-by-case interpretation. This could refer to the rightful place of a minority or an indigenous people. It could conceivably apply also to a community of urban poor, particularly if their survival and/or well-being is threatened and their self-determination then becomes a need/right and requisite to the realization of other rights (life, adequate housing, culture, health, etc.).

In any case, the claimant of self-determination, whether an external or internal type, must meet the challenge and legal test of asserting that the claim at any level does not conflict with—or at least is balanced with—the rights of others. That may mean, of course, ensuring that self-determination claims do not negate general ecological values, others' self-determination rights, the rights of women to gender equality, security of person, regional peace and security, etc.

What are the criteria for *bona fide* claimants to local self-determination in the terms of international law as developed? The criteria presented by Martínez-Cobo (*Study of Discrimination against Indigenous Peoples*, UN document E/CN.4/Sub.2/1986/7/Add.4) has grounded much of the self-determination thinking about indigenous peoplehood and the rights arising. Based on his criteria for indigenous "people," the characteristics constituting a community with the right to claim external or internal self-determination could also be that the community (1) predate the influx of "others," (2) possess distinct cultural attributes, (3) occupy an identifiable territory and (4) identify itself as a people/community having the right to self-determination.

Legally defining the subjects of self-determination

Definitions of "people" or "nation," the legal self-determination rights holders, are generally unpopular with States and their sitting governments, unless the definition applies to an existing "nation-state." Of course, very few States can claim adherence to this definition, that is, to contain a single native people or nation (except, perhaps, Portugal, excluding immigrants). The General Assembly has assumed the task of defining self-determination (particularly in resolution 1514(XV), 14 December 1960). That has been construed typically as applying to cases of decolonization (Angola, Algeria, Namibia, Mozambique, Palestine, Puerto Rico, etc.). In its Advisory Opinion on Namibia, the International Court of Justice recognized Namibians as a "people" and "nation" in light of the value of, and for the purpose of decolonization. Despite this legal reference, the actual definition of "people" and "nation" remains under debate for political and practical reasons.

In addition to the guidance on "people," including indigenous peoples, as explicit self-determination rights holders, we have an international law definition of what constitutes a "community." The "community" definition does not deviate significantly from the four-part construct that Martínez-Cobo offered (above). It comes to us from the first International Court in a case sorting out criteria for transferring the ethnically Greek and Turkish communities between the Republic of Turkey and Greece after the First World War:

A group of persons living in a given country or locality having a race, religion, language and tradition of their own and united in the identity of race, religion, language and tradition in a sentiment of solidarity, with a view to preserving traditions, maintaining their form of worship, insuring the instruction and upbringing of their children in accordance with the spirit and traditions of their race and rendering mutual assistance to each other.⁸⁸⁷

Leaving aside the probability that the purpose of the Court's opinion (population transfer) would be legally impermissible today,⁸⁸⁸ the legal definition of "community" it provided is actually less ambiguous than that of "people" or "nation." The "people" definition remains elusive largely because some States find it a political Pandora's box that could challenge their jurisdiction and/or effective control over territory. Until now, some governments instead persist in proffering the legally vacuous term "indigenous populations," so that the legally more-significant term "people/s" would wane into disuse, as would also the corresponding rightful and self-preserving claims of its subjects to self-determination. However, if one is looking for a way to apply self-determination to "communities," one has this definition of the ICJ's predecessor as a reference.

⁸⁸⁷ Permanent Court of International Justice, *The Greco-Bulgarian "Communities,"* Advisory Opinion No. 17, 31 July 1930 (Leyden: Sijthoff, 1930), p. 21.

⁸⁸⁸ See report of the Special Rapporteurs Aun al-Khasawneh and Ribot Hatano, "The human rights dimensions of population transfer, including the implantation of settlers and settlements," E/CN.4/Sub.2/1993/17.

Significant also is the fact that the Court's definitive Advisory Opinion was intended for a narrow and specific purpose. That was not to recognize an external self-determination right, but to rationalize a population transfer scheme that today would be considered a clear violation of international public law. That is not only because of the absence of consent and the obvious human suffering population transfer causes, but also because it deviates from the most basic concept of contemporary statecraft and democratic governance, which is that the State administer—including by way of implementing the right to self-determination—for *all* of its citizens. Population transfers and external self-determination claims, therefore, serve as a seismograph of a government's failure at effective statecraft.

This dissertation on self-determination has admittedly merged concepts and definitions of communities with peoples/nations, as the Permanent Court of International Justice effectively has done. Nonetheless, the values that sustain them are akin, and so should the safeguards that promise to prevent the worst of consequences arising from human rights violations against any identifiable group. In summary, self-determination has a local and community-based expression and basis as a right. For the purposes of advancing human rights through the "Toolkit," both "communities" as well as "nations/peoples" hold the right and responsibility to determine their own habitat, the essence of a people and/or community's survival and sustainability with dignity in its dwelling place.

Applied to the congruent human rights to information and education

Applied to the congruent human rights to information and education, including capacity and capacity building, the over-riding principle of self-determination, in its classical expression, means that every people has the inalienable right to determine the terms of accessing information that affects their housing and land in its administrative and territorial unit(s). Therefore, for peoples, as such, or for other affected persons, a measure of self-determination, assured through "genuine consultation," is required to realize the congruent rights to information and education, including capacity and capacity building.

✓ Nondiscrimination

General description

Like self-determination, an inalienable human right common to the major legal systems throughout the world, a fundamental requisite of justice is the absence of discrimination on any arbitrary basis. Discrimination typically results in deprivation of human needs and rights.

Given its centrality, the principle of nondiscrimination, consequently, is an over-riding human rights principle embodies in the first Articles of each major human rights treaty. Nondiscrimination, and its corresponding State obligation to ensure nondiscrimination, are enshrined in the preamble of all international declarations and resolutions concerned with human rights matters, governance and the relations between and among States, nations and peoples.

Common to Article 2 in both the Covenants, nondiscrimination stands out as an over-riding principle with *immediate* application to all the rights contained in those instruments.⁸⁸⁹ The Covenants prohibit arbitrary preferential or punitive treatment and oblige States parties to

⁸⁸⁹ For further guidance on the legal obligations to immediate implementation of the nondiscrimination principle applied to housing rights, see the report of the Special Rapporteur on Adequate Housing E/CN.4/2002/59.

undertake steps to ensure that rights be exercised without distinction or discrimination “of any kind [as to] race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”⁸⁹⁰

The International Convention on the Elimination of All Forms of Racial Discrimination (1965) defines discrimination as:

any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.⁸⁹¹

Article 5 of that Convention actually offers the historic first codification of the human right to housing, with particular reference to the over-riding principle of nondiscrimination. It reads:

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

In the Convention and its negotiation history, an important distinction emerges: While it is the obligation of States' parties and their governments to combat both “racism” and “racial discrimination,” the former is a state of mind that should be eradicated through measures including education and other efforts to bring about a cultural and social transformation toward antidiscrimination. The latter, “racial discrimination” is the actual activation of prejudice which, in its manifestation, is a material violation of the rights of others. Any official action or omission of practicing or condoning racial discrimination is a violation of an *immediate* obligation of the State, not subject to “progressive realization.”

This distinction between (1) theoretical racism and (2) racial discrimination in practice has historic roots. It is found also in moral systems, as reflected in the Holy Qur'an, which recognizes the existence of prejudice, but, nevertheless, entreats against putting that into practice:

O you who believe, be upright for God, bearers of witness with justice; and let not hatred of a people incite you not to act equitably. Be just, [for] that is nearer to the observance of duty [the nearest thing to piety].⁸⁹²

This moral distinction was found relevant nearly one millennium later, during the French Revolution. Then, the revolutionary slogan and moral call to the Human Rights of Man and Citizen was “*liberté, égalité, fraternité*.” While all three qualities were found desirable and necessary to build a new, democratic society, only liberty and equality could actually be legislated. Fraternity (or sorority) could be developed and encouraged by the State and civil society much more likely than it could be enforced. Nonetheless, a range of practical measures can be undertaken to nondiscrimination in actual practice.

⁸⁹⁰ ICESCR, Article 2.2; ICCPR, Article 2.1.

⁸⁹¹ Article 1, International Convention on the Elimination of All Forms of Racial Discrimination, adopted by General Assembly resolution 2106 (XX) of 21 December 1965, entered into force, 4 January 1969.

⁸⁹² Chapter 5: The Food [al-Ma'da], Section 2: “Duty of Uprightness,” verse 8. Maulana Muhammad Ali, transl. The Holy Qur'an (Lahore: Ahmadiyya Anjuman Isha'at Islam, 1963), p. 243.

Inherent in the principle of nondiscrimination is the understanding that programs formally providing advantages to persons and groups historically subject to discrimination are not considered to constitute unlawful discrimination. On the contrary, international public law calls upon States to provide additional assistance to those persons and groups subject to past and/or present discrimination, as in corrective/positive discrimination or affirmative action programs that redress foregoing patterns of deprivation.⁸⁹³

Applied to the congruent human rights to information and education

Applied to the congruent rights to information and education, including capacity and capacity building, the nondiscrimination principle ensures that individuals and groups are not deprived of opportunities to access information, including capacity and capacity building, including through legal enforcement, protection and remedy, nor denied this entitlement on the basis of race, color, creed, gender, sex, sexual orientation, political opinion, social or economic status, language, physical ability/disability, property, form of legitimate work, descent, or any other origin or arbitrary criterion. For indigenous, tribal or other land-based peoples, the State has the obligation to recognize their rights to information and education, including capacity and capacity building in law and in practice. Likewise, no State possesses the legal authority to practice or condone *de jure* or *de facto* discrimination that leads to the loss or denial of information or education, including capacity and capacity building to any member of any group, particularly to the unfair advantage another. This applies to all forms and practices of favoritism and other forms of corruption that allow disproportionate benefits to family members or political partisans, as well as preferences given to groups such that spark social conflicts. Nondiscrimination is an immediate obligation on States.⁸⁹⁴

International public law calls States to provide special assistance to persons and groups who have been subject to past and/or present discrimination, as in affirmative action programs that redress foregoing patterns of deprivation.⁸⁹⁵

✓ Gender equality

General description

Despite the universal acceptance of the principle of gender equality in international law, many women are denied equal treatment and discriminated against in their housing on the basis of sex or gender. Approximately one-third of the world's women may be homeless, living in inadequate housing and own less than one percent of the world's property.⁸⁹⁶ The intersectionality of poverty or other factors (i.e., class, indigenous, refugee, migration, caste, sexual orientation, ethnic minority, age, disability, widowhood, citizenship or nationality status, etc.) further marginalize women. In the context of the increased feminization of poverty, decreased access to public services, and destruction of natural environments, all of which are accelerating with the process of globalization, women are increasingly placed in situations where they do not have adequate housing.

The denial of adequate housing for women is a violation of women's human rights. It can also result in the violation of women's other human rights such as rights to life, livelihood,

⁸⁹³ See Marjorie Cohn, "Affirmative Action and the Equality Principle in Human Rights Treaties: United States' Violation of Its International Obligations," *Virginia Journal of International Law*, Vol. 43 (2002), 249–74.

⁸⁹⁴ For further guidance on the legal obligations to immediate implementation of the nondiscrimination principle applied to housing rights, see the report of the Special Rapporteur on Adequate Housing E/CN.4/2002/59.

⁸⁹⁵ See Marjorie Cohn, *op cit*.

⁸⁹⁶ COHRE Fact Sheet on Women's Right to Housing, Land and Property.

adequate food, employment and political participation (e.g., voting rights). In particular, the lack of adequate housing also can make women more vulnerable to various forms of violence against women (e.g., domestic violence, trafficking, sexual and gender-based violence against migrant workers etc.).

The right to nondiscrimination in gender relations, as an over-riding principle in human rights implementation, is generally stated in UDHR, Article 2 (nondiscrimination) and throughout the Declaration in its language of human rights for “everyone” and “all are equal before the law.” More specifically, gender equality has emerged as a binding, over-riding principle in the two Covenants’ common Article 3:

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all...rights set forth in the present Covenant.

This principle is further elaborated in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).⁸⁹⁷ Article 13 obliges States parties to take all appropriate measures to eliminate discrimination against women in areas of economic and social life, and to ensure women's equal right to bank loans, mortgages, and other forms of social credit. In Article 14, paragraph 2, CEDAW specifically addresses women’s equal rights in human settlements as the right of women in rural areas to enjoy adequate standard of living conditions, particularly, in relation to housing sanitation, electricity and water supply, transportation, education, communications and access to credit. This extends explicitly to women’s “equal treatment in land and agrarian reform as well as in land resettlement schemes.” Article 15 also addresses women's equal right to conclude contracts and administer property; while Article 16, paragraph 1 (c) guarantees women's equal rights and responsibilities during marriage and its dissolution, including equal rights for both spouses in respect of ownership, acquisition, management, administration, enjoyment and disposition of property.

This legal norm is carried forward in the Beijing Platform for Action (BPFA), which calls on Governments to remove all obstacles for women in obtaining affordable housing and access to land.⁸⁹⁸ This remains standard in the subsequent multilateral agreements formulated in the Istanbul Declaration and the Habitat Agenda (1996)⁸⁹⁹ and the World Summit on Sustainable Development (WSSD) Plan of Implementation (2002).⁹⁰⁰

The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (1997), which were developed for understanding and determining violations of economic, social and cultural rights, affirmed that, in order to eliminate discrimination against women’s rights recognized in the Covenant, the State party should face the need and legal obligation to eliminate discrimination against women that arises out of social, cultural and other structural advantages.⁹⁰¹

Typically, for women the home is the single most important place in the world. Beyond shelter, it is a place for the vast majority of woman to generate income, care for children, and

⁸⁹⁷ Adopted and opened for signature, ratification and accession by General Assembly resolution 34/180, 18 December 1979; entered into force, 3 September 1981, in accordance with Article 27(1).

⁸⁹⁸ Para 58(m).

⁸⁹⁹ Para 40 (b), 78 (e) and (g).

⁹⁰⁰ Para 67 (b).

⁹⁰¹ Related sources of gender equality for women in human settlements can be found in CEDAW Articles 1, 2(f), 3 and 5 (a); UDHR, Articles 2, 16, 17 and 25; UDHR, Articles 5 (d) (v) and (vi), 5 (e) (iii); ICERD, Article 2, para 1, Articles 3, 9, 16, 17, Article 23, para 4, ICCPR, Article 26; ICESCR, Article 2, para 2, Article 3, and Article 11, para 1; and CRC, Article 1, 16, para 1 and Article 27.

seek respite from violence and patriarchy in the community at large. For many still, it is the only place where women can participate fully in decisions and social activities.

Applied to the congruent human rights to information and education

Poverty combines with other factors (i.e., class, indigenous, refugee, migration, caste, sexual orientation, ethnic minority, age, disability, widowhood, citizenship or nationality status, etc.) to alienate women even further from their human rights to information and education, including capacity and capacity building. In the context of the increased feminization of poverty, decreased access to information, education, capacity and capacity building are accelerating in the current contexts of globalization, whereas women are increasingly placed in situations where they do not have adequate housing, and less access to information, education, capacity and capacity building.

Preserving a practice of unequal rights to information, education, capacity and capacity building is not consistent with human right obligations and likely would violate both the gender-equality provisions of the Covenant on Economic, Social and Cultural Rights, CEDAW and the Racism Convention, as well as provisions of the Vienna Convention on the Law of Treaties (1969).⁹⁰²

✓ Rule of law

General description

In the over-riding principles pertaining to previously discussed forms of discrimination, human rights are, by their nature, equal, inalienable and universal. By this is meant that the criteria for applying the standards and norms are to be inconsistent in their application. One way to ensure that is through the formal and institutionalized rule of law.

As enshrined in UDHR, Article 6, “Everyone has the right to recognition everywhere as a person before the law.” This right is codified in the ICCPR (Article 16), and is supported by regional instruments affirming the same.⁹⁰³ The equal inalienable and universal right to a fair trial, including the presumption of innocence, is enshrined in ICCPR,⁹⁰⁴ as well as the regional instruments.⁹⁰⁵

The law-abiding State and its officers must not withhold or impede remedies, apply the law inconsistently or arbitrarily, or exercise any form of discrimination that affects the human right to adequate housing. Inhabitants who have lost or undergone damage to their housing unjustly or illegally have the right to unobstructed access to legal remedy, including compensation for victims, which the State bears the corresponding obligation to respect, defend, promote and fulfill.

⁹⁰² The Vienna Convention sets forth, in Article 27, that “[A] party may not invoke the provisions of its internal law as justification to perform a treaty,” and the customary law principle, arising from Article 8 of the Universal Declaration of Human Rights, states that “everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him [her] by the constitution or by law.”

⁹⁰³ African Convention on Human and Peoples’ Rights, Article 5; Inter-American Convention on Human Rights, Article 3.

⁹⁰⁴ Article 10 reads: “Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his[her] rights and obligations and of any criminal charge before him[her].” [Bracketed text added.] Article 14.2 sets forth that “Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to the law.”

⁹⁰⁵ African Charter, Article 7; Inter-American Convention, Article 8; European Convention on Human Rights, Article 6.

States are required to maintain the rule of law in order to ensure a consistent, predictable and accessible resolution of disputes with remedy and compensation for the victims. This covers the right of equal access to public services, such as law enforcement, public defense and judicial services. The conduct of law enforcement officers, prosecutors and judges can determine whether or not the rule of law is respected or violated. Therefore, there is a tremendous need for the State to train, discipline and rehabilitate legal enforcers and practitioners. In the case of police services, the use of force is required to follow strictly the principle of presumed innocence and the criteria of necessity and proportionality in case where State force is used.⁹⁰⁶ Where local statutory law may be silent on housing rights safeguards, lawyers and judges bear an extra professional duty to apply the human rights norms to the extent possible.

The principles of remedy and reparation have been firmly established in instruments declaratory of the human right to access to justice. Culminating the development of international law derived from the major legal systems in the world, the revised Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law (2003) outline the right and corresponding State obligations as follows:

VII. Victim's Right to Remedy

Remedies for violations of international human rights and humanitarian law include the victim's right to:

- (a) Access justice;
- (b) Reparation for harm suffered; and
- (c) Access the factual information concerning the violations.

VIII. Victims' Right to Access Justice

A victim's right of access to justice includes all available judicial, administrative and other public proceedings, mechanisms and modalities that exist under domestic laws, as well as under international law. Obligations arising under international law to secure the individual or collective right to access justice and fair and impartial proceedings should be made available under domestic laws. To that end, States should:

Make known, through public and private mechanisms, all available remedies for violations of international human rights and humanitarian law;

Take measures to minimize the inconvenience to victims, protect their privacy as appropriate, and ensure their safety from intimidation and retaliation, as well as that of their families and witnesses, before, during, and after judicial, administrative, or other proceedings that affect the interests of victims;

Facilitate assistance to victims seeking access to justice.

Make available all appropriate diplomatic and legal means to ensure that victims can exercise their rights to a remedy and reparation for violations of international human rights or humanitarian law.

In addition to individual access to justice, adequate provisions should also be made to allow groups of victims to present collective claims for reparation and to receive reparation collectively.

⁹⁰⁶ Code of Conduct for Law Enforcement Officials, adopted by General Assembly resolution 34/169, 17 December 1979, Article 3; Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted at the Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August–7 September 1990, preamble and Articles 1–11.

The right to an adequate, effective and prompt remedy against a violation of international human rights or humanitarian law includes all available international processes in which an individual may have legal standing and should be without prejudice to any other domestic remedies.⁹⁰⁷

The restitution of housing and property is one form of restitutive/restorative justice sought in the rule of law applied to housing rights violation victims. Efforts continue to develop these methods and disparate efforts, not least in the development of draft guidelines on restitution for refugees.⁹⁰⁸

Applied to the congruent human rights to information and education

In the case of a housing rights dispute over access to information, education, capacity and capacity building, the State bears an obligation to ensure that the rule of law is applied in a context of equality, inalienability and universality of rights, particularly with regard to the affected human right (i.e., adequate housing). In the case where the State (e.g., courts, public finance institutions, municipal planners, police, etc.) have a role in a dispute over tenure, the State bears the responsibility to abide by its human rights obligations and refrain from violations of the right to housing, including access to information, education, capacity and capacity building, such as unlawful forced eviction, or other forms of violence carried out in any connected with the denial of access to information, education, capacity and capacity building.

The law-abiding State, its agents and offices must not withhold access to information, education, capacity and capacity building in the housing sphere, nor exercise any form of arbitrary discrimination against the tenure holder. Inhabitants who have suffered a loss of their housing unjustly or illegally as a result of any denial of access to information, education, capacity and capacity building have the right to unobstructed access to legal remedy, including compensation for victims, for which the State bears the corresponding obligation.

✓ Nonretrogression/progressive realization

General description

ICESCR's Article 2 identifies the State party's obligation to ensure the "progressive realisation" of ESC rights. That is widely interpreted to mean that the State party breaches this provision if it tolerates or causes "regressivity" in the enjoyment of the right. The relevant jurisprudence has established that, even in the case of scarce resources, the State must exert good-faith efforts, including through international cooperation, to advance—and not derogate—the enjoyment of ESC rights, including adequate housing and its constituent entitlements.

The treaty bodies have clarified further that neither political processes, domestic legislation, scarcity of resources, or agreements with other parties can be invoked to justify nonimplementation of human rights treaty obligations.⁹⁰⁹ For example, the binding nature of a treaty obligation is further clarified in the Vienna Convention on the Law of Treaties (1969),

⁹⁰⁷ As revised in accordance with UN Commission on Human Rights resolution E/CN.4/2003/34 (2003).

⁹⁰⁸ Progress report of the Special Rapporteur, Paulo Sérgio Pinheiro, "Housing and property restitution in the context of the return of refugees and internally displaced persons," E/CN.4/Sub.2/2004/22, 2 June 2004.

⁹⁰⁹ Letter of CESCR Chairperson Mme. Virginia Bonoan-Dandan to S.E. M. Yaakov Levy, Permanent Representative, Permanent Mission of Israel to the United Nations Office and Specialized Agencies at Geneva, 11 May 2001, annex to Letter by the Chairperson of the Committee on Economic, Social and Cultural Rights to the President of ECOSOC (11 May 2001).

clarifying in its Articles 27 and 46, that invoking an internal law is not admissible as a justification for nonimplementation of a treaty obligation.⁹¹⁰ To harmonize treaty obligations with local implementation, human rights obligations arising from the treaties and case law should guide policy formulation and decision-making processes in law-abiding States. Therefore, a process of realising the rights should not regress, but should ensure “the continuous improvement of living conditions” (Article 11).

This over-riding principle of “nonregressivity” has been reaffirmed in the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights (1986) and Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (1997),⁹¹¹ as well as numerous cases of international jurisprudence through the monitoring functions of CESCR.

The many examples of globalization-era economic reforms demonstrate how the withdrawal of the State from its obligations to fulfill economic/social/cultural rights can lead to deprivation. The State nonetheless bears a covenanted obligation to ensure that economic policies do not make tenure more precarious and insecure, whether arising from domestic political change or pressures of an external actor, such as an international financial institution. In order to ensure “progressive realization,” therefore, it is vital to ensure that the human right to adequate housing forms a part of the overall human rights framework for development policy, especially guiding international cooperation arrangements. This civilizing process requires improved coordination among the relevant government bodies, such as ministries of Justice, Finance and Foreign Affairs. This is not only out of domestic duty toward citizens for States to ensure that development partnerships effect “progressive realization,” but also an extraterritorial obligation of the State party under ICESCR, Article 2.

The CESCR has commented also on the “core obligations” of States to implement the human right to adequate housing. It noted that, regardless of the state of development of any country, certain steps must be taken immediately, in addition to the over-riding principles of human rights law. These include abstaining from measures that would impinge upon the right, as well as to engage positively in practices to facilitate the people’s processes of groups seeking to improve their living conditions, in accordance with the specific elements outlined above.⁹¹²

Applied to the congruent human rights to information and education

The State’s offices and agents, at all levels, as well as its guiding policies and legislation should ensure that inhabitants have greater access to information, education, capacity and capacity building in the housing sphere. This means that new laws, budgets, plans and policies, as well as patterns of civil servant behavior and practice should improve access to

⁹¹⁰ Article 27 (Internal law and observance of treaties): “A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to Article 46.” Article 46 (Provisions of internal law regarding competence to conclude treaties) states that: 1. A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance. 2. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith.”

⁹¹¹ Text available at <http://ip.aaas.org/escrdocs.nsf/>.

⁹¹² “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.” General Comment No. 4, para. 10.

information, education, capacity and capacity building for inhabitants. It also means that those same parties should develop remedies for those who have been deprived of access to information, education, capacity and capacity building in matters affecting their housing.

✓ International Cooperation

General description

States parties to both Covenants bear an obligation to implement human rights within a context of “international economic cooperation.”⁹¹³ The ICESCR’s Article 2.1 requires States party to undertake steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

In the spirit of the numerous multilateral agreements on human rights and development, “progressive realization of ESC rights,” as a borderless objective, logically engages “international cooperation” duties for States to conduct themselves accordingly through their relations with other States, nations and peoples:

In fraternity and solidarity
Domestically and extraterritorially
Individually, jointly and/or collectively.

The preamble of the United Nations Charter specifies the purposes of the world organization insofar as “we the peoples of the United Nations” are determined “to promote social progress and better standards of life in larger freedom.” Article 1, para. 3 of the Charter sets out one of the UN’s purposes as “to achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.”

Linking international cooperation and self-determination as essential to the peaceful order of the United Nations, the Charter’s Article 55 reads:

With a view to the creation of conditions or stability and well-being[,] which are necessary for peace and friendly relations among nations based on respect for the principles of equal rights and self-determination of peoples, the United Nations shall promote universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

The Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations considers as essential:

the progressive development and codification of the following principles:... (d) the duty of States to cooperate with one another in accordance with the Charter;...(g) the principle that States shall fulfill in good faith the obligations assumed by them in accordance with the Charter, so as to secure their more-effective application

⁹¹³ Common Article 1.2.

within the international community would promote the realization of the purposes of the United Nations;...⁹¹⁴

The UN States members share a duty to cooperate with one another, irrespective of their differences, to maintain international peace and security and promote international economic stability and progress, the general welfare of nations and international cooperation free from discrimination. To this noble end, the Declaration embodied by UN members commitments such that:

(c) States shall conduct their international relations in the economic, social, cultural, technical and trade fields in accordance with the principles of sovereign equality and nonintervention;

(d) States Members of the United Nations have the duty to take joint and separate action in cooperation with the United Nations in accordance with the relevant provisions of the Charter.

States should cooperate in the economic, social and cultural fields as well as in the field of science and technology and to the promotion of international cultural and educational progress. States should cooperate in the promotion of economic growth throughout the world, especially that of the developing countries.⁹¹⁵

In addition to its Article 2, ICESCR also sets out to identify the UN systems itself as a vehicle for international cooperation to uphold the Covenant. The Covenant empowers ECOSOC to raise the Covenant-monitoring reports as a guide for UN technical assistance.⁹¹⁶

Other instruments of international public law are dedicated to specifying norms for international cooperation agreements between and among States. Consistent with human rights norms and other *jus cogens* principles of law, the Vienna Convention, Article 53, provides clarity:

A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

States parties adhering to the international law principles of international cooperation are required to behave extraterritorially consistent with the progressive realization of economic/social/cultural rights. For our purposes, this extends especially to the human right to adequate housing and land.

As a donor country, a State must ensure that the projects and programs it supports do not erode any of the entitlements contained in their right to adequate housing for inhabitants in

⁹¹⁴ Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly in its resolution 2625 (XXV) of 24 October 1970 Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly in its resolution 2625 (XXV) of 24 October 1970

⁹¹⁵ Ibid.

⁹¹⁶ Article 22 reads: "The Economic and Social Council may bring to the attention of other organs of the United Nations, their subsidiary organs and specialized agencies concerned with furnishing technical assistance any matters arising out of the reports referred to in this part of the present Covenant which [sic] may assist such bodies in deciding, each within its field of competence, on the advisability of international measures likely to contribute to the effective progressive implementation of the present Covenant."

beneficiary countries. That includes avoiding any action that leads to forced evictions, confiscation or demolition of housing. In the case of development assistance resulting in dislocation of inhabitants, all aspects of the undertaking are to be the subject of consultation with the affected persons, and the efforts should enhance legal security of tenure as a result within the covenanted human rights framework.

As a recipient country, structural adjustment, deregulated foreign investment, privatization and related measures typified by today's bilateral and multilateral arrangements assistance agreements and programs must be compatible with the human rights obligations of the affected State. Measures that deny or reduce tenure security would be illegal and unaccepted as a condition of the assistance. States parties to the human rights instruments have a self-preserving opportunity and responsibility to uphold their prior treaty obligations as a form of (moral, legal and practical) resistance to negotiation pressures or conditionalities that may derogate the terms of legal security of tenure for inhabitants.

As all human rights implementation ultimately is a local matter, regional instruments can be a source a greater specificity in determining of State obligations and practical measures needed to uphold economic, social and cultural rights. For example, the African Charter on Human and Peoples' Rights (1981) provides a broad agreement on the term of international cooperation in its Article 21: 1, which establishes that:

All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it. 2. In case of spoliation, the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation. 3. The free disposal of wealth and natural resources shall be exercised without prejudice to *the obligation of promoting international economic cooperation based on mutual respect, equitable exchange and the principles of international law*. 4. State Parties to the present Charter shall individually and collectively exercise the right to free disposal of their wealth and natural resources with a view to strengthening African Unity and solidarity. 5. *State Parties to the present Charter shall undertake to eliminate all forms of foreign exploitation particularly that practised by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources.* [Emphasis added.]

States Parties are required to review multilateral agreements on investment, trade-related intellectual property arrangements, poverty-reduction strategy papers (PRSPs), bilateral and multilateral relations in the World Trade Organization context, World Bank lending and assistance terms, and the International Monetary Fund programs operating in, or otherwise affecting the State, in order to ensure consistency with covenanted obligations and avoid either retrogressivity or violations of its citizens' ESC rights. The State party is obliged to apply the Covenant *a priori* to ensure that any such conditionality would be subject to the ESC rights safeguards for its own inhabitants, and for those of another State party.

Privatization programs may lead to deprivation of the housing rights entitlement to tenure security. In the event of workers living in administrative housing who become laid off as part of a privatization or State-enterprise sell-off arrangement may lose their tenure altogether. Even in cases where local legislation is silent, international treaty obligations remain for the State party to defend the workers' human right to adequate housing by legal and enforceable protection for their secure tenure and all other housing rights entitlements.

As an extreme example of international cooperation conducted in explicit violation of ESC rights applying to adequate housing and secure tenure would be a scenario wherein a State engaged in, or condoning third parties to engage in acts or omissions that would contribute to population transfer or any of its related international crimes, such as mass deportations, ethnic cleansing, destruction of civilian or private property, implantation of settlers and settler colonies, or other forms of demographic manipulation of an internal or external self-determination unit. Duty prohibits States party from allowing public or private resources to accrue to settler colonies in an occupied territory, for example, or engage in any other acts or omissions that would facilitate another State party's violations of the Covenant or Convention in this way. There are numerous examples today in countries where these forms of violation continues unaddressed with the accomplice and collaboration of other States. Impunity still characterizes the conduct of many of these crimes, as the perpetrators have not yet been prosecuted at any level, including at the International Criminal Court.

A State's participation in international economic sanctions or blockades that lead to violations of the ESC rights of persons other than the State Party's own residents, citizens and nationals may lead to conditions that undermine housing rights. CESCR has provided guidance to States parties of the Covenant on ESCRs affected by sanctions regimes and subject to protection measures to avoid regressivity and violation.⁹¹⁷

Direct provision, or participation in multilateral programs of development and financial assistance actually may lead to violations of rights embodied in the Covenant (e.g., stagnation, deterioration or denial of work, education, health or housing rights, forced eviction, etc.) and constitute a breach of treaty obligations. Specifically, ICESCR and its enshrined rights should guide and govern a State's policies and conduct in any multilateral institution that imposes economic conditionalities on other States or their agents that bring about a negative consequences effect inhabitants housing rights conditions. The legacy of development banks' support for forced evictions of all possible scales and levels of deprivation has become notorious, and States that promote, finance or engage directly or indirectly in making decisions or executing these policies may be in breach of their human rights treaty obligations.

Applied to the congruent human rights to information and education

Access to information, education, capacity and capacity building in the housing sphere actually should improve as a result of international development cooperation. Any cross-border cooperation and investment in human settlements and/or in other sectors affecting housing and land rights entitlements should not affect access to information, education, capacity and capacity negatively.

✓ Other principles of application

The principles discussed above are those explicitly stated in the major international human rights treaties. At the same time, we can consider additional principles and concepts that also guide the application of the human right to adequate housing. These arise from the international jurisprudence of individual State party reviews by the treaty-monitoring bodies, as well as from their General Comments and General Recommendations. They also come to us from popular claims of people's movements, from the political resolutions of the multilateral organizations, from expert opinions found in the legal literature, and from the evolving experience at implementing human rights. Three such principles of application for

⁹¹⁷ See CESCR General Comment No. 8, "the relationship between economic sanctions and respect for ESC rights."

us to consider are known as the “indivisibility of rights,” “minimum core obligations” and “universality.”

Indivisibility

The concept of all human rights as indivisible is as practical as it is theoretical. It arises from the realization that, when we unpack the contents of a right, we encounter aspects of the other rights as well.

Take, for example, the “habitability” entitlement contained in the human right to adequate housing. The deterioration of the structural features of the home leaving the inhabitants exposed to the elements, or pollution in the immediate vicinity of the housing surely effect the enjoyment of the human right to “a standard of living adequate for the health and well-being of himself and of his family,” as recognized in Article 25 of the 1948 Universal Declaration of Human Rights (UDHR), and codified as the “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health” in Article 12 of the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR).

Likewise, homelessness is a status synonymous with the denial of voting rights in most States, where registration and voting require a *domicile fixe*. Thus, the human right to adequate housing is linked with everyone’s “right to take part in the government of his [sic] country, directly or through freely chosen representatives,” as promised in UDHR (Article 21), and codified in the Covenant on Civil and Political Rights (ICCPR), in 1966, as everyone’s “right to take part in public life, directly or through freely chosen representatives” (Article 25). Incorporating the experience of HIC members and others around the globe, it has become clear that our monitoring methodology calls our attention also to the “congruent” human right to participation and self-expression among the constituent entitlements of the human right to adequate housing.

Sorting, categorizing and distinguishing subjects of any kind can be a useful exercise that makes manageable order out of complexity and facilitates understanding. Human rights are no exception. However, in practice, we find that human rights are interdependent, and categorical separation can become artificial and actually impede understanding. One example is in the division of human rights found in the UDHR into the two, separate Covenants. The reason for adopting two basic Covenants, instead of one, is largely attributed to the divergent Cold War ideologies that dominated the General Assembly when it adopted the Covenants in 1966. Ideology is also the reason that one of the largest and wealthiest industrialized States has failed to ratify the ICESCR until today, and ideology also prevailed to exclude a “human right to own property” from that Covenant, although that right is included in the UDHR (Article 17). Despite the false impression left by the Covenants dividing human rights into two instruments camps, the ICCPR’s nonetheless recognizes, in its preamble, that:

... in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights.

Without appreciating the over-riding principle of indivisibility, other distortions can arise. With civil and political rights traditionally gaining from more attention and specificity than economic/social/cultural rights (consistent with some Western Bloc preferences), some

authors have proposed that we consider “generations” of rights.^{918[1]} Presenting distinct rights in such a priority order perpetuates the historic neglect of economic/social/cultural rights and promotes a logic that may culminate in violations. Nominating civil and political rights in a hierarchical order as “first generation” rights classifies economic/social/cultural rights as secondary: the “second generation” of rights. Group rights, as distinct from individual rights, environmental rights and, in certain cases, self-determination thus become degraded as “third generation.” This view is kept alive by a simple misunderstanding of “progressive” realization, required in ICESCR, such that slow realization of economic/social/cultural rights is acceptable and that all aspects of economic/social/cultural rights, as such, are subject to gradual implementation. The indivisibility of human rights belies such gradualist or generational notions. Therefore, this toolkit cannot accommodate the divisive, generational approach to human rights not for ideological reasons, but for the fact that theories neatly segregating rights are not sustained in practice.

It is with this recognition of the indivisibility of rights that CESCR commented:

...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....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.^{919[2]}

Core obligations

Alone, the very general reference to the human rights in treaty texts does not provide the specific guidance needed for States parties around the world to know their precise obligations. ICESCR’s English-language version requires States to “take steps.” The French texts calls on States “to act” (*s’engage à agir*) and, in Spanish, the Covenant requires States “to adopt measures” (*a adoptar medidas*), but offers little about what those steps/actions/measures should be, except to say that these should be “appropriate,”

^{918[1]} French jurist Karel Vasak is attributed with first proposing the division of human rights into three generations, while at the International Institute of Human Rights (Strasbourg), in 1979. His division adapted the French Revolution’s slogan of *Liberté, Égalité, Fraternité* as ordinal categories. The three generations are subsequently reflected in some of the rubrics of the European Charter of Fundamental Rights.

First-generation human rights deal essentially with liberty. In Vasak’s view, these are seen as fundamentally civil and political in nature and serve to protect the individual from excesses of the State. First-generation rights include, *inter alia*, freedom of speech, the right to a fair trial, and freedom of religion, as enshrined in Articles 3–21 of UDHR and ICCPR.

Second-generation human rights would be those related to equality, and are supposedly the social, economic, and cultural rights. This theory sees these essentially as positive rights; that is, actions that the State is required to provide to the people under its jurisdiction, as opposed to actions from which the State should refrain—e.g., forced eviction—in order to realize rights.

Third-generation human rights correspond with fraternity, or involving “solidarity.” They include group and collective rights, such as self-determination, economic and social development, sovereignty over natural resources, and the right to participate in the common heritage of mankind. Treated as third generation, the generational theory of rights presumes that these rights are not yet binding and dubiously judicial.

In an alternative explanation for the three-generational approach rests on the political divisions of the Cold War, where the West promoted allegedly first-generation (civil and political) rights, and the East promoted second-generation (economic, social and cultural) rights. The Third World (i.e., third priority in the putative hierarchy) promoted (third-generation), solidarity rights, as in the decolonization struggles of the 1970s, including decolonization processes delayed until today.

^{919[2]} General Comment No. 4: “the right to adequate housing” (1991), para. 9.

“progressive” (nonregressive/ nonretrogressive), nondiscriminatory (nondiscrimination), involve international cooperation and include legislative measures (rule of law). Therefore, the treaty-monitoring bodies bear the task of issuing General Comments and General Recommendations to supply the needed specificity, based on international public law and the implementation experience of all States parties.

In its General Comment No. 3: “The nature of States parties’ obligations,”^{920[3]} CESCR addressed the principle of “minimum core obligations”:

...a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party. Thus, for example, a State party in which any significant number of individuals is deprived of ...basic shelter and housing...is, *prima facie*, failing to discharge its obligations under the Covenant. If the Covenant were to be read in such a way as not to establish such a minimum core obligation, it would be largely deprived of its *raison d’être*.^{921[4]}

The General Comment, like the Covenant, takes into consideration material limits of States. However, the Covenant’s Article 2 (1) obligates each State party to take the necessary steps “to the maximum of its available resources,” and the treaty body has determined that the nature of treaty obligations are such that a State bears a heavy burden of proof to demonstrate that “every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations.”^{922[5]}

The “minimum core obligations” also include those appropriate steps to respect, defend, promote and fulfill the human right to adequate housing, like other economic/social/cultural rights, as a matter of immediate application. Among the appropriate measures, in addition to harmonizing domestic legislation with the covenanted rights, is to provide judicial remedies to victims within the national legal system. That would be among the most effective measures to ensure compliance with obligations to implement certain aspects of economic/social/cultural rights *immediately*, such as by ensuring nondiscrimination. The Committee has determined that it is “difficult to sustain” any suggestion that these immediate obligations are inherently non-self-executing. This legal authority is consistent also with the terms of the Vienna Convention on the Law of Treaties (1969), which provides that “A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.”^{923[6]} The treaty bodies have clarified further that neither political processes, domestic legislation, scarcity of resources, nor agreements with other parties could be invoked to justify nonimplementation of human rights treaty obligations.^{924[7]}

Nondiscrimination is perhaps the most obvious and urgent of the immediate principles in implementing the human right to adequate housing. CESCR has provided specific guidance

^{920[3]} Adopted by the CESCR in its fifth session (1990), E/1991/23.

^{921[4]} *Ibid.*, para. 10.

^{922[5]} *Ibid.*

^{923[6]} Vienna Convention on the Law of Treaties, signed at Vienna, 23 May 1969; entered into force, 27 January 1980, Article 27: “Internal law and observance of treaties.” The Article also goes on to state that “this rule is without prejudice to Article 46.” Article 46: “Provisions of internal law regarding competence to conclude treaties” states that “1. A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance. 2. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith.”

^{924[7]} Letter of CESCR Chairperson Mme. Virginia Bonoan-Dandan to S.E. M. Yaakov Levy, Permanent Representative, Permanent Mission of Israel to the United Nations Office and Specialized Agencies at Geneva, 11 May 2001, annex to Letter by the Chairperson of the Committee on Economic, Social and Cultural Rights to the President of ECOSOC (11 May 2001).

such that, among other things, “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.”^{925[8]}

The measures needed for States parties to comply with obligations of immediate application include negative obligations. That is, many of the measures to realize the human right to adequate housing would require little more than the State and its agents to refrain from certain harmful practices, such as arbitrary house demolitions and forced eviction, or a meaningful commitment to enabling “self-help” or “social production of habitat” by affected groups. Such changes in State behavior would not require significant expenditure of public resources.

Universality

The principle of human rights’ “universality” is simply expressed in the UDHR’s recognition that “All human beings are born free and equal in dignity and rights” (Article 1). Everyone, without exception, is entitled to human rights by virtue of belonging to the human family. From a moral point of view, the universality of human rights is an essential principle if the human civilization is to advance for the better. In international law, the text of ICESCR also speaks consistently of right of “everyone,” which obliges States not to discriminate in adherence to minimum core obligations. In the field of housing, in particular, States are not permitted to interpret its minimum core obligations to apply selectively, that is, only to citizens, or only certain citizens, but also to ensure the human right to adequate housing is realized also for “everyone,” including residents, immigrants and migrant workers, etc. The only conditionality permitted in law is that the subjects of human rights qualify as members of the human family.

Before the Universal Declaration, the social movements, revolutions, antislavery struggles and intellectual contributions of the past have served as vehicles for the promotion of human rights that eventually have been incorporated into local and international law and practice. However, many of these famous accomplishments were limited in their substance or application, geographically or socially, or were subject to reversal. Social science and philosophy have contributed greatly to the recognition of human rights, but have not carried the force of law. The recognition of the universality of human rights overcomes the shortcomings left by these otherwise-significant accomplishments:

Limits in scope of application:

- The rights and ethics delivered through the world’s moral systems, especially those found in the religions, also are limited in scope by the fact that they apply to adherents to a particular faith group, not applying universally;
- The Magna Carta of 1215 imposed limits on royal impunity that equate as new rights for citizens, especially property-owning citizens. However, this historical achievement had only local application in the geographical realm of the English king.

^{925[8]} General Comment No. 3: “The nature of States parties’ obligations,”^{925[8]} CESCR addressed the principle of “minimum core obligations,” adopted by the CESCR in its fifth session (1990), E/1991/23, para. 11.

^{925[9]} The Vienna Convention sets forth, in Article 27, that “[A] party may not invoke the provisions of its internal law as justification to perform a treaty,” and the customary law principle, arising from Article 8 of the Universal Declaration of Human Rights, states that “everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him [her] by the constitution or by law.”

Exclusion of social sectors and substantive rights:

- The “American Revolution,” in the English colonies that eventually became the original United States of America, realized the right to self-determination as a legal right and *raison d'état*. However, the right to self-determination, as inalienable as it is, applied in the American Revolution case as a right limited only to the white colonizers who identified themselves as a distinct people. The remaining indigenous peoples—whom the settlers mostly largely and replaced—have yet to achieve their self-determination to this day;
- The French Revolution, for all its achievements, realized rights for individuals. French farmers and workers sought recognition of their group rights in the context of the revolution; however, its leadership rejected those expansive notions of rights and insisted on *liberté, égalité and fraternité* with an individual focus;
- The results of the Bolshevik Revolution institutionalized recognition of group rights for workers, etc.; however, rejected a right to property ownership. However ethically grounded the rationale for that omission, the denial of property rights also has emerged as a common tool for depriving persons, communities and entire peoples of their means of subsistence, thereby demonstrating, by its violations, the importance of that neglected human right.

Retrogression:

- The antislavery movement in Haiti at the end of the 18th Century resulted in a democratic regime and Constitution under the leadership of former slave and eventual General Toussaint Louverture. However, the same France that produced the world-changing Revolution only 12 years before saw the French General Napoleon I crush the new democracy in 1801 for reasons of imperial interest, reversing the accomplishments of Haitian antislavery democracy, with consequences extending to this day.

Despite their shortcomings, these episodes in the gradual achievement of rights through local struggle all have contributed to the accumulation of human rights recognition as universally applicable. Human rights law today embodies that cumulative recognition into an international and universal code that seeks to leave no human group, geographical region or human need without mutual protection in the multilateral legal regime.

Universality of human rights now means that it is impermissible to neglect certain rights as if they were intended selectively for certain cultures, as if and people of other cultures deserve an inferior standard. Universality also means that no State or government is exempt from its obligations, either for reasons of specificity of local law, as the Vienna Convention has addressed, or to uphold traditional practices that violate rights or their over-riding principles of application.

Interpreting rights consistent with one's own culture (as in the cultural adequacy of housing) means applying locally specific options and idiomatic expressions consistent with the human rights framework. However, practices that preserve or condone unequal rights to secure tenure, inheritance or other entitlements of the human right to adequate housing are not consistent with the present framework and likely to violate both the gender-equality provisions of the Covenant, as well as essential provisions of the Vienna Convention on the Law of Treaties (1969).^{926[9]}

While local experience of application and struggle continue to provide specificity on how to realize human rights, reveal a variety of possible strategies and define emerging rights (such as the rights to water, land and energy), cultural specificity does not mean allowance for the derogation of rights to something short of the over-riding principles and entitlements reflected in this toolkit. As affirmed by moral arguments and legal authority, adequate housing is the right of everyone, everywhere.

Conclusion

The over-riding principles featured in the monitoring steps of this toolkit are those explicitly mentioned in the major human rights treaties. The “Other principles of application” are implied in the human rights instruments or recognized in international jurisprudence, but are not less important to keep in mind.

The HLRN toolkit attempts to go further than merely encouraging the monitor to keep these additional principles in mind, however. The toolkit’s design actually incorporates all of these three principles, but without culling them out as additional steps in the monitoring process.

The indivisibility of rights is already present in the 12 entitlements; whereas, the first eight derive directly from the CESCR’s General Comment No. 4 specifically on the right to housing. The “Congruent rights” derive from rights whose sources and concepts arise from the ICCPR, Refugee Convention and other instruments. Therefore, the housing rights entitlements themselves embody the indivisibility concept in a practical form.

The core minimum obligations applying in the case of the human right to adequate housing also are consistent with those entitlements outlined in the General Comment No. 4, which are embedded in this methodology (human right to adequate housing entitlements A–H). Naturally, the local specificity as to the nature and level of effort required to realize the human right to adequate housing is precisely your contribution through your monitoring effort, your critical process and by posing your solutions to problems in the field.

The universality of the human right to adequate housing is also inherent to this toolkit, by design. That is manifest in the wide range of international and regional instruments guaranteeing the right and incorporated into the Step 2 presentation of both the Sources in international law and Popular sources.

The good news is that, with these principles integrated in the design of the toolkit, you are able to apply them as a matter of course. Therefore, it would be unnecessary and redundant to create corresponding, additional tasks. By applying the methodology in this Housing and Land Rights Monitoring Toolkit, you will be putting all of these inter-related and interdependent principles into living practice.

9.4. Guarantees

Guarantees of the Human Right to Adequate Housing

We will now determine the existing assets guaranteeing the entitlements of the human right to adequate housing in your country situation. We can begin by making our assessment at the general and international level, then proceeding to the more instrumental and local level. The “guarantees” do not mean only legal provisions, but also institutional, policy and other assets that function to ensure, or at least contribute to implementation of the various contents of our human right to adequate housing.

Therefore, one should assess first the State's current obligations by its ratification of international (and then regional) treaties recognizing the human right to adequate housing, its over-riding principles and its specific entitlements. Then this method would have us determine any similar guarantees in the national constitution (or equivalent). At the more-specific level of legislation, the inquiry should have us identify which statutes, regulations and even municipal ordinances actually guarantee the right or any entitlement within the right. Presumably, public policies, programs, institutions and budgets in place should form the practical implementation counterparts to complement these legal criteria and the respect, defense, promotion and fulfillment of the human right at the most-localized operational level.

Inquiry Begins Here

Following this logic, our line of inquiry on "guarantees" poses a number of questions for the monitor to provide the answer. Now your role will become more active. Accordingly, we will follow the method of assessing the guarantees in your country situation for implementation of the human right to adequate housing from general to specific, thus, focusing on:

- Ratifications and multilateral commitments:** Obligations arising from multilateral (international and regional) ratification of relevant treaties;
- Constitutional provisions** relevant to the human right to adequate housing and land;
- National legal system:** Legislation and other local law;
- Institutions:** both binding and bonding institutions, whether as a formal structure, or a more-customary, social character;
- Policies:** having nationwide application;
- Programs:** long-term, policy-based and systematic efforts;
- Projects:** having more temporary and localized application; and
- Budgets** of public institutions.



In that order, our line of inquiry will explore these guarantees for each of the twelve entitlements of the human right to adequate housing and land. You will likely find that you may already have the answers to many of these questions from the previous sections on "Sources" and "Over-riding Principles." For instance, you have already learned about, and identified many multilateral treaty instruments guaranteeing the human right to adequate housing. Now, you will be able to fill in the rest of the guarantees to complete the picture of how these norms translate into legal and functional assurances locally for this and every entitlement of our human right that you choose to monitor and assess.

This method ensures that the monitor take into consideration also the guarantees of the over-riding human rights principles (as explained above in "Over-riding principles applied to legal security of tenure and freedom from dispossession" in Step 3 of this toolkit). These principles, found in the first Articles of all the major human rights treaties, are to be generally and universally applied in order to ensure a context for the realization of all rights, not least the human right to adequate housing and land. Since these principles over-ride, or sit on top of the human rights framework applied to housing and land, they appear first in the list of questions in our line of inquiry. These questions include a list of legal instruments and commitments by States to guarantee these over-riding principles. (Please note that these are

illustrative lists; they are not exclusive lists. You may know of other such guarantees, and you may find that some listed do not apply to your country situation.)

In the same way that we proceed from the general to the specific, the inquiry about the guarantees of the over-riding principles is followed by the more precise, practical guarantees that ensure the human right to adequate housing and land is made real in practice. Therefore, the systematic questions here include a test of (1) the present (general and contextual) guarantees for applying the over-riding principles of international human rights law in the case of the entitlement legal security of tenure and freedom from dispossession (i.e., self-determination, nondiscrimination, gender equality, rule of law, nonregressivity/nonretrogression and international cooperation), as well as (2) the (functional and specific) local guarantees of legal security of tenure and freedom from dispossession deriving from the guaranties listed above.

✓ Guarantees of the over-riding principles

Self-determination

Which international treaties has the State ratified, acceded to or succeeded to that guarantee that the principle of self-determination be applied, including in the housing context?

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention on the Elimination of All Forms of Racial Discrimination (1965)
- Convention on the Rights of the Child (1989)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- ILO No. 107 concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (1957)
- ILO Convention No. 169 concerning Indigenous Peoples in Independent Countries (1989)
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee that the principle of self-determination be applied, including in the housing context?

- Declaration on the Right to Development (1986)
- Declaration on Social Progress and Development (1969)
- Habitat II Agenda (1996)
- Istanbul Declaration (1996)
- Social Summit Declaration and Programme of Action (1995)
- Universal Declaration of Human Rights (1948)
- United Nations Commission on Human Rights resolutions
- UN General Assembly resolutions [various]
- Vienna Declaration and Programme of Action (1993)
- Durban Declaration and Programme of Action [of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] (2002)
- Johannesburg Declaration of the World Summit on Sustainable Development and Plan of Implementation (2001)

Which regional treaties has the State ratified, acceded to or succeeded to that guarantee that the principle of self-determination be applied, including in the housing context?

- African Charter on Human and Peoples Rights (1981)
- American Convention on Human Rights (1969)
- American Declaration of Human Rights (1948)
- Arab Charter on Human Rights (1994)
- (European) Convention for Protection of Human Rights and Fundamental Freedoms (1950)
- European Social Charter (1961)

Has the State participated in the adoption of multilateral agreements in the form of regional conferences, summits, or congresses, etc., or voted in favor of resolutions in regional organizations that guarantee that the principle of self-determination be applied, including in the housing context?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (2000)
- Rabat Declaration (1995)

Nondiscrimination

Which international treaties has the State ratified, acceded to or succeeded to that guarantee that the over-riding principle and human right to freedom from discrimination be applied, including also in the housing context?

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention on the Elimination of All Forms of Racial Discrimination (1965)
- Convention on the Rights of the Child (1989)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- International Labour Organisation Convention No. 107 concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (1957)
- International Labour Organisation Convention No. 117 *on Social Policy (Basic Aims and Standards)* (1962)
- ILO Convention No. 169 concerning Indigenous Peoples in Independent Countries (1989)
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)
- Refugee Convention (1951)
- Convention relating to the Status of Stateless Persons (1954)
- Convention on the Reduction of Statelessness (1961)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee that the over-riding principle and human right to freedom from discrimination be applied, including also in the housing context?

- Declaration on Asylum (1967)
- Declaration on the Right to Development (1986)
- Declaration on Social Progress and Development (1969)
- Declaration on the Elimination of Violence against Women (1993)
- Habitat II Agenda (1996)
- Declaration on Cities and Other Human Settlements in the New Millennium [Habitat II+5 UNGAR S-25/2] (2001)
- UN Guidelines on Internally Displaced Persons (1998) [vote in favor of adoption in UNHRCR E/CN.4/1998/53/Add.2, dated 11 February 1998]
- International Labour Organisation Recommendation No. 162 concerning Older Workers (1980)
- Istanbul Declaration (1996)
- Rio Declaration and Agenda 21 (1992)
- Social Summit Declaration and Programme of Action (1995)
- Universal Declaration of Human Rights (1948)
- UN General Assembly resolutions [various]
- United Nations Commission on Human Rights resolutions [various]
- Vancouver Declaration Human Settlements (1976)
- Vienna Declaration and Programme of Action (1993)
- Durban Declaration and Programme of Action [of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] (2002)
- Johannesburg Declaration of the World Summit on Sustainable Development Plan of Implementation (2001)

Which regional treaties has the State ratified, acceded to or succeeded to that guarantee that the over-riding principle and human right to freedom from discrimination be applied, including also in the housing context?

- African Charter on Human and Peoples Rights (1981)
- American Convention on Human Rights (1969)
- Arab Charter on Human Rights (1994)
- (European) Convention for Protection of Human Rights and Fundamental Freedoms (1950)
- European Social Charter (1961)

Has the State participated in the adoption of multilateral agreements in the form of regional-level conferences, summits, or congresses, etc., or voted in favor of resolutions in regional organizations that guarantee application of the over-riding principle and human right to freedom from discrimination, including also in the housing context?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (2000)

- Rabat Declaration (1995)

Gender equality

Which international treaties has the State ratified, acceded to or succeeded to that guarantee the application of the over-riding principle of gender equality be applied, including also in the housing context?

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention on the Rights of the Child (1989)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- International Labour Organisation Convention No. 117 *on Social Policy (Basic Aims and Standards)* (1962)
- International Labour Organisation Convention No. 131 Concerning Minimum Wage Fixing, with Special Reference to Developing Countries (1970)
- International Labour Organisation Convention Recommendation No. 115 concerning Workers' Housing (1961)
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee the application of the over-riding principle of gender equality be applied, including also in the housing context?

- Declaration on Asylum (1967)
- Declaration on the Right to Development (1986)
- Declaration on Social Progress and Development (1969)
- Habitat II Agenda (1996)
- Declaration on Cities and Other Human Settlements in the New Millennium [Habitat II+5 UNGAR S-25/2] (2001)
- International Labour Organisation Recommendation No. 162 concerning Older Workers (1980)
- Istanbul Declaration (1996)
- Rio Declaration and Agenda 21 (1992)
- Social Summit Declaration and Programme of Action (1995)
- Universal Declaration of Human Rights (1948)
- United Nations Commission on Human Rights resolutions
- Vienna Declaration and Programme of Action (1993)
- Durban Declaration and Programme of Action [of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] (2002)
- Johannesburg Declaration of the World Summit on Sustainable Development and Plan of Implementation (2001)

Which regional treaties has the State ratified, acceded to or succeeded to that guarantee the application of the over-riding principle of gender equality be applied, including also in the housing context?

- African Charter on Human and Peoples Rights (1981)

- American Convention on Human Rights (1969)
- American Declaration of Human Rights (1948)
- Arab Charter on Human Rights (1994)
- (European) Convention for Protection of Human Rights and Fundamental Freedoms (1950)
- European Social Charter (1961)

Has the State participated in the adoption of multilateral agreements in the form of regional conferences, summits, or congresses, etc., or voted in favor of resolutions in regional organizations that guarantee the application of the over-riding principle of gender equality be applied, including also in the housing context?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (2000)
- Rabat Declaration (1995)

Rule of law

Which international treaties has the State ratified, acceded to or succeeded to that guarantee the State's application of the over-riding principle of the rule of law, which also extends to the housing sphere?

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention on the Elimination of All Forms of Racial Discrimination (1965)
- Convention on the Rights of the Child (1989)
- Rome Statute on the Establishment of the International Criminal Court (1998)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- International Labour Organisation Convention No. 107 concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (1957)
- International Labour Organisation Convention No. 117 *on Social Policy (Basic Aims and Standards)* (1962)
- International Labour Organisation Convention No. 131 Concerning Minimum Wage Fixing, with Special Reference to Developing Countries (1970)
- ILO Convention No. 169 concerning Indigenous Peoples in Independent Countries (1989)
- International Labour Organisation Convention Recommendation No. 115 concerning Workers' Housing (1961)
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)
- Refugee Convention (1951)
- Convention relating to the Status of Stateless Persons (1954)
- Convention on the Reduction of Statelessness (1961)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee the State's application of the over-riding principle of the rule of law, which also extends to the housing sphere?

- Declaration on Asylum (1967)
- Declaration on the Right to Development (1986)
- Declaration on Social Progress and Development (1969)
- Habitat II Agenda (1996)
- Declaration on Cities and Other Human Settlements in the New Millennium [Habitat II+5 UNGAR S-25/2] (2001)
- International Labour Organisation Recommendation No. 162 concerning Older Workers (1980)
- Istanbul Declaration (1996)
- Rio Declaration and Agenda 21 (1992)
- Social Summit Declaration and Programme of Action (1995)
- Universal Declaration of Human Rights (1948)
- United Nations Commission on Human Rights resolutions
- Vancouver Declaration Human Settlements (1976)
- Vienna Declaration and Programme of Action (1993)
- Durban Declaration and Programme of Action [of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] (2002)
- Johannesburg Declaration of the World Summit on Sustainable Development and Plan of Implementation (2001)

Which regional treaties has the State ratified, acceded to or succeeded to that guarantee the State's application of the over-riding principle of the rule of law, which also extends to the housing sphere?

- African Charter on Human and Peoples Rights (1981)
- American Convention on Human Rights (1969)
- American Declaration of Human Rights (1948)
- Arab Charter on Human Rights (1994)
- (European) Convention for Protection of Human Rights and Fundamental Freedoms (1950)
- European Social Charter (1961)

Has the State participated in the adoption of multilateral agreements in the form of regional conferences, summits, or congresses, etc., or voted in favor of resolutions in regional organizations that guarantee the State's application of the over-riding principle of the rule of law, which also extends to the housing sphere?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (2000)
- Rabat Declaration (1995)

Nonregressivity/nonretrogression

Which international treaties has the State ratified, acceded to or succeeded to that guarantee the State's implementation of the principle of nonregressivity/nonretrogression in the respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human right to adequate housing and land?

- Convention on the Elimination of All Forms of Racial Discrimination (1965)
- Convention on the Rights of the Child (1989)
- International Covenant on Economic, Social and Cultural Rights (1966)
- International Labour Organisation Convention No. 117 *on Social Policy (Basic Aims and Standards)* (1962)
- International Labour Organisation Convention Recommendation No. 115 concerning Workers' Housing (1961)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee the State's implementation of the principle of nonregressivity/nonretrogression in the respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human right to adequate housing and land?

- Declaration on the Right to Development (1986)
- Declaration on Social Progress and Development (1969)
- Habitat II Agenda (1996)
- Declaration on Cities and Other Human Settlements in the New Millennium [Habitat II+5 UNGAR S-25/2] (2001)
- Istanbul Declaration (1996)
- Rio Declaration and Agenda 21 (1992)
- Social Summit Declaration and Programme of Action (1995)
- Universal Declaration of Human Rights (1948)
- United Nations Commission on Human Rights resolutions
- Vancouver Declaration Human Settlements (1976)
- Vienna Declaration and Programme of Action (1993)
- Durban Declaration and Programme of Action [of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] (2002)
- Johannesburg Declaration of the World Summit on Sustainable Development and Plan of Implementation (2001)

Which regional treaties has the State ratified, acceded to or succeeded to that guarantee the State's implementation of the principle of nonregressivity/nonretrogression in the respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human right to adequate housing and land?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (200)
- Rabat Declaration (1995)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee the State's implementation of the principle of nonregressivity/nonretrogression in the respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human right to adequate housing and land?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (2000)
- Rabat Declaration (1995)

International Cooperation

Which international treaties has the State ratified, acceded to or succeeded to that guarantee the State's implementation of the principle of international cooperation to ensure respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human rights to adequate housing and land?

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention on the Elimination of All Forms of Racial Discrimination (1965)
- Convention on the Rights of the Child (1989)
- Rome Statute on the Establishment of the International Criminal Court (1998)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- International Labour Organisation Convention No. 107 concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (1957)
- International Labour Organisation Convention No. 117 *on Social Policy (Basic Aims and Standards)* (1962)
- International Labour Organisation Convention No. 131 Concerning Minimum Wage Fixing, with Special Reference to Developing Countries (1970)
- ILO Convention No. 169 concerning Indigenous Peoples in Independent Countries (1989)
- International Labour Organisation Convention Recommendation No. 115 concerning Workers' Housing (1961)
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)
- Refugee Convention (1951)
- Convention relating to the Status of Stateless Persons (1954)
- Convention on the Reduction of Statelessness (1961)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee the State's implementation of the principle of international cooperation to ensure respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human rights to adequate housing and land?

- Agenda 21 (1992)
- Declaration on Environment and Development (1992)
- Declaration on Asylum (1967)
- Declaration on the Right to Development (1986)
- Declaration on Social Progress and Development (1969)
- Habitat II Agenda (1996)
- Declaration on Cities and Other Human Settlements in the New Millennium [Habitat II+5 UNGAR S-25/2] (2001)
- International Labour Organisation Recommendation No. 162 concerning Older Workers (1980)
- Istanbul Declaration (1996)
- Rio Declaration and Agenda 21 (1992)
- Social Summit Declaration and Programme of Action (1995)
- Universal Declaration of Human Rights (1948)
- United Nations Commission on Human Rights resolutions
- Vancouver Declaration Human Settlements (1976)
- Vienna Declaration and Programme of Action (1993)
- Durban Declaration and Programme of Action [of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] (2002)
- Johannesburg Declaration of the World Summit on Sustainable Development and Plan of Implementation (2001)

Which regional treaties has the State ratified, acceded to or succeeded to that guarantee the State's implementation of the principle of international cooperation to ensure respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human rights to adequate housing and land?

- African Charter on Human and Peoples Rights (1981)
- American Convention on Human Rights (1969)
- American Declaration of Human Rights (1948)
- Arab Charter on Human Rights (1994)
- (European) Convention for Protection of Human Rights and Fundamental Freedoms (1950)
- European Social Charter (1961)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee the State's implementation of the principle of international cooperation to ensure respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human rights to adequate housing and land?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (2000)
- Rabat Declaration (1995)

What additional multilateral commitments has the State made to guarantee nondiscrimination in the respect, protection, promotion and fulfillment of the human right to adequate housing and, by extension, information, education, capacity and capacity building?

Do not forget that the body of the binding international treaties that the State already has ratified contains binding human rights obligations that take precedence over nonbinding declarations of mere intent or political will. Monitoring these obligations is the covenanted task of the treaty parties [ratifying States], which has been delegated to neutral treaty-monitoring bodies that are supported in their task by government and civil-society monitors. Keep in mind also that some multilateral declarations and many agreements with international financial and development institutions may contain standards less protective of human rights and freedoms than those of a binding nature under human rights treaties. Those agreements may even impede the enjoyment of economic/social/cultural rights. Such agreements are to be evaluated subject to prior human rights treaty obligations—not vice versa.

✓ Local guarantees

Ratifications and international commitments

Which international treaties has the State ratified (acceded or succeeded to) that guarantee the human right to adequate housing, in particular information, education, capacity and capacity building?

Constitutional provisions

- Does the State have a Constitution, or equivalent, guaranteeing the right to human right to housing and land, including information, education, capacity and capacity building?
- Does the State have a Constitution, or equivalent, guaranteeing the right to local self-determination?
- Does the State have a Constitution, or equivalent, guaranteeing the right to freedom from discrimination?
- Does the State have a Constitution, or equivalent, guaranteeing gender equality?
- Does the State have a Constitution, or equivalent, guaranteeing the rule of law, including access to justice and democratic participation and representation?
- Does the State have a Constitution, or equivalent, guaranteeing the right to the continuous improvement of living conditions?
- Does the State have a Constitution, or equivalent, providing that international relations be conducted within the framework and objectives of human rights, including economic, social and cultural rights?

National legal system

- Is the right to adequate housing, including information, education, capacity and capacity building recognized as a distinct right in the country's legal system?

- Is national and local legislation consistent with the human rights right to housing and land, including information, education, capacity and capacity building?
- Is national and local legislation consistent with the principle of local self-determination?
- Is national and local legislation consistent with the right to freedom from discrimination? What statutes has the State/government legislated, and are in force, to ensure nondiscrimination in the respect, defense, promotion and implementation of the human right to adequate housing, in particular, information, education, capacity and capacity building?
- Do the concerned persons or community have the sense that the terms of their entitlement to information, education, capacity and capacity building are equal and consistent with others'?
- Does national and local law maintain the principle of gender equality, particular as it relates to housing, land and information, education, capacity and capacity building?
- Do local and national laws and regulations uphold the rule of law, including access to justice and democratic participation and representation in matters related to housing, land and information, education, capacity and capacity building?
- Does the State's legal system maintain the right to the continuous improvement of living conditions?
- Are the laws and regulations of the State consistent with the principle that international relations, including international entities operating locally, conduct themselves within the framework and objectives of human rights, including economic, social and cultural rights, in particular, the human right to adequate housing and land, including information, education, capacity and capacity building?
- Does the performance of the law-enforcement services guarantee the practice and enforcement of the respect, defense, promotion and implementation of the human right to adequate housing, including information, education, capacity and capacity building?
- Are judges and lawyers performing sufficiently and consistently to uphold the human right to adequate housing, including the entitlement of information, education, capacity and capacity building? What are some examples?

Institutions

- Is there a sense in the community that the State and government institutions represent their aspirations to self-determination?
- What State and public institutions exist as a guarantee of nondiscrimination in the respect, defense, promotion and implementation of the human right to adequate housing, in particular, information, education, capacity and capacity building?
- Do the concerned persons or community have the possibility to exercise an effective role in determining the terms and conditions of information, education, capacity and capacity building?

- ❑ What State and public institutions exist as a guarantee of gender equality in the defense, promotion and implementation of the human right to adequate housing, in particular, information, education, capacity and capacity building?
- ❑ What private and nongovernmental institutions exist as a guarantee of gender equality in the defense, promotion and implementation of the human right to adequate housing, in particular, information, education, capacity and capacity building?
- ❑ What informal institutions (including social norms) function so as to help implement the human right to adequate housing and, in particular, information, education, capacity and capacity building?⁹²⁷
- ❑ What social institutions and consistent social practices exist as a guarantee of gender equality in the defense, promotion and implementation of the human right to adequate housing, in particular, information, education, capacity and capacity building?
- ❑ How have these institutions actually improved capacity to protect, or actual protection of information, education, capacity and capacity building for those in need?

Policies

- ❑ What statewide policies are in place and implemented to guarantee of the human right to adequate housing and, in particular, information, education, capacity and capacity building?

Keep in mind that the body of the binding international treaties that the State has ratified contain provisions that call for human rights to be implemented in the presence of the over-riding principles of self-determination, nondiscrimination, gender equality, the rule of law, international cooperation in the implementation of human rights, and progressive realization (nonregressivity/ nonretrogression) and the continuous improvement of living conditions.

- ❑ How have national policies enhanced local self-determination so as to ensure acceptable levels of information, education, capacity and capacity building?
- ❑ How have national policies to ensure nondiscrimination positively affected information, education, capacity and capacity building in the country?
- ❑ How have national gender policies led to improvements in the conditions of information, education, capacity and capacity building in the housing sphere, especially for those in need?
- ❑ How have the State's policies on access to justice enhanced conditions of information, education, capacity and capacity building, especially for those in need?

⁹²⁷ The operative concept of institutions here encompasses both bonding and bridging institutions. "Institutions," in this sense, involve the rules of the game under which formal and informal activity is conducted, and include public institutions, private institutions, collective practices and norms, as well as changing norms (e.g., brought about through the youth, technology, economic or demographic shifts, and other emerging behaviours). According to Douglas C. North, 1993 Nobel economics laureate, institutions are "humanly devised constraints that shape human interaction."

- How have national housing policies ensured the continuous improvement of living conditions, in particular the housing rights entitlement of information, education, capacity and capacity building, especially for those in need?
- In what ways have national housing policies ensured that international relations and international entities operating within the country respect, defend, promote and fulfil the human right to housing, in particular the entitlement of information, education, capacity and capacity building for those in need?
- To what extent have external parties positively influenced your country's official policies or practices in guaranteeing the entitlement to information, education, capacity and capacity building?

Programs

- What progressive steps has the State made on a national scale in the past period (year[s], or since your last assessment) to improve housing rights, especially the entitlement of information, education, capacity and capacity building? (These may include: law reforms, improved infrastructure, more effective implementation methods, population registry programs, programs to consider ratification of international covenants, and evaluations of housing rights implementation, etc.)

Keep in mind that the body of binding international treaties that the State has ratified contain provisions that call for human rights to be implemented in the presence of the over-riding principles of self-determination, nondiscrimination, gender equality, the rule of law, international cooperation in the implementation of human rights, and progressive realization (nonregressivity/ nonretrogression) and the continuous improvement of living conditions.

- What private-sector or NGO programs are in place and implemented to guarantee the human right to adequate housing and, in particular, information, education, capacity and capacity building?
- How have these national programs enhanced local self-determination in a way that has improved the conditions of information, education, capacity and capacity building?
- What national programs are completed, ongoing, or planned to ensure nondiscrimination positively affected information, education, capacity and capacity building in the country?
- Are there any national gender programs completed, ongoing or planned with the purpose and effect of improving the conditions of information, education, capacity and capacity building in the housing sphere, especially for those in need? Do they cover land rights and inheritance issues?
- What are have the State's recent, present or future programs to enhance access to justice that are intended to improve housing and living conditions, especially for those in need? How have those programs implemented to date succeeded in enhancing information, education, capacity and capacity building of housing?
- How have national housing programs ensured the continuous improvement of living conditions, in particular the housing rights entitlement of information, education, capacity and capacity building, especially for those in need?

- In what ways have national housing programs ensured that international relations and international entities operating within the country respect, defend, promote and fulfil the human right to housing, in particular the entitlement of information, education, capacity and capacity building for those in need?
- Has the government in the concerned State cooperated with other State or non-State parties to find identify and adapt good practices locally to improve information, education, capacity and capacity building for all those living there?

Projects

- What progressive actions has the State undertaken in the way of limited-scale or pilot projects in the past period (year[s], or since your last assessment) to improve housing rights, especially the entitlement of information, education, capacity and capacity building?
- What private-sector or NGO projects are in place and implemented to guarantee the human right to adequate housing and, in particular, information, education, capacity and capacity building?
- How have such local projects enhanced local self-determination in a way that has improved the conditions of information, education, capacity and capacity building?
- What projects completed, ongoing, or planned to ensure nondiscrimination positively affected information, education, capacity and capacity building in the country?
- Are there any gender-based projects completed, ongoing or planned with the purpose and effect of improving the conditions of information, education, capacity and capacity building in the housing sphere, especially for those in need? Do they cover land rights and inheritance issues?
- What are have the State's recent, present or future projects to enhance access to justice that are intended to improve housing and living conditions, especially for those in need? How have those programs implemented to date succeeded in enhancing information, education, capacity and capacity building of housing?
- How have these projects ensured the continuous improvement of living conditions, in particular the housing rights entitlement of information, education, capacity and capacity building, especially for those in need?
- In what ways have public or private projects ensured that international relations and international entities operating within the country respect, defend, promote and fulfil the human right to housing, in particular the entitlement of information, education, capacity and capacity building for those in need?
- Has the government in the concerned State cooperated with other State or non-State parties to find identify and adapt good practices locally through projects that actually improve information, education, capacity and capacity building for all those living affected?

- Are there foreign State or foreign private interests operating projects affecting the housing and human settlements sector in the country and affecting the situation under review? Are their roles positively affecting the enjoyment of information, education, capacity and capacity building?

Budgets

- What public budgets are in place to guarantee the human right to adequate housing and, in particular, information, education, capacity and capacity building? How does the budget correspond to actual spending and implementation targets?
- Is the necessary public budget information available to conduct a multiyear assessment of the financial performance of policies, programs and projects affecting housing and living conditions of those vulnerable and needy inhabitants of the country?
- Does the public have access to the budgets of private companies and organizations operating in the housing sphere and having an effect on the housing rights entitlement of information, education, capacity and capacity building?
- Does the reliable budget information support the public claims of those responsible for the budgets intended for improvement of living conditions of the needy, particularly in the housing rights entitlement of information, education, capacity and capacity building?
- What international obligations and commitments affect the public budget with ramifications on the housing sector, including the entitlement of information, education, capacity and capacity building?
- What national obligations and commitments affect the public budget with ramifications on the housing sector, including the entitlement of information, education, capacity and capacity building?
- What financial policies affect the public budget with ramifications on the housing sector, including the entitlement of information, education, capacity and capacity building?

9.5. Obstacles, impediments, barriers

At the present stage in the monitoring process, you have well identified the elements arising from the human right and legal concept of adequate housing. You have completed the necessary review of international minimum standards that codify the right, along with the corresponding obligations on the ratifying State. Your process has taken you through the moral arguments of social movements and others, who are the very source of human rights throughout history. Those sources fill legal gaps and provide specificity to local human rights priorities and application. In your context, you also have identified which of the binding instruments and other theoretical guarantees apply to the case at hand.

At this point, you are advancing beyond the theoretical dimensions of the human right to adequate housing, its constituent elements and its guarantees. As a housing-and-land-rights monitor, you will now enter the practical dimension and assess the most difficult challenge in the field of human rights: implementation. The following sample questions guide the monitor to prepare needed data and arguments by detailing the present obstacles, impediments, barriers, threats and constraints that have brought about, or threaten to bring about a

violation or deprivation of the right and the element of information, education, capacity and capacity building, which you are currently addressing.

When monitoring documenting any stage of this toolkit inquiry, or assessing the conditions affecting any right, it is essential to ensure the highest quality of information possible. It has been said often that information is power. In our case, this is especially true, but the degree of that power will depend largely on the following qualities of your information:

- Completeness
- Level of detail and specificity
- Date (freshness) of the information
- Integrity of the information (i.e., lack of contradictions)
- Effective (articulate, concise, understandable and correct) use of language
- Relevance: linkage to the question of housing and land rights implementation
- Credibility of source (reputation, effective presentation, link to issue and community)

In order to begin assessing the compatibility of the theoretical affirmations of the human right to housing and land with the local reality, you will determine now whether, and to what extent barriers, contradictions, obstacles, and impediments contribute to actual and/or potential violations of the congruent right to information, education, capacity and capacity building. This process is aided with the following battery of questions:

- Do obstacles and impediments to adequate information related to housing and community development impede the human right to participation? [See the congruent right to "**Participation and self-expression**" in the present toolkit.]

✓ **Obstacles to over-riding principles**

Self-determination

- Are the people dissatisfied with the terms of their information, education, capacity and capacity building?
- Do the concerned persons or community lack the possibility to exercise an effective role in determining the terms of information, education, capacity and capacity building?
- Does the community lack sufficient information or capacity sufficiently to enjoy the human right to adequate housing, in particular, the entitlement of information, education, capacity and capacity building?
- Is illiteracy an impediment to the community's access to sufficient information to enjoy the human right to adequate housing, in particular information, education, capacity and capacity building?

Nondiscrimination

- To what extent is discrimination an issue in realizing the congruent right to information, education, capacity and capacity building?
- Is there (does the affected community report) any type of discrimination practiced randomly, occasionally or on the social level, or institutionalized in some form, affecting information, education, capacity and capacity building?

- What are the nature of the discrimination and its effects of the entitlement of information, education, capacity and capacity building?

Gender equality

- Is there any gender-based discrimination applied in realizing the congruent right to information, education, capacity and capacity building?
- Is the discrimination practiced randomly, occasionally or on the social level, or is it institutionalized in some form such that affects information, education, capacity and capacity building?
- Does local law on inheritance, divorce or other specialization fail to provide equal rights to males and females of all ages? How?

Rule of law

- Has the State failed to ratify any of the relevant international or regional treaties guaranteeing the human right to adequate housing?
- Has the State issued any reservations, declarations or understandings to international or regional treaties that possibly limit the affect of human right to adequate housing guarantees, particularly so as to affect the entitlement of information, education, capacity and capacity building?
- Has the State government failed to conduct a legal evaluation of housing rights implementation?
- Has the State government failed to present timely reports to the relevant treaty-monitoring bodies covering the human right to adequate housing?
- Has the State and its government failed to implement in good faith the Concluding Observations of the various treaty bodies concerning implementation of the human right to adequate housing?
- Do the three branches of government (judiciary, legislative and executive) operate with autonomous authority?
- Do the three branches of government coordinate to uphold and enforce a single system of law?
- Does the State lack a Constitution, or equivalent, guaranteeing gender equality?
- Does the State lack a Constitution, or equivalent, guaranteeing the rule of law, including access to justice and democratic participation and representation?
- Does the State lack a Constitution, or equivalent, guaranteeing the right to the continuous improvement of living conditions?

- Does the State lack a Constitution, or equivalent, providing that international relations be conducted within the framework and objectives of human rights, including economic, social and cultural rights?
- Does the country's legal system lack recognition of the human right to adequate housing, including information, education, capacity and capacity building?



- Do legal or procedural shortcomings impede the admissibility of claims invoking international treaty obligations in the defense of human right to adequate housing, in particular, the entitlement to information, education, capacity and capacity building?
- Has the State failed to ratify the Rome Statute on the International Criminal Court, limiting the options to seek justice and remedy for gross violations of the human right to adequate housing?
- Does the political system in the country lack coordination among branches of executive, legislative and judicial government?
- Does the State lack a Constitution, or equivalent, guaranteeing the rule of law, including access to justice and democratic participation and representation?
- Are there contradictions in the national law affecting information, education, capacity and capacity building?
- Is there insufficient enforcement of laws and/or policies against arbitrary eviction enforced, including safeguards for vulnerable groups, such as: women, children, orphans, etc.?
- Do local authorities fail to recognize explicitly the application of the international human rights treaties that the State has signed and/or ratified and that guarantee the human right to to adequate housing, including the entitlement of information, education, capacity and capacity building?
- Has the legislature failed to harmonize national laws with international human rights treaty obligations in the formulation of policies affecting the human right to adequate housing, in particular, with affect on information, education, capacity and capacity building?
- Is national and local legislation inconsistent with the human rights right to housing and land, including information, education, capacity and capacity building?
- Is law enforcement inadequate to ensure enjoyment of the entitlement of information, education, capacity and capacity building?
- Are law enforcement officers in need of training in, and information about the human right to to adequate housing in order to uphold the entitlement of information, education, capacity and capacity building?
- Do lawyers, prosecutors and/or judges lack awareness and training in the housing and land rights law in order to uphold and defend the entitlement of information, education, capacity and capacity building?

- Has the national court system failed in any way to admit claims of housing and land rights victims, including those whose congruent right to information, education, capacity and capacity building has been violated?
- Do the rule-of-law, regulations, or their enforcement fail to govern market forces effectively to ensure the respect, protection, promotion and fulfillment of the right to adequate housing (e.g., governing monopolies, procedures for legal redress)? How does fact affect the enjoyment of the housing rights congruent right to information, education, capacity and capacity building?
- Does local law restrict civil society associations from advocating rights or providing services that would advance the respect, defense, promotion and fulfillment of the human right to housing, including information, education, capacity and capacity building?

Nonregressivity / nonretrogression

- Has the State failed to take steps to improve housing rights, especially affecting information, education, capacity and capacity building, in the past period (year[s], or since your last assessment)?
- Have new laws degraded protection of human right to to adequate housing in the recent period, particularly affecting information, education, capacity and capacity building?
- Have new policies degraded protection or enjoyment of human right to to adequate housing in the recent period, particularly affecting information, education, capacity and capacity building?
- Have national programs led to a decline in the enjoyment of human right to to adequate housing in the recent period, particularly affecting information, education, capacity and capacity building?
- Have infrastructure or physical features of the built or natural environment led to a decline in the enjoyment of human right to to adequate housing, particularly affecting information, education, capacity and capacity building?
- Have nationwide programs failed to improve, or led to a decline in, the enjoyment of human right to adequate housing, in particular the terms of information, education, capacity and capacity building?
- Have local projects supported by State or local authorities failed to improve, or led to a decline in, the enjoyment of human right to to adequate housing, in particular the terms of information, education, capacity and capacity building?
- Have public budget allocations failed to improve, or led to a decline in, the enjoyment of human right to to adequate housing, in particular the terms of information, education, capacity and capacity building?
- To what extent has the State government's efforts fallen short in the improvement the terms of information, education, capacity and capacity building, especially of the poor, vulnerable and minorities?

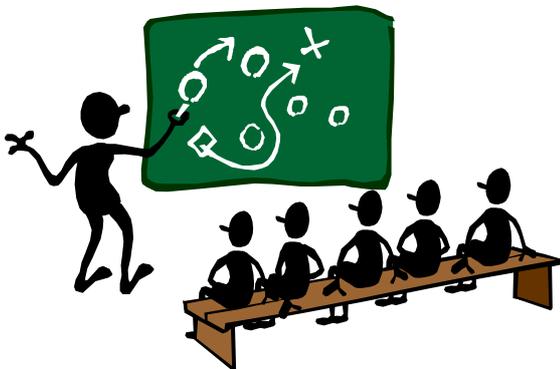
International cooperation

- Are foreign State or non-State interests operating in the housing and human settlements sector in the country and affecting the entitlement of information, education, capacity and capacity building? Are their roles negatively affecting the enjoyment of information, education, capacity and capacity building?
- To what extent have external parties (States, or international financial institutions) negatively influenced your country's official policies or practices in guaranteeing the right to information, education, capacity and capacity building?
- Has the State neglected to take steps, "individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources" and capacities to ensure (especially poor and vulnerable) people's information, education, capacity and capacity building?

✓ Local obstacles

Institutions

- As far as human right to to adequate housing and information, education, capacity and capacity building are concerned, are there gaps or shortcomings in the State, government and other public institutions positioned to improve living conditions, including the housing-rights entitlement of information, education, capacity and capacity building?



- Has there been a recent decrease in the quantity or quality of civil society institutions upon which the community now relies.

- Do the concerned private and nongovernmental institutions fail to guarantee gender equality in the defense, promotion and implementation of the human right to adequate housing, in particular, information, education, capacity and capacity building?

What informal institutions (including social norms) function so as to impede the enjoyment of the human right to adequate housing and, in particular, information, education, capacity and capacity building?⁹²⁸

- Do these institutions actually lack the will or capacity to protect legal information, education, capacity and capacity building for those in need?
- Do these institutions actually lack the will, knowledge or capacity to use the relevant treaty body Concluding Observations in work of monitoring and lobbying officials

⁹²⁸ The operative concept of institutions here encompasses both bonding and bridging institutions. "Institutions," in this sense, involve the rules of the game under which formal and informal activity is conducted, and include public institutions, private institutions, collective practices and norms, as well as changing norms (e.g., brought about through the youth, technology, economic or demographic shifts, and other emerging behaviours). According to Douglas C. North, 1993 Nobel economics laureate, institutions are "humanly devised constraints that shape human interaction."

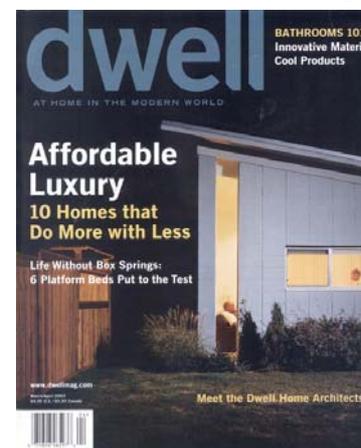
Policies

- Do the relevant ministries omit to incorporate international human rights treaty obligations in the formulation of policies affecting the human right to adequate housing, in particular, with affect on information, education, capacity and capacity building?
- What statewide policies are still needed to guarantee of the human right to adequate housing and, in particular, information, education, capacity and capacity building?
- Have the relevant national policies neglected to ensure acceptable levels of self-determination in determining the terms and conditions of information, education, capacity and capacity building? How and why?
- Have national policies failed to reach their targets (even despite announcements of official intent) positively to affect information, education, capacity and capacity building? How and why?
- Have national gender policies led to improvements in the conditions of legal information, education, capacity and capacity building in the housing sphere, especially for those in need? How and why?
- Have the State's policies on access to justice failed to improve conditions of legal information, education, capacity and capacity building, especially for those in need?
- Have national housing policies failed to ensure the continuous improvement of living conditions, in particular, by stagnating or degrading the housing rights entitlement of information, education, capacity and capacity building, especially for those in need? How and why?
- Do national housing policies lack consideration of, and/or reference to the international human rights instruments relevant to the human right to to adequate housing and information, education, capacity and capacity building, and to which the State is bound?
- To what extent have external parties negatively influenced your country's official policies or practices in guaranteeing the information, education, capacity and capacity building?
- Have State housing-policy implementing institutions omitted to seek international cooperation in the human right framework by conditioning international entities operating within the country also to respect, defend, promote and fulfil the human right to housing, in particular the entitlement of information, education, capacity and capacity building?

Programs

- What negative steps has the State taken on a national scale in the past period (year[s], or since your last assessment) to improve housing rights, especially the entitlement of information, education, capacity and capacity building? These may include declining legal assistance laws, deteriorating infrastructure without repair, declining implementation efforts?
- What related private-sector or NGO programs have failed to enhance the enjoyment of the human right to to adequate housing, in particular, information, education, capacity and capacity building?

- Is there a lack of, and need for national gender programs completed, ongoing or planned with the purpose and effect of improving the conditions of legal information, education, capacity and capacity building in the housing sphere, especially for those in need?
- Do existing programs omit to cover land and inheritance rights?
- Have the intergovernmental relations declined between your State and others leading to a decline on options for international cooperation in advancing the respect, defense, promotion and/or fulfilment of the human right to to adequate housing, in particular information, education, capacity and capacity building?
- Has the government in the concerned State declined to cooperate with other States, intergovernmental agencies, or foreign non-State parties to identify and adapt good practices locally to improve the congruent right to information, education, capacity and capacity building?



Projects

- What relevant State actions or omissions have led to the failure of limited-scale or pilot projects in the past period (year[s], or since your last assessment) to improve housing rights, especially the entitlement of information, education, capacity and capacity building?
- What private-sector or NGO projects have failed to seek, or fallen short of their intended goal to guarantee the human right to adequate housing and, in particular, information, education, capacity and capacity building?
- Have such local projects undermined local self-determination with negative effect on the conditions of information, education, capacity and capacity building? How and why?
- Are foreign State or foreign private interests operating projects negatively affecting the housing and human settlements sector in the country and affecting the entitlement of information, education, capacity and capacity building? How and why?
- Have projects conducted by local or international entities in the country privatized the provision of housing or public services replaced the role and responsibility of the State and local authorities to fulfil the human right to to adequate housing, in particular the entitlement of information, education, capacity and capacity building for those in need?

Budgets

- Are there obstacles to obtaining adequate information about public expenditures in the housing sector, or in areas affecting the enjoyment of the human right to to adequate housing, including information, education, capacity and capacity building?
- Is there a lack of legal and actual protection of the right to information, including information and documentation on public budget expenditures in the housing sphere related to the entitlement of information, education, capacity and capacity building?

- Are public budgets inadequate to guarantee the human right to adequate housing and, in particular, information, education, capacity and capacity building?
- Is there underspending of the budget such that impedes the achievement of policy, program or project implementation targets, affecting information, education, capacity and capacity building?
- Do public budget items and actual financial performance reflect a lack of sufficient priority given to implementing policies, programs and projects to improve housing and living conditions, affecting also information, education, capacity and capacity building, of those vulnerable and needy inhabitants of the country?
- Does the public have access to the budgets and financial performance data of private companies and organizations operating in the housing sphere and having an effect on the housing rights entitlement of information, education, capacity and capacity building?
- Does the reliable budget information contradict the public claims of officials and institutions responsible for the continuous improvement of living conditions of the needy, particularly in the housing rights entitlement of information, education, capacity and capacity building?

Do international obligations and commitments negatively affect the public budget with ramifications on the housing sector, including with negative affect on the entitlement of information, education, capacity and capacity building?

- What national obligations and commitments affect the public budget with ramifications on the housing sector, including the entitlement of information, education, capacity and capacity building?
- What financial policies constrain the public budget with negative consequences on the housing sector, including the entitlement of information, education, capacity and capacity building?
- Is the achievement of information, education, capacity and capacity building accompanied by an inordinate economic burden?
- Is the State failing to regulate effectively the terms and conditions of housing market, so as to avoid corruption, collusion, fraud, discrimination, nepotism and any arbitrary criteria? How is this affecting the entitlement of information, education, capacity and capacity building?
- Is the State prohibiting or impeding individual and community initiatives toward obtaining information, education, capacity and capacity building, individually as well as collectively?
- Are State authorities permitting other parties to interfere with community efforts toward obtaining information, education, capacity and capacity building, individually as well as collectively?
- Are present government mechanisms and structures inefficient at assisting the needy population from gaining access to information, education, capacity and capacity building?

- ❑ Does the State lack needed resources to ensure information, education, capacity and capacity building, especially for the poor, vulnerable and needy?
- ❑ Does national political disharmony impede enjoyment of the human right to to adequate housing and information, education, capacity and capacity building?
- ❑ Is there armed conflict in the country impeding the private and/or public institutions from carrying out development and delivering services that safeguard and improve information, education, capacity and capacity building conditions?
- ❑ Has a natural disaster inflicted parts of the country, creating conditions that negatively affect the human right to to adequate housing, including the congruent right to information, education, capacity and capacity building? Do these conditions impede relief or reconstruction assistance by public and private actors?

9.6. The victims and vulnerable persons: the actors

At this step in the housing and land rights monitoring process, you will have to provide relevant facts and figures concerning the people who already have been affected and those who remain vulnerable. You should also identify and describe precisely which part of the population is affected.

Those affected (victims or vulnerable) individuals and groups could be, for example, an indigenous community historically undergoing discriminatory treatment and land confiscation. It is essential to report the number of affected people, among them proportions of children, women and other groups having special needs, such as the elderly, who may be particularly affected.

In your inquiry into the identities of the victims and the vulnerable inhabitants, it is vital that you determine the place and time, as well as the characteristics of the affected persons in the case. The numbers and any demographic data of the composition of the affected population are critical to understanding the case and characterizing the type of violations. The violation or vulnerability may be multidimensional (or intersectional), involving more than one form of discrimination. Knowing the victims and vulnerable persons can help determine which combinations of housing rights elements are simultaneously affected. In describing the population, knowing the particular vulnerabilities and special needs of the affected persons or community (whether arising from historical factors, gender, age or other demographics) complete the picture that you eventually will present to your intended audience.

✓ Distinguishing between the victims and vulnerable

It is also important for the monitor to distinguish between those victims, whom already have been violated, and those who are vulnerable to future violation or deprivation. Of course, this distinction will be strategically important later in the process, when the housing and land rights monitors and defenders choose an action in response to the violation. You will have to determine then if your intervention is to be remedial or preventive. In any case, an eye to those who remain vulnerable even after the principal violation, as well as after a particular solution to a case, will maintain the monitors focus—as necessary—on the further interventions needed toward the ultimate realization of the human right to adequate housing and land.

The following sample questions guide the monitor to prepare needed data and arguments, in the case of any present obstacles, but focusing on the human dimension in the case of a violation of the congruent right to information, education, capacity and capacity building.

Victims

- Identify the type and form of violation of the congruent right to information, education, capacity and capacity building:
 - Homelessness
 - Forced eviction
 - Arbitrary demolition
 - Denial of equal inheritance rights
 - Confiscation of property by public officials and bodies
 - Confiscation by private actors (criminal gang, settlers, armed groups)

- Who has been affected by the violation of the entitlement of information, education, capacity and capacity building?

- How many people have been affected in the same way in the last year (any time period)? Does it demonstrate a pattern?

- Identify and provide demographic details of the victims:
 - Numbers and proportions of refugees
 - Numbers and proportions of migrant workers
 - Numbers and proportions of minority persons
 - Numbers and proportions of males and females
 - Numbers and proportions of indigenous and/or tribal and semitribal people
 - Numbers and proportions of elderly, disabled, medically challenged persons with special needs
 - Numbers and proportions of members of groups subject to (current and historic) discrimination
 - Numbers and proportions of impoverished inhabitants, including those subject to discrimination on the basis of their economic status or work (e.g., Dalits)
 - Numbers and proportions of any other relevant group identity of victims

- Where does the violation of this right mostly occur (i.e., rural, urban, slums)?

- When does this violation mostly occur? Day or night? Weekend? Certain times of the year? Why does the violator choose this timing?

Vulnerable individuals and groups

- Identify the type and form of vulnerability to future violation of the congruent right to information, education, capacity and capacity building:
 - Homelessness
 - Forced eviction
 - Arbitrary demolition
 - Denial of equal inheritance rights
 - Confiscation of property by public officials and bodies
 - Confiscation by private actors (criminal gang, settlers, armed groups)

- Who are the populations most likely to experience the violation of the right to information, education, capacity and capacity building? Why are they vulnerable?
- Identify and provide demographic details of the concerned vulnerable persons or groups:
 - Numbers and proportions of refugees
 - Numbers and proportions of migrant workers
 - Numbers and proportions of minority persons
 - Numbers and proportions of males and females
 - Numbers and proportions of indigenous and/or tribal and semitribal people
 - Numbers and proportions of elderly, disabled, medically challenged persons with special needs
 - Numbers and proportions of members of groups subject to (current and historic) discrimination
 - Numbers and proportions of impoverished inhabitants, including those subject to discrimination on the basis of their economic status or work (e.g., Dalits)
 - Numbers and proportions of any other relevant group identity of vulnerable persons
- Explain the insecurity of their situation and give details about the naturally vulnerable populations (women, children, indigenous, slum dwellers, refugees, workers/migrant workers, farmers, etc.).

Focus on multidimensional / intersectional affects

Your case will be enhanced when your information includes emphasis on the particular types of victimization or vulnerability by focusing on the social groups typically subject to multidimensional, or intersectional types of deprivation. The monitor should identify such multiple forms of deprivation for each of the groups already identified in this section (above). This step allows you to identify the nature and causes of the particular affects on certain groups who may be made vulnerable already in addition to, or in advance of the specific housing land rights violation, or anticipated violation. The following sample questions will lead you to clarify this point.

Women

- Are women in the given community or case subject to deprivation of their congruent right to information, education, capacity and capacity building?
- What are the reasons for this condition? Is it by some custom, religion or other ideological motivation?
- Does the practice of domestic or social violence against women somehow impede women's enjoyment of their congruent right to information, education, capacity and capacity building?
- Are the formal or informal terms of inheritance already biased against women in a way that negatively affects the enjoyment of the congruent right to information, education, capacity and capacity building?

Children

- Do housing conditions impede acceptable access to public goods and services as an element of the RAH, so as to obviate violence and abuse, including psychological & sexual abuse, within the home or community?
- Are housing conditions, in particular, the rights element of information, education, capacity and capacity building, suitable for children to carry out their studies?
- Are housing conditions, including information, education, capacity and capacity building, conducive to achieving the highest attainable standard of physical and mental health?

Racial, ethnic or other groups

- Who are the victims or vulnerable persons or community subject to discrimination that includes denial of information, education, capacity and capacity building?
- Have the affected persons or groups (either the vulnerable or the victims) been denied their right to suitable housing, and particularly to information, education, capacity and capacity building, because they belong to a specific minority, ethnic or indigenous group?
- How has historic discrimination, if any, affected the current situation?

✓ Victims' case documentation form

9.7. Losses/consequences

✓ Quantification methodology

Quantifying violations to the right to adequate housing: a tool for evaluating the effects of demolitions, confiscations and forced evictions

The purpose of this tool is to help determine the value of costs and losses that victims incur as a consequence of the violation their housing rights. Using this tool will aid in the various necessary stages of proper monitoring of specific violations of the right to housing, including:

1. Documentation and recording
2. Monitoring and reporting
3. Quantifying/evaluating
4. Identifying and solving problems
5. Follow-up assessments
6. Fact-finding missions
7. Public information and campaigns
8. Social mobilization
9. Media work
10. Compensation efforts
11. Legal defense and prosecution
12. Monitoring international obligations

The quantification methodology and "Loss Matrix" are designed to aid human rights workers responsible for each stage in the monitoring process, including interventions that are both preventive and remedial. These stages may involve the same individual human rights worker at each stage, or may involve a division of team labor. In either case, this tool also can serve as a vehicle for organizing tasks in a coordinated and complementary way, when more than

one individual or organization is involved in the process. For instance, if different teams or organizations are specializing in respective geographical areas, applying this tool commonly aids the process to avoid duplication and the discrediting contradiction of facts.

Whether or not your monitoring objective is legal defense, policy analysis, compensation or public information, the quantification of the effects of the violation strengthen your argument and, consequently, help mobilize support for the movement to end, redress and compensate/obtain restitution for the violations. In particular, your findings will substantiate the assertion that many housing rights violations actually widen and deepen poverty, having a de-development effect on the community and country.

The material and otherwise-calculable costs resulting from the violation are determined for each unit (household) affected and then totaling them. Alternatively, in the case of multiple units affected, a representative sample should be obtained to determine the average values, which then are to be multiplied by actual numbers of units affected.

Other incalculable losses still have to be recorded and reported in narrative terms. Such narrative explanation and analysis will be useful as an accompaniment to this quantification table.

Both short-term and long-term values are to be assessed.(You can follow examples of traffic dispute jurisprudence, or the law pertaining to insurance or divorce cases in your country to come up with a methodology of determining personal injury and pain-and-suffering damages claims for compensation purposes.) Accurate and thorough quantification of costs and losses calls for both a great deal of cooperation between the monitor and the affected community, and a continuous relationship over time.In order to capture many of the values, sustained monitoring and calculation are required over time. It is, therefore, recommended that such monitoring effort be undertaken or coordinated by those who maintain a program and commitment to the affected community over the long term.

This tool seeks to quantify the costs of victims, as well as public, or social costs. For our purposes, the principal victim(s) would be those persons whose property and lives are directly affected by the act, be it a demolition, confiscation and/or eviction, etc.(This tool would be used for any and all categories of violation.) Ancillary or indirect victims would be those who undergo the cost or other harm as a result of an act intended or directed at others. The indirect victims' losses and damage should be included in the overall assessment of the violation's effects.

The middle column, entitled "Methodology," in the quantification table found at the "**Loss Matrix**" link contains commentary on the contents of the calculated costs/losses and provides guidance on how to calculate them. It is there where you will record in your applied version of the "Loss Matrix" the type of items or values totaled under the particular type of cost/loss. There, too, you could cite whether or not the values are losses/costs to the principal victims only, or include those of indirect victims, such as those enduring collateral damage from a house demolition. The "Methodology" description should be as complete but concise as possible, within a short line or two.

It is possible to modify "Loss Matrix" to the user's discretion. (However, we emphasize that any modifications be shared among the community of monitors to ensure compatibility of findings.) For example, certain direct and indirect victims' losses may need to be separately calculated for some reason. In that case, an additional column can be added. In any case, however, it is important to arrive at a global cost figure for the violations under review. The

column at the far right under each category of cost should be totaled using the imbedded Excel formula.

Follow the links to access the details of the quantification methodology and “**Loss Matrix.**”

- Victim's material losses
- Victim's nonmaterial losses
- Other than victim's material losses (public costs)
- Other than victim's nonmaterial losses (including social costs)

Contents and methodology for determining each category of loss/costs

Victims' Material Losses

The Structure

The fair market value of the house, shelter or other structure(s). This is probably greater than the cost, as indicated in official records of the most recent tax assessment, for example. That price may be a guide, but is likely to be out of date with the value that would be obtained if the property were to be sold on the market. The market value would also likely be less than the “speculative value,” which is considered to be that value (price) that a speculator, investor or other interested party would anticipate after the demolition/eviction and after converting the structure—if partially retained—for eventual exchange or reassessment. The reference for determining the market value would be reliable real estate agents, banks, or other parties involved in the sale and exchange of such properties. The standard methodology would involve collecting three quotes/estimates and selecting the average, or taking the middle quote as the fair market value.

In the likely event that no such property market is actively issuing quotes on the value of the affected property. The remaining alternative method for determining market value would be the estimated cost of replacing the property at current market values.

Note that the victim incurring the loss in this case would be the owner(s) and or title holder(s), including those owning the property individually, or collectively, under formal title, or by traditional tenure systems.

Plot

The plot and the structure are considered separately in this methodology to accommodate systems where the two aspects of property value are determined separately, or by different methods. For example, a cooperative arrangement may provide for outright title to the structure, but a “share” of the land area under it. It also allows for disaggregating these values in the event of a dispute over one and not the other. In the event that the structure and the land are both held in title by the same owner and the values are customarily assessed in combination, the structure and plot values could be combined in the matrix.

The eviction and/or demolition may not involve the dispossession of land title or ownership of the plot on which the structure stands. In that case, the evaluator would proceed to the next categories and not enter a value for the plot. However, in some cases, such as in Israel, the land plot under a demolished structure may, perforce, be assumed by, or “revert to” the state as “state land” or “national land.” The evaluator must be familiar with the local laws and regulations to determine if that is the case in the event of an eviction or demolition. That may determine whether or not a value is entered in this category of the matrix or not.

In the case of a housing plot being confiscated by the state, determining the value of that plot may be difficult if, again, no market value can be determined for the affected area. In that case, the methodology would involve determining the cost at current market value of a comparable site in another location.

Contents

Each affected party should cooperate with the field workers to provide an inventory of the actual contents lost and damaged in the demolition. The value of those contents for this quantification purpose is the **replacement value** of the items, not the market value. The contents (furniture, clothing, foodstuffs, electronics, housewares items, etc.) would be subject to depreciation and the resale or fair-exchange values would not be sufficient to cover the cost of replacement. The replacement value represents the actual cost of repurchasing items comparable in quality to those lost or damaged by the demolition. (For heirlooms and other items sentimental value, a replacement cost should be included in this category; however, the nonmaterial loss or irreplaceability should be expressed in the "Victims' Nonmaterial Losses" section of the matrix, with a narrative either included in the matrix or attached to it.

Collateral damage

This section of the matrix allows for inclusion of the material losses to the indirect victims in particular, including neighbors' and public property that are affected by the act. In cases of violent eviction or demolition, using bulldozer or explosives, for example, nearby property can be damaged in various degrees, or destroyed.

Infrastructure

This section refers to services and other infrastructure lost in the demolition/eviction/confiscation that would have to be replaced after the event. For example, electricity provided at the original site may have to be replaced by a generator or purchasing energy from an alternate source. Water, previously available from installed or nearby facilities may have to be replaced by purchasing water or hauling it from another source. The resulting added cost—including the relative cost of labor at the going rate of such work for hire, which is beyond the existing regular costs of obtaining same—is the value to be calculated here.

Business losses

If the demolition/eviction/confiscation results in the loss of a business, or a portion of business, that cost is to be included here. Those losses are the subject of subcategories to be detailed below.

Equipment/inventory

This includes the value of machinery and equipment, other installations, such as furnishings and built ins, as well as all stock and supplies. This should include also the property belonging to others lost or damaged in the event. For example, a laundry or repair service would hold clients' property to be processed and returned. The values of those items are also to be included in this figure.

Prospective income

The loss resulting from inability to deliver goods and services, and the anticipated profit from existing stores, orders, contracts, etc. that would be unfulfilled due to the event. The short-term and long-term affects are to be calculated by different methods. This category of loss follows the method developed locally for determining “goodwill” as an asset, which would include the projected income from a pattern of business developed through the lifetime of the enterprise. [Refer to insurance law methods.]

Mortgage, other debts and penalties

The demolition/eviction/confiscation removes the owner’s relationship with the land and/or structure, contents, livestock, inventory and other matters of material value, such as materials and work performed for physical improvement to the property. However, the event does not relieve the owner from responsibility to repay for those values obtained on a credit basis. Those values, including any penalties and increased interest resulting from the event, are to be included here for both the short-term and long-term. If a situation prevails, as in many legal systems, that a debtor relinquishes claims (as in a natural disaster, for example), then that cost should nonetheless be calculated and listed under the category of “Other than Victim’s Losses.”

Livestock

The value of livestock lost and the treatment of those injured by the event is calculated here. This would include also the labor costs for time spent in rounding up dispersed livestock at the rate of pay for such work for hire. The calculus for these values includes the loss of anticipated returns from normal sale of, and/or produce from the animals, including their normally anticipated progeny over the short-term and long-term. In the case of the animals’ value as beasts of burden, the returns on their labor are to be included in the figures provided under lost revenue, increased transportation costs, returns from crop loss, or other appropriate category.

Land

The landed property not associated with the affected structure itself is to be calculated on the basis of fair market value, as with the structure and its plot entered above. This could be land adjacent to the dwelling or other affected structure, or land confiscated separately. This land could be lost entirely through confiscation, or its value could be reduced as a result of the eviction or demolition. In the case of eviction, land title might not be lost outright, but the conditions created by the eviction may prevent the owner(s) from returning to or reclaiming their land. In that case, the land in question would be calculated as an outright loss.

Trees/crops

The value of a lost or damaged nonfruit-bearing, or otherwise unharvestable tree or other vegetation would be determined by the cost of purchasing and replanting a comparable replacement. The nonmaterial, aesthetic, or sentimental value of the tree or other vegetation would be included by narrative in the Victim’s Nonmaterial Losses item under Environment or Heritage, as appropriate. The value of harvestable trees and crops would include the

value of the replacement itself for fruit-bearing trees and crops, as well as the (short-term and long-term) value of the harvest. The loss of timber would be calculated accordingly also, with the value being the anticipated return from the harvesting or sale of the tree itself.

The ecological loss of vegetation, depending on the nature of the event—if by demolition were by fire or other destructive means—also carries a value. Ecological damage is calculated on the basis of the restoration costs entailed. Collateral damage to wildlife and other natural assets, owing to the damage and the time required to restore it, may be of both a calculable and incalculable loss. Where possible, such calculable values should be included here. Otherwise, those losses are to be recorded in the narrative section of both the Victim's and Nonvictim's Nonmaterial Losses, for those losses would be of a more public nature.

Lost/decreased wages/income

The loss of a home, including subsequent short-term or long-term resettlement, may involve the loss of livelihood, whether that livelihood is linked to the dwelling and/or land lost. In any event, wages would inevitably be lost (to victim or her/his employer) for nonproductive time attending to the event and its aftermath. Resettlement can lead to loss of a job or jobs altogether, or necessitate securing alternative employment, especially if temporary or long-term resettlement is far from the regular workplace. To calculate that value, one would subtract the short-term and long-term wages and other income of affected persons from the normal, anticipated wages and other income before the event. Since obtaining new employment and other income involves a loss of certain benefits, such as accumulated vacation leave, seniority and other benefits, the relative loss of those values should be included here if calculable. Job seniority may not be calculable value in monetary terms if it involves merely standing vis-à-vis colleagues. However, if that seniority arguably would have led to promotion with material effect in the short or long terms, that value is to be factored here as well.

Health care

The event itself or its aftermath may have negative health consequences. Social science has recorded the effects of eviction and resettlement upon the increased mortality and morbidity rates of the affected communities. While these notable consequences belong among the Victim's Nonmaterial Losses, the care for these consequences has clearly calculable values. The loss of life, limb and other health effects are the subject of the laws of states for the purposes of calculating victim compensation in insurance and other cases involving law suits. A sample of such methods taken from such statutes could form a composite methodology for calculating victims' health losses here.

The overcrowding, such as in interim or alternative housing arrangements, often leads to negative health consequences for those evicted, as well as for those providing the alternative shelter in their own quarters. The care and treatment of these health consequences (such as influenza, scabies, malnutrition, etc.) are an additional value added to these health care costs.

Interim housing

Eviction, confiscation and demolition victims often seek alternative housing with relatives or friends, either within the community or elsewhere. This housing has a value, which is to be

calculated on the basis of fair rental rates for such shelter, whether rent is paid or not. It remains a cost and value that is subsidized in one form or another. It also can lead to an actual expanded definition of what constitutes the victim, for persons and groups offering assistance in various forms can be counted as second tier victims by virtue of the loss—voluntary or otherwise—incurred as a result of servicing the persons directly affected by the eviction, confiscation or demolition.

Bureaucratic and legal fees

While under threat of a violation, such as eviction, demolition and confiscation, the eventual victim would likely undergo costs related to both time spent and out-of-pocket costs in order to restrain or defend against the impending violation (if the threat is known in advance). Both the time and monetary costs incurred by both bureaucratic processes and legal advice and defense work should be quantified. Even if the legal advice given is free of charge to the affected person(s), those rendering the advice (NGO, CBO, other *pro bono* service) should put a value on that service for the purposes of this costing exercise. (The costs of bureaucratic efforts by public personnel is determined below under “Other than Victims’ Nonmaterial Costs.”)

Before the victim(s) can restore their proper housing, s/he conventionally undergoes a procedure and cost toward obtaining a license to rebuild or otherwise restore a dwelling. The costs incurred in this process, including fees, legal service, bribes and other out-of-pocket expenses should be included as a category in its own right.

Alternative/replacement housing

The cost of securing comparable housing on a permanent basis is represented here. (Temporary lodging costs are treated above under “Interim housing.”) The comparable housing is meant to include a dwelling with similar spatial dimensions, infrastructure, location and services as the home lost in the violation. This may involve calculation of the replaceable features of the original dwelling with some adjustments, depending on circumstances. For instance, a comparable dwelling space may be found near the source of livelihood, but may be in a differently priced market, and the adjusted figure would account for that. That dwelling may be comparable in most aspects, but lack services or infrastructure. In that case, the cost of obtaining the replacement services or infrastructure at the local rate would have to be added. Likewise, if the replacement housing is comparable to the original dwelling lost, but its location is less convenient for commuting to one’s source of livelihood or family and original community members, that additional transportation cost would be included in the “Transportation” item below.

Since this category of cost is of a more-or-less permanent nature, it should be cited in the “Long-term” cost column of the matrix. Typically, obtaining permanent replacement housing is a lengthy process; therefore, calculating this costs would be a subject for, and a further argument for follow up monitoring of violation cases.

Resettlement

The expenses of traveling and transport of goods to both interim and replacement housing sites form part of the resettlement cost. This, too, would likely involve the efforts and time on the part of several persons—with equivalent values—in order to locate and secure the short-

term and long-term housing alternatives. All related costs should be calculated as much as possible.

Transportation costs

This category is the amount of difference between the amounts spent on transportation as a result of the eviction, demolition or confiscation and the amounts spent (if any) on transportation in the normal conduct of life at the original place of residence. Such values include expenses *and* time spent commuting to and from the source of livelihood, visiting family and community members, going to market, carrying out cultural and religious activities, visiting grave sites, conducting other official or private business, etc.

Victims' nonmaterial losses

Health

In addition to the cost of medical treatment, the loss of health has a value seldom calculated in monetary terms. Methods for calculating the values of losses of life and limb can be found in local legal practice concerning divorce, traffic and insurance. This loss will have to be described in some detail in order to make your case.

Living space

A reduction in living space can have negative physical and emotional effects, as when an evicted family takes refuge with friends and relatives in small, temporary quarters. Consequences may include nervousness, loss of sleep or skin ailments. Be sure to describe this situation as part of the victim's experience.

Reconstruction licensing

Long waiting and frustration may result from the search for a license to rebuild after demolition, eviction or confiscation. This loss can be measured in time and stress, and should be included here.

Psychological harm

The victims may suffer mental stress and psychological harm, especially in the context of violence during eviction, or the trauma that accompanies homelessness after the violation. Children are particularly susceptible. Their story needs to be told. You may find criteria for quantifying the value of pain and suffering from the specialized practice of local law on traffic and insurance.

Disintegration of family

Displacement and other violations of adequate housing could lead to separation of family members and the deterioration of family relationships. With the psychological depression arising from housing and land loss, some victims may engage in antisocial behavior, such as violence or substance abuse that harms family relations.

Loss of community

Eviction, resettlement or land loss can fragment communities and reduce social capital built up over time. It can separate people from support systems (including child-care arrangements, domestic division of labor, etc.) upon which they depend for livelihood and social activities, while women bear an extra burden of maintaining an uprooted home.

Investment in infrastructure

Even—and especially—the most-impooverished communities have to invest in local infrastructure (e.g., electricity, water, transport, roads), particularly if the municipal institutions exclude them. Separation from these facilities by forced eviction, confiscation or demolition means a total loss of that investment, which may not be quantified, partly because they are the product of volunteer labor.

Investment in sanitation and waste-management systems

A community may provide its own waste-management solutions, however simple it may be, especially in the absence of public services. The vital functions of waste management may no longer be possible because of the separation, causing a loss of labor divisions or disposal options and spell a deterioration in the quality of life, including entitlements to environmental health as a result of the violation.

Investment in security protection systems

Informal communities are typically forced to seek their own security arrangements, since civil police may fail to serve them, or deteriorating living conditions may coincide with increased social violence.

Investment in educational infrastructure

Local communities' arrangements for popular education may be curtailed with eviction, leading also to the disruption of formal education (e.g., lost school days). Each home also is a locus of educational infrastructure, especially where children carry out their homework.

Heritage

For heirlooms and other items of sentimental value, as for land-based identity and culture, a replacement cost should be included in this category. However, the incalculable nonmaterial dimension, or irreplaceability should be expressed in the "Victims' Nonmaterial Losses" section of the matrix, with a narrative either included in the matrix or attached to it.

Victims' nonmaterial costs

Environment/ecology

Various forms of housing rights violation can spell the loss of environmental safety, health and recreation. Displacement and eviction sever the relationship between the inhabitants and their habitat. It may also force them to live in precarious or unsafe environments as a consequence.

Standing/seniority

A home owner who loses her/his housing also loses the status that comes with the property and securely tenured lifestyle. The formerly real or perceived capacity of the victims to advise and support others dissipates with the violation of their right to adequate housing, especially through land loss.

Relocating long-standing communities to new areas makes them low-status newcomers in competition with new, indigenous neighbors. Environmental degradation or rezoning may affect the status of a community negatively, leading to intangible—but sometimes also quantifiable—losses.

Political marginalization

Homeless people in many States are denied the right to vote for lack of a fixed address. Resettlement renders inhabitants politically weak vis-à-vis new neighbors, especially without the benefit of local connections and established relationships.

Social marginalization

Losing one's home and place to live often means losing also the social integration once enjoyed in the former residence. Spatial marginalization to the outskirts of the city may be synonymous with exclusion from social services and infrastructure.

Further vulnerabilities

The loss of home, land and social capital (i.e., productive relations within the community) can leave the victim(s) without protection from the natural elements, and/or without livelihood and sources of income. The homeless woman becomes further vulnerable to threats against her personal security and integrity long after the housing-rights violation.

Other-than-victims' material costs (public costs)

Police

The law enforcement officials engaged in either committing or remedying a housing and land rights violation, for example, represent a cost to the public purse. You can calculate their number, multiplied by the hours/days engaged and by corresponding wages and benefits to derive an estimate of the public costs incurred.

Bulldozers

In some cases (e.g., in Israel), courts issue orders to targeted inhabitants and communities to demolish their own homes. If they do not comply, the State carries out the deed and charges the victim for the service. In other cases, the housing rights monitor would have to calculate the cost of using the equipment and the wages of the operator to determine the public expenditure in carrying out that part of the violation.

Legal practitioners

Lawyers, either arguing against or defending housing and land rights, as well as judges, prosecutors and court staff dedicate time and materials that are covered from public budgets. Their level of effort and cost per unit of time (hours or days) could form a method of calculating these public costs.

Army

Military personnel and equipment used in the violation (or defense against a violation) also represent a cost. Quantifying these costs may be a more-elusive exercise, but it may be useful to pose estimates for your public's consideration.

Other forces

The public bodies may subcontract tasks and functions to private parties; however, those expenditures related to the case at hand would factor among the nonvictim's material costs.

Bureaucratic and personnel costs

The inspection, administrative processing, clerical and other desk work in public institutions may be carried out in connection with your case and paid by the tax payer. Your educated estimate of these values forms part of the public cost scenario.

Other-than-victims' nonmaterial costs

Social costs

Housing rights violations can be a cause or consequence of social unrest in a country. Depressed living conditions within a community often coincide with increased social violence, and dislocation often generates new adversary relations among inhabitants competing over territory and property, either at the original site, or in resettlement. Squalid living conditions also could give rise to practices and pathogens that bear a social cost in the form of declining public health.

Civic order

Linked to adequate housing and other economic and social rights, civic order typically deteriorates commensurate with the deprivation of living conditions. Resistance to eviction and forced relocation, demolitions and dispossession by any party is the natural response to a breakdown in civic order, including that characterized by the State omitting to implement its obligation to respect, defend, promote and fulfill the human right to adequate housing and land.

Political legitimacy

Depending on the facts and scale of a particular situation, a housing and land rights violation could undermine the legitimacy of the political party, government or even State in whose name the violation is committed. Alternatively, resolving and remedying a violation could have the opposite effect of recovering the loss of official credibility and legitimacy.

✓ **Loss matrix**

✓ **Housing contents inventory**

9.8. **Duty holders**

The professional monitor of the human right to adequate housing should provide a list as complete as possible of the duty holders both legally and morally responsible. This legal duty holder (i.e., the State and its agents) may be operating in conjunction with others in either the violation or the potential solution. The audience of your eventual action, whether they are the general public, journalists, or a prosecutor or judge, will need a clear and complete picture of the legal personalities, those who are responsible for their acts of commission and/or acts of omission, and who does what to whom, from the beginning to the present.

As borne out in the foregoing sections on sources of law and guarantees, the concerned State is always the principal duty holder. The State is the legal personality that is treaty bound by the obligation to respect, protect, promote and fulfil human rights, but also to aid those who have been deprived of them. The State's duties are threefold:

- To avoid deprivation,
- To protect and defend those facing deprivation,
- To provide remedy in the forms of assistance and justice to those deprived.

You may find that the State, as duty holder, has committed acts that cause deprivation, or omitted to protect or remedy a deprivation through the obstacles identified above. One might also find that the duty holder is constrained by other actors or factors, such as natural disaster, or global economic recession.

Identifiable institutions and man-made forces, either internal or external, may be known to contribute to a violation. These may include actors such as the International Monetary Fund (IMF), the World Bank, a multinational corporation or national planners. You may find that these parties are either directly or indirectly responsible for the deprivation, or conditions leading up to it. So, too, are factors such as debt or traditional social practices. Especially when the role of the State is passive (i.e., by denial or failure to protect and ensure remedy to the victims), other actors may come to the fore. Private companies, including multinational corporations, for instance, regularly acquire assets and carry out projects that involve forced evictions and land confiscation. In some cases, the regional and international development banks have their well-articulated policies on compensation/relocation. However, these companies may be the right hand of State policies, or implementers of international public projects. That is why it can be crucial to record the relations between the different actors forming a whole chain of duty holders.

One must not overlook the possibility that duty holders, particularly as violators owing remedy and restitution to victims, might also be members of the community, or even family members of the victim(s). Where does the State duty lie in such a situation?

As the legal personality obliged to respect, defend, promote and fulfil the human right to adequate housing, the State's duty lies squarely in the execution of its human rights obligations to regulate behavior of legal persons within its jurisdiction (and areas where it exercises effective control) in order to uphold rights. The human rights treaties and other



instruments provide the guidance on how States—and statecraft—should address human rights violations by third parties not only as matters of civil or criminal law, but also as means to ensure the legitimacy of the concerned government, or even State itself.

To have a full outline of questions for identifying the duty holders and the applicable legal obligations, you can use this "Toolkit" very effectively, since each element of the right to adequate housing that you have identified as relevant to your case has corresponding duty holders.

Primary duty holders: State authorities

- Has the State failed to take to prevent the violation of housing rights, especially information, education, capacity and capacity building? What are those neglected steps?
- Has the State protected the impoverished and vulnerable inhabitants and aided the victims (e.g., by prosecution, return, compensation, etc.) in the violation of housing rights, especially information, education, capacity and capacity building? Which are the particular bodies responsible for these preventive and remedial steps?
- Has the State taken sufficient measures to promote the entitlement of information, education, capacity and capacity building (e.g., human rights education, campaigns, public-service announcements, awareness-raising publications, etc)? Which are the specific bodies responsible for those measures?
- What is the State's relationship with other duties holders regarding the assessed violations? Explain the nature of that relationship. Is it a contract, foreign aid package, nepotism, political patronage, etc.?

Secondary: Have other actors affected the denial of information, education, capacity and capacity building needed for accessing adequate housing?

- Are other local, non-State actors somehow engaged in the denial of information, education, capacity and capacity building? Who are they and what is their role?
- What role do international financial institutions (IFIs) such as the World Bank, IMF, a regional development bank, or the World Trade Organisation have in determining the policies or conditions affecting information, education, capacity and capacity building in the affected community/country?
- What role and influence do multinational corporations or international development agencies have in determining the policies or conditions of information, education, capacity and capacity building in the affected community/country?
- How are these secondary duty holders responsible for the violation of the right to information, education, capacity and capacity building? To what extent do they influence State policies, programs, and laws having an effect on the violation?
- Do the secondary duty holders have internal policies/codes of conduct regarding housing rights, especially affecting the congruent right to information, education, capacity and capacity building? If so, are they publicly accessible?

- What are the relevant details of those policies or codes? How do they protect the human right to adequate housing and the entitlement of information, education, capacity and capacity building?
- Are these conditions part of an implementation contract or other cooperative agreement with State bodies or other partners?
- Before implementation, do they study the impact the projects will have or consider the possible unintended consequences?
- If there are several secondary duty holders, what is their relationship to each other, and how do they share responsibility for the assessed violation of the congruent right to information, education, capacity and capacity building? What is the relationship between each of them and the State?
- Do local authorities lack sufficient autonomy in housing and community development to apply locally relevant options to ensure the human right to adequate housing, especially information, education, capacity and capacity building?
- Do local authorities use their autonomy to protect and influence the central authorities of the State in a positive way, or do they participate in the violation and denial of the State's obligations and national policies?

Assessment

- To what extent is the State responsible for the vulnerability or violation of the housing rights congruent right to information, education, capacity and capacity building?
- To what extent are non-State actors responsible for the vulnerability or violation of the housing rights congruent right to information, education, capacity and capacity building?

9.9. Actions

The following table of actions (comprised of both preparation and implementation tasks) arranges a variety of possible problem-solving options for you by categorizing them for organizational and selective decision-making purposes. It is not an exhaustive set of options, but merely part of an array of possibilities for you to undertake with the affected community, depending on the present strengths (assets), weaknesses (liabilities), opportunities and threats.

Before selecting your actions, you should conduct a strategic planning exercise. For guidance click [here](#).

Footnotes shown here refer to relevant manuals, training materials, expertise, trainers, recorded experiences and/or methodologies already available to guide your chosen action toward a desired goal/result/solution. Toolkit users are encouraged to consult the HIC-HLRN website regularly for updates and further reference (www.hlrn.org) on constantly evolving updates, including strategies and practices arising from experiences throughout the global HIC and HIC-HLRN community.

Action		Solution
Preparation	Implementation	
Alternative tenure options		
Gather information for community to consider tenure options	Develop "limited equity cooperatives" ⁹²⁹	Legal secure tenure in adequate housing and sustainable land
	Inform and train community in pursuing land-tenure options ⁹³⁰	
Community capacity building		
Conduct training for community on their human right to adequate housing ⁹³¹	Mobilize community in local and national human rights campaigns	Greater community participation in projects, programs and policy formulation with well-defined human rights orientations
Legal service organizations and centers provide legal advice and representation to disadvantaged individuals and communities ⁹³²	Organize popular resistance to HRAH violations (demonstrations, petitions, sit-ins, street theater, etc.) ⁹³³	Community blocks housing rights violations by State and non-State entities
<i>Pro bono</i> (volunteer) lawyers provide legal advice and representation to disadvantaged individuals and communities	Organize national campaign on RAH ⁹³⁴	Coordinated community action and reaction to influence State authorities on housing policies
Build capacity of community-based and other civil society organizations to manage projects and campaigns ⁹³⁵		CBOs and NGOs more

⁹²⁹ The limited-equity cooperative is a form of housing tenure in which shareholder residents manage their buildings, within limits imposed by a charter, and have the right to get back what they have paid for their shares plus an allowance for improvements, if and when they decide to leave. See Duncan Kennedy, "The Limited Equity Coop as a Vehicle for Affordable Housing in a Race and Class Divided Society," 46 *Howard Law Journal* 85–125, 85 (Fall 2002).

⁹³⁰ Luanne Warnock, *Sharing the Cost of Land Tenure and Stewardship* (Davis CA: Sustainable Agriculture Research and Education Program, University of California, 1996).

⁹³¹ See Circle of Rights (Washington: 2000); Jules N. Pretty, Irene Guijt, John Thompson and Ian Scoones, *Participatory Learning and Action, A Trainer's Guide* (London: International Institute for Environment and Development, 1995), available from Earthprint at www.earthprint.com; also materials of Peoples' Movement for Human Rights Education, <http://www.pdhre.org>.

⁹³² Gridley Hall and Burton Fretz, "Legal Services in the Third World," *Clearinghouse Review* (December 1990); Jose Diokno, *Developmental Legal Aid in Rural Asean: Problems and Prospects* (Washington: 1981); Richard J. Wilson and Jennifer Rasmussen, *Promoting Justice: A Practical Guide to Strategic Human Rights Lawyering* (Washington: Human Rights Law Group: 2001).

⁹³³ Morjane Baba, *Guérilla Kit* (Paris: La Découverte, 2003); Mike Prokosh and Laura Raymond, *The Global Activist's Manual: Local Ways to Change the World* (New York: Nation Books, 2002).

⁹³⁴ "Global Struggle and National Focus Note" (Geneva: HIC, 1996).

		capable to support the affected people in responding rapidly and effectively to crises/violations
Train communities (in HRAH, strategic planning, technical skills, etc.) ⁹³⁶	Public agencies provide adequate technical, marketing and research assistance to disadvantaged community on an affirmative-action basis	Community better able to mount specific alternatives to official plans
Raise public awareness toward social mobilization through public education ⁹³⁷	Mobilize peaceful public protests to housing rights violations	Prevent forced evictions
Enhance monitoring-and-documentation skills and methods (e.g., archiving, statistics, multimedia, etc.) to build strong argumentation ⁹³⁸	Urgent Action appeals (organize regional and/or international mobilization) ⁹³⁹	Convince public of violations and need for resolution
	Public-information campaigns ⁹⁴⁰	
Design and implement alternative planning (community generated techniques in the people's initiative to design their own living environment) ⁹⁴¹		Participatory alternative housing projects adapted to the community's needs
Conduct an inventory (enumeration) of community human	Organize and divide volunteer labor of affected communities; and to areas	Community housing and built environment upgraded on-site as alternative to relocation.

⁹³⁵ Kaplan, Allan, *The Development of Capacity* (Geneva: UN Nongovernmental Liaison Service, 1999); Goggey, Shirley, *Rural Community Resource Centers: A Guide for Developing Countries* (London and Basingstoke: MacMillan, 1988).

⁹³⁶ Barrameda, Teresita V. and Lea I. Espallardo, *Learning, Reflecting and Acting for a Human Rights Future: A Training Manual for the Education of the Human Right to Housing in Urban Communities* (Quezon City: Process, Inc. and New York: PDHRE, 2000).

⁹³⁷ *Writing for change: An interactive guide to effective writing, writing for science, writing for advocacy* [CD and user's guide] (Oxford: fahamu and IDRC, 2000); International Human Rights Internship Program, *Ripple in Still Water: Reflections by Activists on Local- and National- Level Work on Economic, Social and Cultural Rights* (Washington: University of Minnesota Human Rights Resource Center, 1997), Chapter 6, online at <http://www1.umn.edu/humanrts/edumat/IHRIP/ripple/toc.html>; Allan McChesney, *Promoting and Defending Economic, Social and Cultural Rights: A Handbook* (Washington: AAAS and HURIDOCS, 2000) Chapter 7 online at: <http://shr.aaas.org/escr/handbook/>.

⁹³⁸ For guidance and methodology in documenting housing rights cases, see HLRN, *Urgent Action! HLRN Guide to Practical Solidarity for Defending the Human Right to Adequate Housing* [Arabic, English, French and Spanish versions] (Cairo: HLRN, 2003); and HIC Housing and Land Rights Network website: www.hlrn.org.

⁹³⁹ For guidance and methodology in building housing rights cases argumentation and mobilise solidarity, see HLRN, *Urgent Action! HLRN Guide to Practical Solidarity for Defending the Human Right to Adequate Housing* [Arabic, English, French and Spanish versions] (Cairo: HLRN, 2003); and HIC Housing and Land Rights Network website: www.hlrn.org.

⁹⁴⁰ *Strategic Campaigning* (London: Amnesty International, 2003).

⁹⁴¹ Youth in Unity for Voluntary Action--YUVA and University of Tasmania, "Settlement Upgrading Manual" [Sakkardara alterantive plan] (October 2000); UNCHS, *Human Settlements Development through Community Participation* (Nairobi, UNCHS, 1991); Nick Waters, *The Community Planning Handbook: How People Can Shape Their Cities, Towns and Villages in Any Part of the World* (London: Earthscan, 2001).

⁹⁴² *Ibid.*

resources and social capital ⁹⁴²	to develop alternative plans	Obtain adequate relocation site with suitable location, environmental conditions and livelihood options
	Community representatives lobby officials and legislators to cooperate with/approve community-proposed alternatives	
Community organizing		
Consult with community representatives and conduct an inventory (enumeration) of community human resources and social capital	Establish a tenants union ⁹⁴³	Community presents a common position in defense of its rights and interests
Identify and locate absentee landlord ⁹⁴⁴		
Cooperate and negotiate ⁹⁴⁵		
Learn/use conflict resolution techniques and, including alternative dispute resolution ⁹⁴⁶	Decriminalize actions taken to obtain elements of HRAH	Administrative recognition of tenure and the human right to adequate housing of people without economic access
Mobilize inhabitants	Organize squatter actions and squatter-empowerment interventions ⁹⁴⁷	

⁹⁴³ Tenant organizing resources” on the National Alliance of HUD Tenants website: <http://www.saveourhomes.org/>. Practical steps for forming a tenants union can be found on http://www.radio4all.org/aia/pro_tenant.html.

⁹⁴⁴ “Who is my landlord anyway?” (Seattle: The Tenants Union, 2004), go to <http://www.tenantsunion.org/research.html>.

⁹⁴⁵ For a collection of popular experiences in government-nongovernment cooperation in the field of human settlements, see Habitat International Coalition, Building the City with the People: New Trends in Community Initiatives with Local Governments (Mexico City: Habitat International Coalition, 1997), contents also available on line at HIC General Secretariat website, at <http://www.hic-net.org/library.asp>.

⁹⁴⁶ American Arbitration Association (AAA), Grievance Mediation Procedures (New York: AAA, 1992); AAA, Resolving Your Disputes (New York: AAA, 1993); American Bar Association, Alternative Dispute Resolution: An ADR Primer (Washington: Standing Committee on Dispute Resolution, 1989); Carpenter, Susan L. and W.J.D. Kennedy, Managing Public Disputes: A Practical Guide to Handling and Reaching Agreements (San Francisco: Jossey-Bass Publisher, 1988); Cochrane, Michael G. ed., Attorneys General and New Methods of Dispute Resolution (Washington: American Bar Association, 1990); Costantino, Cathy, A. and Merchant, Christina, S. Designing Conflict Management Systems (San Francisco: Jossey-Bass Publisher, 1996); Edelman, Lester, Frank Carr, and James L. Creighton, The MiniTrial (Ft. Belvoir VA: U.S. Army Corps of Engineers Institute for Water Resources, 1989); Edelman, Lester, Frank Carr, Charles Lancaster, and James L. Creighton, Non-Binding Arbitration (Ft. Belvoir VA: U.S. Army Corps of Engineers Institute for Water Resources, 1990); Fine, Erika S. and Elizabeth S. Plapinger, eds. for the CPR legal Program, Containing Legal Costs: ADR Strategies for Corporation, Law Firms, and Government (Butterworth Legal Publishers, 1988); ; Folberg, Jay and Alison Taylor, Mediation: A Comprehensive Guide to Resolving Conflicts without Litigation (San Francisco: Jossey-Bass Publishers, 1984). For a bibliography and resources guide on alternative dispute resolution, see Office of Personnel Management website: <http://www.opm.gov/er/adrguide/Section7.asp>.

⁹⁴⁷ Diana Mitlin and David Satterthwaite eds., Empowering Squatter Citizen: Local Government, Civil Society and Urban Poverty Reduction (London: International Institute for Environment and Development, 2004), available from Earthprint at www.earthprint.com.

Cooperate with National Human Rights Institutions ⁹⁴⁸	Propose and lobby for the implementation of National Plans of Action for Human Rights ⁹⁴⁹	National housing shortage, upgrading needs and land conflicts addressed in a National Plan of Action with provision for law and policy reform
Negotiate with municipal authorities to include the community/civil society as a partner ⁹⁵⁰	Increase community participation in design, planning, implementation and maintenance of housing ⁹⁵¹	Maintained and upgraded social housing
Train in negotiation and mediation skills ⁹⁵²	Negotiation toward reconciling evictions/removals and land grabbing ⁹⁵³	Indigenous peoples regain historic land claims
Develop community/local government cooperation	Monitor transparency in decision-making processes	Obtain social housing (provided by government), based on need, with amortization based on minimum wage level (affordability)
	Design infrastructure projects	
	Reform public policy toward providing affordable housing	
	Propose and implement National Shelter Strategy ⁹⁵⁴	
	Design national (comprehensive) development plans	

⁹⁴⁸ OHCHR, National Institutions for the Promotion and Protection of Human Rights [Human Rights Series No. 19] (Geneva: OHCHR, undated), at <http://www.unhcr.ch/html/menu6/2/fs19.htm>.

⁹⁴⁹ Office of the High Commissioner for Human Rights, Handbook on National Human Rights Plans of Action [Professional Training Series No. 10] (Geneva and New York: OHCHR, 2002), at: <http://www.ohchr.org/english/about/publications/docs/nhrap.pdf>.

⁹⁵⁰ Janelle Plummer, Municipalities and Community Participation: A Sourcebook for Capacity Building (London: Earthscan, 2001); Janelle Plummer, ed., Focusing Partnership: A Sourcebook for Municipal Capacity Building in Public-Private Partnerships (London: Earthscan, 2002); Diane Warburton, ed., Community and Sustainable Development: Participation in the Future (London: Earthscan, 200X).

⁹⁵¹ UNCHS, Human Settlements Development through Community Participation (Nairobi: UNCHS, 1991).

⁹⁵² Scott Beattie, "Is Mediation a Real Alternative to Law? Pitfalls for Aboriginal Participants," Australian Dispute Resolution Journal 8 (1997) 57; Larissa Behrendt, Aboriginal Dispute Resolution: A Step towards Self-Determination and Community Autonomy. (Sydney: Federation Press, 1995).

⁹⁵³ Michael Asch and Norman Zlotkin, "Affirming Aboriginal Title: A New Basis for Comprehensive Claims Negotiations," in Michael Asch, ed., Aboriginal and Treaty Rights in Canada: Essays on Law, Equality, and Respect for Difference (Vancouver: University of British Columbia Press, 1997).

⁹⁵⁴ UNCHS, Developing a National Shelter Strategy: Lessons from Four Countries (Nairobi: UNCHS, 1990); OHCHR, Handbook on National Human Rights Plans of Action (Geneva: OHCHR, 2001)

Develop the cooperative sector	Promote cooperative sector initiatives to provide affordable housing	
Use/lobby/cooperate with the international human rights system (interventions with factual, legal and political mechanisms of the UN and regional human rights systems) ⁹⁵⁵	Undertake negotiations at international/ multilateral level (whereby negotiators representing the State assert their prior obligations under international human rights treaty law against IFI [Word Bank, regional development bank, IMF, etc.] and WTO conditionalities leading to housing rights regressive / retrogressive violations) ⁹⁵⁶	Obtain/ensure continuous regulation of housing market practices (e.g., to ensure tenure security, accessibility of housing, building materials, direct investment, etc.)
		End to practices of land confiscation through foreclosure, adverse possession and eminent domain without adequate, consensual alternatives
Develop / reform / enforce law ⁹⁵⁷		
Initiate/reform legislation and regulatory processes in compliance with the human-right-to-adequate - housing framework	Undertake class action suits (with minimum of [e.g., at least 15] physical or legal persons undertaking a litigation action, generally in the name of a whole group of the population), or public-interest litigation (e.g., India) ⁹⁵⁸	Law and policy enforced to respect, defend, promote and fulfill housing rights
		Law enforcement officers protect population from and implied protection
Collect sufficient data to determine material and		Violators prosecuted and punished

⁹⁵⁵ See "NGO participation in the activities of the Committee on Economic, Social and Cultural Rights," UN doc. E/C.12/2000/6, 7 July 2000, website: <http://www.hchr.un.ch>; and "Revised general guidelines regarding the form and contents of reports to be submitted by states parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights," UN doc. E/C.12/1991/1, 17 June 1991.

⁹⁵⁶ INCHRITI, Trade, Investment, Finance and Human Rights: Essential Documents (Geneva: INCHRITI, 2001).

⁹⁵⁷ Mario Rosário, "[Action "Tsimá Ga Ku Aka" to build together](#)" (1996); Janeth López, "[Asesoría en vivienda para el proceso de reinserción en Colombia](#)" (1996); K.A. Jayaratne, "[Collaborative Partnership to Improve the Low Income Neighbourhoods](#)," (1996); Michael Shapcott, "[Rupert Pilot Project. A self-Help and Community Rehabilitation Project in Canada](#)" (1996); Leopold Mutembei, "[Struggles of the urban poor to improve their living conditions](#)" (1996); Leonard Chileshe Mulenga, "[The case of Bauleni Upgrading](#)" (1995); Johan Silas, "[The Improvement of Low Cost Housing and Environment](#)" (1996); in Habitat International Coalition, Building the City with the People: New Trends in Community Initiatives with Local Governments (Mexico City: Habitat International Coalition, 1997), contents also available on line at HIC General Secretariat website, at <http://www.hic-net.org/library.asp>.

⁹⁵⁸ "Public interest litigation" (PIL) is a form of litigation filed in a court of law, for the protection of "public interest." Most prominently used in the Indian context, it is not defined in any statute or act. It has been interpreted by judges to consider the intent of public at large. Although, the main and only focus of such litigation is public interest, PIL can be filed in cases involving, e.g., such issues as pollution, "terrorism," road safety, constructional hazards, violated human rights of the poor, the content or conduct of government policy, to compel municipal authorities to perform a public duty, etc. See, for example: Upendra Baxi, "Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India" [revised], in Upendra Baxi, ed., Law and Poverty: Critical Essays (Bombay: Tripathi 1988); Mario Gomez, In the Public Interest: Essays on Public Interest Litigation and Participatory Justice (Colombo: Legal Aid Centre, University of Colombo, 1993); Sampat Jain, Public Interest Legislation (New Delhi, Deep & Deep, 2002); Shri. V.S.Vadivel, "Public Interest Litigation (PIL) A Boon or Bane?" (Legal Services India, 2004),

<http://www.legalserviceindia.com/articles/pil.htm>; see also Help Line Law website: <http://www.helpinelaw.com/docs/main.php3?id=PIL11>.

nonmaterial losses to victims of housing and land rights violations		Victims receive restitution and full compensation for violation and material and nonmaterial losses
Conduct national housing and land rights assessment ⁹⁵⁹	Lobby parliament	Law promotes housing and land acquisition and retention in disadvantaged communities consistent with international commitments to promote just patterns of land distribution
	Raise test cases, constitutional challenges through court system	
	Develop laws on properties left without will and testate in order to narrow the class of heirs and prevent fractionation of the ownership	
	Nationwide constitutional review campaign	Constitutional reform ⁹⁶⁰
Institutional reform		
Establish and maintain an effective Land Trust to support communities subject to discrimination and dispossession		Land ownership expanded for disadvantaged communities on an affirmative-action basis
Monitor and survey practices of public and private lending institutions for discrimination practices and patterns	Lobby for disciplinary action and rehabilitation of institutions to end discriminatory practices	Institutions apply uniform criteria in housing and community development programs, policies and transactions
International human rights system interventions		
Prepare and present collective parallel report to human rights treaty bodies (or submit cases under individual complaints procedures under Optional Protocols)		UN treaty body Concluding Observations coincide with community's evaluation of housing rights conditions and proposals for solutions

⁹⁵⁹ Apply this HIC-HLRN Housing and Land Rights Monitoring Toolkit on a national scale to all elements of the human right to adequate housing.

⁹⁶⁰ See, for example, "The history of constitutional reform in Kenya," World History Archives (2004), <http://www.hartford-hwp.com/archives/36/index-bbh.html>.

Raise cases and submit briefs before regional human rights courts and commissions ⁹⁶¹		State compelled to implement its treaty obligations to respect, defend, promote and fulfill the human right to adequate housing and land
Use Concluding Observations in public information and media campaigns, litigation		
Submit cases to UN Commission on Human Rights 1503 Procedure		States intervene to resolve impasse in housing rights violation case
Submit question/case to UNESCO complaints procedure		States intervene to resolve impasse in housing rights violation case
Legal defense		
Develop and deliver legal literacy and litigation strategy training ⁹⁶²	Provide legal-aid services to defend individual and community housing and land rights	Judicial rulings include legal precedents for future litigation and law reform to ensure individual and group rights to adequate housing and land
Collect detailed data on violations, perpetrators, values of losses and other consequences ⁹⁶³	Present admissible evidence in litigation on behalf of victims ⁹⁶⁴	Crimes and perpetrators prosecuted and punished
		Judicial remedies, including legal precedents for future litigation and law reform to ensure gender equality
Develop gender-awareness and gender-justice training for communities, police,	Provide legal-aid services to defend equal rights to housing and land for	Victims receive restitution and full compensation for violation and material and nonmaterial

⁹⁶¹ Litigating Economic, Social and Cultural Rights: Achievements, Challenges and Strategies (Geneva: COHRE, 2004), available at <http://www.cohre.org/library/Litigating%20ESCR%20Report.pdf>; Amicus Curiae in Grupo Interdisciplinario por los Derechos Humanos v. Colombia [submitted by COHRE to Inter-American Commission on Human Rights on case of housing destruction by paramilitary groups in Ituango and El Aro, Colombia], on line at <http://www.cohre.org/downloads/amicuscolombia1.doc>; Amicus Curiae in Justiça Global, et al. v. Government of Brazil, Inter-American Commission on Human Rights [submitted by COHRE on actual and threatened violations of housing rights, including forced evictions, with the planned Alcântara Spaceport expansion, in Brazil] available at <http://www.cohre.org/downloads/amicusbrazil1.doc>; Amicus Curiae in CELS & CEJIL v Argentina, Inter-American Commission on Human Rights [submitted by COHRE to Inter-American Commission on Human Rights on case local authorities conducting forced evictions in Barrio Ejército de los Andes, Provincia de Buenos Aires, Argentina], available at <http://www.cohre.org/downloads/amicusargentina1.doc>. See also COHRE Case Law Database on line at <http://www.cohre.org/tframe.htm>; Case law database for economic, social and cultural rights available on the ESCR-Net website at <http://www.escr-net.org/>; found in “Case Law” at http://www.escr-net.org/EngGeneral/Case_law.asp, or “Jurisprudencia” at http://www.escr-net.org/EspGeneral/Case_law.asp.

⁹⁶² Margaret Schuler and Sakuntala Kadirgamar-Rajasingham, Legal Literacy: A Tool for Women’s Empowerment (Washington: Women, Law and Development, OEF International, 1992).

⁹⁶³ See “Housing and Land Rights Violation Case Documentation Form” in this toolkit.

⁹⁶⁴ Domestic Implementation of International Human Rights: Litigating Economic, Social and Cultural Rights, on Human Rights Internet website at http://www.hri.ca/fortherecordCanada/vol1/guide-part_11.htm; Case Law Database for Economic, Social and Cultural Rights available on the ESCR-Net website at <http://www.escr-net.org/>; found in “Case Law” at http://www.escr-net.org/EngGeneral/Case_law.asp, or “Jurisprudencia” at http://www.escr-net.org/EspGeneral/Case_law.asp.

lawyers, prosecutors and judges ⁹⁶⁵	women and gender-discrimination victims	losses ⁹⁶⁶
Develop judicial procedures and expertise to provide for land-consolidation courts	Consolidate and reduce unstable “in-common” tenancy to maintain family and community land retention, especially to uphold land base for minority groups and indigenous peoples	Communities restore and retain their land base
Media cooperation and campaigns		
Conduct training for media professional in the human right to adequate, corresponding obligations, interviewing victims, quantifying victims’ losses and community follow-up ⁹⁶⁷	Meet journalists and media professionals to follow-up on training and present new documentation and information on developments	Informed public supports community alternative-development and/or anti-eviction proposals
Provide media outlets with economic analyses of various possible alternatives (on-site upgrading v. relocation)		
Provide media outlets with alternative plans and community proposals for their development		
Policy reform		
Reverse and prosecute discriminatory practices toward disadvantages individuals and communities by both public and private lending institutions		Fairness-in-lending policy formulated and enforced for housing and land purchase, rehabilitation and sustainability
Expand public-private initiatives to stimulate investment and multipurpose development communities		Integrated development with low-cost housing on public and donated lands
Provide housing and relief		
Exchange expertise in temporary housing and	Organize emergency relief (immediate provision of	Eviction and displacement victims receive emergency

⁹⁶⁵ Shelter Rights Initiative, Gender Specific Rights Litigation and Protection Strategies (Lagos: SRI, 1998); SRI, Manual on Judicial Protection of Economic, Social and Cultural Rights (Lagos: SRI, 2000).

⁹⁶⁶ “Seminar on the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms,” Netherlands Quarterly on Human Rights Special Issue (1993); S. Nadasen, “Restitution, Reconstruction, Reconciliation and Restribution: Land Reform—Balancing the Interests of the Dispossessed, the Homeless and Development,” Stellenbosch Law Review (1997), 360–77. For a bibliography of global restitution and compensation experience, go to: <http://userpage.fu-berlin.de/~theissen/biblio/>.

⁹⁶⁷ HIC-HLRN training module on “Housing and Land Rights for Media Professionals.”

relief provision	housing and/or housing resources at no cost to those denied: water, medical services, economic relief, housing resources and building materials, etc.)	(temporary) housing
Resource mobilization		
Conduct an inventory (accounting) of community (human and material) resources	Design, adapt and implement alternative-finance schemes; (e.g., small savings toward common projects) and self-financing for needy inhabitants (with freehold tenure options) ⁹⁶⁸	Upgrading and generally improved living conditions on site, as alternative to relocation
	Establish and operate nonbank institutions as lenders and builder of adequate, low-income housing ⁹⁶⁹	
	Organize self-help cooperation through rotating community credit (building & upgrading infrastructure, social production of housing ⁹⁷⁰)	

⁹⁶⁸ Alternative Financing Models: Hybrids of Homeownership Mutual Housing (The Enterprise Foundation, 2003); "Capitalizing on Collaboratives: New Partners for Comm. Dev. Finance" (Washington: Center for Policy Alternatives, July 1996); Enrique Ortiz, FONHAPO: The Experience of the National Fund for Low Income Housing in Mexico (London: International Institute for Environment and Development, 1998), available from Earthprint at www.earthprint.com.

⁹⁶⁹ Jeffrey Carmichael and Michael Pomerleano, The Development and Regulation of Non-Bank Financial Institutions (Washington: World Bank, 2002); Indonesia: Housing Finance for the Urban Poor (Manila: Asia Development Bank, 2001); Peer Smet, "Indian Housing Finance Alliances and the Urban Poor," Global Built Environment Review Vol. 2, No. 1, 58–66, <http://www.edgehill.ac.uk/gber/pdf/vol2/issue1/Eight.pdf>.

⁹⁷⁰ Joseph Schechla, ed., *Anatomies of a Social Movement* (Cairo: HIC-HLRN, 2004); Habitat International Coalition, *Building the City With the People. New Trends in Community Initiatives in Cooperation with Local Governments* (Mexico City: Habitat International Coalition, 1997); Prem Pangora, *Citizen's Initiatives for environmental improvements: The case of River Sabarmati, Ahmedabad, India* (Mexico City: Habitat International Coalition, 1997); Joël Audefroy, *Construyendo la Ciudad con la Gente. Nuevas tendencias en la colaboración entre las iniciativas comunitarias y los gobiernos locales* (Mexico City: Coalición Internacional para el Habitat, 1998); Gustavo Romero, La producción social del hábitat: reflexiones sobre su historia, concepciones y propuestas (2000), available on line at http://www.hic-net.org/online/Romero_PSH-intro.pdf; Eike Jacob, *Social Production of Habitat in Latin America* (2003); Habitat International Coalition-América Latina, "Social Production of Habitat. Conceptual framework" (2003); Enrique Ortiz, Social Production of Habitat: Marginal option or reality-transforming strategy? (2003), available on line at http://www.hic-net.org/online/Ortiz_SPH.pdf; Enrique Ortiz, *Vivitos y Coleando. 40 años trabajando por el hábitat popular en América Latina* (2002).

	<p>Immediate, diligent and effective increase in advice-and-lending services, on an affirmative-action basis within public lending institutions</p>	
	<p>Develop microcredit schemes (for upgrading and construction, but with social and legal components providing HRAH content)⁹⁷¹</p>	
<p>Analyze economic costs of the various possible alternatives (on-site upgrading v. relocation)</p>		
<p>Raise material support (raise funds) from private, public and intergovernmental donors), including microcredit⁹⁷²</p>		
<p>Plan/undertake reconstruction,⁹⁷³ upgrading and general improvement of living conditions (with multiple parties cooperating)</p>		
<p>Restoration and increase housing subsidy programs for low-income people, including by tax reform (e.g., reversal of tax cuts for the wealthiest tax payers)</p>		<p>Low-income people pay no more than 30% of monthly incomes for adequate housing</p>
<p>Conduct an inventory of community financial and material resources</p>	<p>Develop community savings schemes</p>	<p>Social production of habitat: Community/self-financed upgrading of housing and improvement of living conditions</p>

⁹⁷¹ Nazrul Islam, [Grameen Bank Bangladesh. A credit institution for housing](#) (1996); Jaffer Murtaza, [The Tanzania-Bondeni Community Lands Trust](#) (1996).

⁹⁷² Nazrul Islam, [Grameen Bank Bangladesh. A credit institution for housing](#) (1996); Jaffer Murtaza, [The Tanzania-Bondeni Community Lands Trust](#) (1996).

⁹⁷³ See York University Postwar Reconstruction and Development Unit, website: <http://www.york.ac.uk/depts/poli/prdu>.

Conduct public budget analysis from the housing rights perspective ⁹⁷⁴	Develop participatory budgeting ⁹⁷⁵ (ensuring that necessary programs and projects are budgeting according to housing rights obligations)	Public budgets comply with State's housing rights obligations to ensure "progressive realization" with "maximum of available resources"
Training other actors (outside community)		
Train civil servants in HRAH (including international treaty obligations upon the State and local authorities)	Reform urban/land planning criteria, procedures and objectives to harmonize with local community needs and criteria ⁹⁷⁶	Physical planning integrates human rights obligations, language and priorities directed to needy and vulnerable communities
Train lawyers in HRAH, (including international treaty obligations upon the State, as well as litigation strategies) ⁹⁷⁷	Legal argument, litigation and judicial decisions invoke international norms and treaty obligations	Legal recognition of traditional legal and tenure systems and provision of secure title ⁹⁷⁸
		Legal recognition of tenure and the human right to adequate housing of people without economic access

⁹⁷⁴ Ravikant Joshi, *A Case for Reform: how municipal budgets can change our cities* (Mumbai: YUVA Books, 2001); Maria Socorro I. Diokno, "A Rights-based Approach towards Budget Analysis" (Washington: International Human Rights Internship Program, 1999); Institute for Development Policy Analysis and Advocacy—IDPAA (Atiur Rahman et al.), *Alternative Budget Analysis: A Series of Studies on the National Budget for the Perspective of Poverty Eradication* [three volumes: Budget and the Poor, The Budget-making Process, People's Budget: An Alternative Exercise Using Participatory Tools] (Dhaka: University Press Ltd., 2002).

⁹⁷⁵ Rebecca Abers, 1998, "From clientelism to cooperation: Local government, participatory policy, and civic organizing in Porto Alegre, Brazil"; *Politics and Society*. 26(4)c 511–37; Rebecca Abers, *Inventing Local Democracy: Grassroots Politics in Brazil* (Boulder: Lynne Rynner, 2000); Baierle, Sergio, 1998, "The Explosion of Citizenship: The Emergence of a New Ethical-Political Principal in Popular Movement in Porto Alegre, Brazil," in Sonia E. Alvarez, Evelina Dagnino and Arturo Escobar, *Cultures of Politics/Politics of Cultures: Revisioning Latin America Social Movements* (Boulder: Westview Press, 1998); Sousa Boaventura de Santos, "Participatory Budgeting in Porto Alegre: Toward a Redistributive Democracy." *Politics and Society* 26(4) (1998), 461-509; *Quem é o público do Orçamento Participativo: se perfil, porque participa, e o que pensa do processo* (Porto Alegre: Cidade de Porto Alegre, 1999); Luciano Fedozzi, *Orçamento Participativo: Reflexões sobre a experiência de Porto Alegre* (Porto Alegre: Tomo Editorial, 1998); Pedro Jacobi and Macro Antonio Carvalho Teixeira, "Orçamento Participativo: co-responsabilidade na gestão das cidades," *São Paulo em Perspectiva*, 10 (3) (1996) 119–28; Brain Wampler, "Orçamento Participativo: Os paradoxos da participação e governo no Recife," *Cadernos de Estudos Sociais*, 15(2) (1999), 343–73; Brian Wampler, *A Guide to Participatory Budgeting* (October 2000). Internet sources: Participatory budget: The Case of Porto Alegre (Brazil) at:

<http://www.goethe.de/br/poa/buerg/en/framebag.htm> (2004);

World Bank: http://www.worldbank.org/html/fpd/urban/urb_age/porto.htm,

<http://www.worldbank.org/wbiep/decentralization/Topics13.7.htm>, <http://www.worldbank.org/participation/>; Inter-American Development Bank: <http://www.iadb.org/exr/IDB/stories/2000/eng/JAN00E/c200c1.htm>,

<http://www.iadb.org/exr/idb/sidebars/2000/eng/c200c4.htm>; Conference Proceedings on Participatory Budgeting:

<http://www.idre.ca/lacro/docs/conferencias/stren.html>, <http://www.ssc.wisc.edu/~wright/deliberative.html>,

<http://www.pqualc.org>.

⁹⁷⁶ UNCHS, *Developing a National Shelter Strategy: Lessons from Four Countries* (Nairobi: UNCHS, 1990); OHCHR, *Handbook on National Human Rights Plans of Action* (Geneva: OHCHR, revised draft May 2001).

⁹⁷⁷ Shelter Rights Initiative, *Gender Specific Rights Litigation and Protection Strategies* (Lagos: SRI, 1998); SRI, *Manual on Judicial Protection of Economic, Social and Cultural Rights* (Lagos: SRI, 2000).

⁹⁷⁸ Peter R. Grose, "An Indigenous Imperative: The Rationale for the Recognition of Aboriginal Dispute Resolution Mechanisms." *Mediation Quarterly* 12 (4) (summer 1995), 327–38.

		Judge issues restraining orders halting forced evictions and removals, land confiscation, property destruction and other housing and land rights
Train judges in HRAH (including international treaty obligations upon the State) ⁹⁷⁹		Judicial decision orders return, restitution and compensation for evictees, IDPs, refugees ⁹⁸⁰
Train law enforcement officials in the human right to adequate housing (including international treaty obligations upon the State)	Quantify losses/costs of housing rights violations	Victims compensated for losses ⁹⁸¹
Transitional justice (post conflict) ⁹⁸²		
Document details on violations, perpetrators, values of losses and other consequences ⁹⁸³	Present evidence to truth (and reconciliation) commission ⁹⁸⁴	Public aware of population transfer, mass dispossessions and other crimes committed during conflict

⁹⁷⁹ Shelter Rights Initiative, Manual on Housing Rights Protection Strategies for Lower Court Judges (Lagos: SRI, 2000).

⁹⁸⁰ UNCHS, Housing and Property Rights in Kosovo (Pristina: UNCHS, March 2000).

⁹⁸¹ For elaboration of the principles of compensation to victims of human rights violations, see Theo Van Boven, "Basic Principles and Guidelines on the Right to Reparation for Victims of Gross Violations of Human Rights and Humanitarian Law, Appendix 8 ("The van Boven Principles"), Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, E/CN.4/Sub.2/1996/17; also E/CN.4/1997/104, annex and subsequently revised as "Basic principles and guidelines on the right to a remedy and reparation for victims of violations of international human rights and humanitarian law," by Cherif Bassiouni, independent expert, Commission on Human Rights (E/CN.4/2000/62, annex). John Dugard, "Is the Truth and Reconciliation Process Compatible with International Law? An Unanswered Question," South African Journal on Human Rights Vol. 13, 258–68. For quantification methodology, see HIC-HLRN Loss Matrix in this Housing and Land Rights Monitoring Toolkit, or go to www.hlrn.org; for implementation, see to UNCHS, Housing and Property Rights in Kosovo (Pristina: UNCHS, 2000).

⁹⁸² For a general bibliography on transitional justice, go to <http://www.peacemakers.ca/bibliography/bib26reconciliation.html> or <http://userpage.fu-berlin.de/~theissen/biblio/> (on experiences of Germany and South Africa).

⁹⁸³ Use "Housing and Land Rights Violation Case Documentation Form" in this toolkit.

⁹⁸⁴ Kerry Able, and Jean Friesen, eds., Aboriginal Resource Use in Canada: Historical and Legal Aspects (Winnipeg: University of Manitoba Press, 1991); Alfred, Gerald R., and Franke Wilmer. "Indigenous Peoples, States and Conflict," in D. Carment and P. James, eds., Wars in the Midst of Peace: The International Politics of Ethnic Conflict (Pittsburg: University of Pittsburgh Press, 1997); Michael Coyle, "Claims Resolution: A Healing Process?" in J. Oakes, R. Riewe, K. Kinew and E. Maloney, eds., Sacred Lands: Aboriginal World Views, Claims and Conflicts (Calgary: Canadian Circumpolar Institute, 1998); Robert Rotberg and Dennis Thompson, eds., Truth v. Justice: The Morality of Truth Commissions (Princeton: Princeton University Press, 2000); Truth and Reconciliation Commission of South Africa Report, Vols. 1–5 (Cape Town: Juta, 1998); Theo van Boven, "Study Concerning the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms" [final report of Special Rapporteur] (Geneva: Commission on Human Rights, Subcommission on Prevention of Discrimination and Protection of Minorities) E/CN.4/Sub.2/1993/8. For an extensive bibliography of sources, go to: <http://userpage.fu-berlin.de/~theissen/biblio/>.

	Issue amnesty for past crimes and perpetrators of forced evictions/removals ⁹⁸⁵	Social reconciliation
	Present evidence to Truth and Justice Commission	Social reconciliation
		Crimes and perpetrators prosecuted and punished
Present evidence to “mixed courts”	Return, restitution and compensation for evictees, IDPs, refugees ⁹⁸⁶	

Of course, an illustrative list of potential interventions does not sufficiently convey the wealth of local governmental and nongovernmental experience available for review and exchange. Moreover, it is, as always, at the local level of implementation where human rights, including the human right to adequate housing, are transformed from moral suasion and legal theory to implementable reality. Therefore, both the practical, case-based perspective and the theoretical-and-comparative perspective become mutually dependent, mutually reinforcing and, hence, equally needed.

9.10. Evaluation & follow-up

Evaluation of any action you choose should be an ongoing function parallel to the events and development as they happen. This note offers some simple guidance on the specific evaluation tasks you will face. They are described in stages, with particular emphasis on the final stages and the vision for the future.

For our purposes, evaluation and follow-up imply two levels of assessment: (1) evaluation the action and (2) following the situation after the action concludes. The former is internal in nature and helps your organization, community or network become a learning institution by building on the lessons (successes, near-successes, failures and unanticipated results) of your efforts. The latter enables you, your organization, community or network to test the outcome to ascertain whether or not it has tangible benefits for those persons, communities, populations and peoples affected and targeted in your action. Ultimately, the follow-up process should lead you to the necessary conclusion as to what, if anything, to do next.

✓ Evaluating the action

⁹⁸⁵ John Dugard, *Dealing with Crimes of a Past Regime: Is Amnesty Still an Option?* [The Third Manfred Lachs Memorial Lecture] (1999); Carla Edelenbosch, “Human Rights Violations - A Duty to Prosecute?” *Leiden Journal of International Law* Vol. 7, No. 2 (1994), 5–22; Dianne F. Orentlicher, “Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime,” *The Yale Law Journal* Vol. 100, No. 8 (1991) 2537–615.

⁹⁸⁶ Uma Dhupelia Mesthrie, *The Truth and Reconciliation Commission and the Commission on Restitution of Land Rights: Some Comparative Thoughts* [“The TRC: Commissioning the Past” conference] (Johannesburg: University of the Witwatersrand, 1999); S. Nadasen, “Restitution, Reconstruction, Reconciliation and Redistribution: Land Reform: Balancing the Interests of the Dispossessed, the Homeless and Development,” *Stellenbosch Law Review* (1997) 360–77; David B. Southern, “Restitution or Compensation: The Land Question in East Germany,” *International and Comparative Law Quarterly* Vol. 42, No. 3 (1993), 690–97; David B. Southern, “Restitution or Compensation: The Open Property Question,” *German Politics* Vol. 2, No. 3, 436–49. For a bibliography of global restitution and compensation experience, go to: <http://userpage.fu-berlin.de/~theissen/biblio/>.

Evaluation your action includes three integrated but conceptually distinct processes: (1) monitoring progress, (2) formative evaluation and (3) measuring the development impact.

1. Monitoring implementation progress

Monitoring the implementation of your action is the most frequent—indeed constant—aspect of the learning process. This should involve periodic reports on production of outcomes, financial accounting and levels and nature of inputs (e.g., technical assistance, training, social production of habitat). The periodicity of the reporting could be quarterly, if the action is expected to proceed for a year or more. Alternatively, reporting could be more frequent, especially if it is a short-term action, or if it takes place in a fast-paced environment such as a threatened eviction or natural disaster situation, and particularly if extreme deprivation of human well-being is at stake.

The responsibility for monitoring is to be shared by a group of actors. Remembering that, like in the “Toolkit” guide for strategic planning, the more participation, the more-favorable the result (“more participation = more dignity”).

Reporting on the action, based on the monitoring of implementation progress, should be specifically assigned, most probably to the coordinator of the action or the chief executive officer of the principal body organizing the action. The audience of the reports should be both internal, for the benefit of those engaged, and external, depending on the obligations you have to supporters, members and/or funders. The assignment of duties, division of labor and timing of evaluation events should be completed also in the planning stage of your activity (see [“Strategic planning”](#) link above).

2. Formative Evaluation Indicators of Accomplishments

Midway in the process of your action, you should conduct an assessment of the *quality and adequacy* of the tasks undertaken by assessing the actual outcomes against the standard of expected results you already have set out for yourselves.

You should develop an evaluation plan and data collection instruments as part of the project implementation. That means, you should plan ahead to collect information that will verify your intended results, whether that be in the form of documents, press reports, opinion surveys, affidavits, water-quality test results, etc. The formative evaluation activities probably will require site visits, rapid assessment and low-cost data collection techniques such as focus groups, interviews, training evaluation forms, and simple targeted studies to identify key issues for action management.

3. Development-impact Assessment and Indicators

Development-impact assessments that you and your organization/community undertake less frequently, perhaps on an annual basis, will track changes in the outcomes, in order to determine the degree to which the larger environment of the human right to adequate housing is improving—or deteriorating, as the case may be.

Your action could—and should—produce an initial baseline report at the initial stage that coincides with your first inventory, site visits and/or assessment arising from your first use of this “Toolkit.” That report should record what you consider to be the key assumptions going into the activity, and will serve you in the subsequent stages of your action, especially at the

final stages, to test those assumptions and adjust strategies to incorporate the knowledge you have created.

For the purpose of your organization's integrity and the tactical responses you may require in the future, your action should be seen critically in the light of the purposes and goals you set out in your planning process (see "**Strategic planning**" link above). Some sample questions to include in your evaluation include the following:

- How does the action relate to your purpose statement of your organization/ community?
- How does the action relate to the goals(s) of your organization/community?
- Was the action planned or spontaneous?
- What was the expected result?
- Was that result achieved? If not, why?
- Were unintended results achieved?
- What were the lessons learned from this activity?
- How did this activity build/strengthen/develop your organization? What gains did you and others realize?
- How did your organization/community record and report the experience?
- How did your organization/community share and exchange the experience and lessons learned with others? Who? When? Where? What was the result?
- Has there been follow-up? Why? What? Who? When? Where?
- Click on "Following up the situation" for guidance on the last point.

✓ **Following up the situation**

Each successful or unsuccessful action needs to be tested further for at least two reasons: (1) in order to determine if the achievement is real or merely theoretical and (2) to determine what your next move is going to be.

The now famous *Irene Grootboom and Others v. Oostenberg Municipality*⁹⁸⁷ case before the South African Constitutional Court (1999) found in favor of the plaintiffs by applying the principles of international law on the human right to adequate housing and the legal strictures on the practice of forced eviction. The Court ordered the Western Cape Provincial Government and the Oostenberg Municipality to grant housing and utilities to the 390 adults and 510 children wrongfully evicted community at Wallacedene their right to return and remain and to benefit from public services corresponding to that right. Until today, that decision has not been fully implemented.

Likewise, the landmark case of *Qa'dan v. Katzir*,⁹⁸⁸ in Israel, resulted in the 2000 High Court ruling that Katzir (a settlement built on Palestinian land, directed and funded in large part by the Jewish Agency) acted unlawfully when discriminating on the basis of "nationality" by excluding a non-Jewish from obtaining housing there. Until this day, that decision has not been honored, the indigenous Adil and Iman Qa'dan family of Arab citizens of Israel do not have their home in Katzir, and the Jewish Agency continues to provide land and housing benefits only to those holding "Jewish nationality," and to the exclusion of others.

⁹⁸⁷ Irene Grootboom and Others versus Oostenberg Municipality, Cape Metropolitan Council, the Premier of the Province of the Western Cape, National Housing Board, and Government of the Republic of South Africa, Constitutional Court of South Africa Case No: 6826/99..

⁹⁸⁸ Qa'adan versus Israel Lands Administration (ILA), Ministry of Construction and Housing, Tal-Iron Local Municipal Council, Jewish Agency for the Land of Israel (JA), KATZIR: Cooperative Association for Community Settlement in Samaria Ltd., and the Farmers Association; Case No. 6698/95 of the Israeli Supreme Court, sitting as the High Court of Justice.

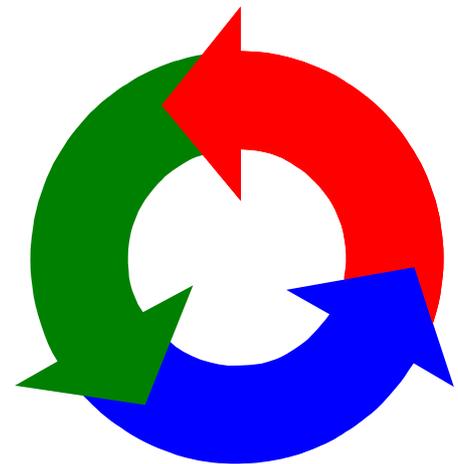
There are numerous examples of slum clearance and resettlement that result in the promised secure tenure of housing, but fail to comply with other elements of the human right in their implementation. [Note: HLRN and this “Toolkit” do not advocate slum clearance or resettlement.] Inhabitants in resettlement often lack access to public goods and services, suitable location, are denied compensation for losses and are subject to a process inconsistent with the over-riding principle of self-determination.⁹⁸⁹

All such gaps and shortcomings in the outcome of any housing rights defense effort remain to be addressed, even though some advocates and service-providing NGOs may consider these developments to be victorious at some level. The true test remains, however, to determine the tangibility of the results within the framework of the human right to adequate housing, and over the long term.

With all of its emphasis on the law, this “Toolkit” is intended to assist in the realization of the human right to adequate housing as a complement to the theoretical elaboration of the right in law. Implementation is the ultimate objective of human rights, as well as this “Toolkit.” Therefore, the tools provided here should serve also as the final evaluation criteria to examine whether or not the composite dimensions of the human rights are implemented and present or not.

You should use the elements (entitlements) of the human right to adequate housing here as your guide; these are also the binding criteria for all State parties and their representatives to apply as well. If you and your organization/community determine that certain criteria have been breached or neglected, then, alas, further remedial action will be required.

The bad news, perhaps, is that there may yet be more work to be done. However, even if one has to go back to the drawing board, at least the needed tools are available to the cyclical task. So, now, you can just do it.



⁹⁸⁹ See Housing and Land Rights Network, *Restructuring New Delhi's Urban Habitat: Building an Apartheid City?* (HIC-HLRN: New Delhi, 2002).

10. Participation⁹⁹⁰ & Self-expression

10.1. Concept and meaning

Effective participation in decision making is essential to the fulfillment of all other rights, as well as the elements of the right to housing (Shue 1996). At all levels of the decision-making process in respect of the provision of and right to adequate housing, individuals and communities must be able to express and share their views, they must be consulted and be able to contribute substantively to such processes. The state must ensure access to decision-making centres and effectively combat fraudulent and corrupt practices.

In respect of the right to adequate housing, the right to self-expression includes the right effectively and substantively to participate in decisions that affect housing, including, inter alia, location, spatial dimensions, links to community, social capital and livelihood, housing configuration and other practical features. The state must ensure that building and housing laws and policies do not preclude free expression, including cultural and religious diversity. Moreover, the right to self-expression must be respected, protected, promoted and fulfilled to ensure harmonious and effective design, implementation and maintenance of the community, for which necessarily addressing the interests of multiple parties is only possible through cooperation in consideration of their views.

10.2. Sources

In this section, your **Step 2**, the HLRN “Toolkit” provides the most important international legal basis and the popular claims that ground each element of the human right to adequate housing. This compilation attempts to be as comprehensive as possible; however, additional popular sources and legal developments will augment this inventory in the future.

It is vital to establish both the established sources in international law and the popular claims. The authority of the legal sources carries corresponding obligations on most States, and applies universally to all people on the planet as *human* rights. The popular sources advance claims that are “emerging” with human rights language eventually to be codified in the law. All legally established human rights norms originated as popular claims carried forth through various forms of historic struggle.

The Legal Authority

Please note that the legal instruments cited here carry differing levels of obligation, and they are organized for you accordingly. Customary law is made up of those norms and principles that legal opinion and interstate institutions consider so basic and so repeatedly affirmed as to be binding on all legal personalities. The Universal Declaration of Human Rights, the antecedent to all subsequent human rights treaties, is the most relevant example of customary law for our purposes, even though it does not establish a monitoring and enforcement mechanism to ensure compliance.

The ratified treaties (Covenants, Charters, Conventions, etc.) are binding on all their ratifying States parties, and each establishes an independent body to monitor and guide implementation. The treaty-monitoring process provides an opportunity for civil society, States and the international legal bodies each to play a role. These international treaties are also characterized as hard law (*lex lata*), because of their binding nature. Treaty law, by definition, is any agreement between two or more States. The treaties considered here are those of both international and regional nature.

The “soft-law” instruments (*lex feranda*) include the Declarations, Basic Principles, Minimum Rules, General Comments, etc., that are the multilateral commitments arising from international conferences, assemblies, summits, congresses and other specialised meetings. Also included in this category are the general and country-specific guidance that the treaty-monitoring bodies issue to guide and specify treaty obligations, as well as those instruments of inter-State agreement (decisions and resolutions) arising from the various political bodies of the international system (e.g., UN Commission on Human Rights, International Labour Organisation General Assembly, etc.). These instruments contain standards that are declaratory of already-binding international law, reflect the collective political will of States and provide specificity to the general Articles in the binding instruments. However, these form legal and policy guidance without the corresponding obligations of treaty law and without the corresponding legal monitoring mechanisms.

Thus, the list of legal sources in this section of the HLRN “Toolkit” maintains a corresponding priority order such that presents the binding instruments first (in chronological order of their adoption), and follows with the nonbinding, declaratory sources (in their chronological order):

- ***International Treaty Law***
- ***Regional Treaty Law***
- ***Declaratory Instruments and Jurisprudence***

The Moral Argument

The popular sources are useful especially in demonstrating ground-level recognition of the various elements of adequate housing as rights in and of themselves, but also provide a list of human rights that reflect common human needs, but await codification as *bona fide* rights. The “emerging rights” include elements inextricable from the human right to adequate housing: water, land and energy, among others. The popular sources are indicators of the ever-evolving specificity of human rights law and the legal and problem-solving horizons toward which social movements and the human rights community are heading.

The relevant excerpts from these collective moral are listed in the “Toolkit” Sources (Step 2) as *Popular Sources*. These are moral, rather than legal, in nature. However, as claims, they bear legal dimensions in the sense that they are the substance of future legal standards. We continue to include these claims in the HLRN “Toolkit” as they emerge from popular struggles, natural and social sciences, nongovernmental forums, social movements, campaigns and labour action (strikes), as well as other forms of popular and collective problem-solving initiatives.

In this “Toolkit,” *Popular Sources* are distinguished from the legal sources by their presentation in *italic* script.

Another source of the human right with a legal dimension is the jurisprudence of course-based decisions on cases involving housing and land rights. These also could provide the basis for legal argument even in distant jurisdictions. Examples include the case-specific—but internationally relevant—rulings in famous decisions in favor of housing rights claims such as those arising from legal struggles in Cyprus, Palestine/Israel and South Africa:

Qa’adan versus Israel Lands Administration (ILA), Ministry of Construction and Housing, Tal-Iron Local Municipal Council, Jewish Agency for the Land of Israel (JA), KATZIR: Cooperative Association for Community Settlement in Samaria Ltd., and the Farmers

Association; Case No. 6698/95 of the Israeli Supreme Court, sitting as the High Court of Justice.

Irene Grootboom and Others versus Oostenberg Municipality, Cape Metropolitan Council, the Premier of the Province of the Western Cape, National Housing Board, and Government of the Republic of South Africa, Constitutional Court of South Africa Case No: 6826/99 (1999).

Loizidou versus Turkey (Article 50 and Merits), European Court of Human Rights Case 40/1993/435/514 (18 December 1996).

✓ Legal sources

Participation

Customary International Law

Universal Declaration of Human Rights (1948)

Article 21. “Everyone has the right to take part in the government of his country. The will of the people shall be the basis of the authority of government; this shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.”

International Treaty Law

Desertification Convention (1994)

Article 10.2(e) & (f) “National action programmes shall specify the respective roles of government, local communities and land users and the resources available and needed. They shall, *inter alia*...promote policies and strengthen institutional frameworks which develop cooperation and coordination, in a spirit of partnership, between the donor community, governments at all levels, local populations and community groups, and facilitate access by local populations to appropriate information and technology...provide for effective participation at the local, national and regional levels of nongovernmental organizations and local populations, both women and men, particularly resource users, including farmers and pastoralists and their representative organizations, in policy planning, decision-making, and implementation and review of national action programmes.”

International Covenant on Civil and Political Rights (1966)

Article 22.1. “Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.”

Article 25. “Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions; to take part in the conduct of public affairs, directly or through freely chosen representatives”

Convention on the Elimination of All Forms of Racial Discrimination (1965)

Article 5. “...States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of... (c) Political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the

conduct of public affairs at any level and to have equal access to public service... **(e) (iii)**
The right to housing...”

Regional Treaty Law

European Charter of Fundamental Rights (2000)

Article 25. The rights of the elderly

“The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.”

Article 26. Integration of Persons with Disabilities

“The Union respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and their participation in life of the community.”

African Charter on Human and Peoples’ Rights (1981)

Article 13.1. “Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law. **2.** Every citizen shall have the right of equal access to the public service of the country. **3.** Every individual shall have the right of access to public property and services in strict equality of all persons before the law.”

American Convention on Human Rights (1969)

Article 23. Right to Participate in Government: **1.** Every citizen shall enjoy the following rights and opportunities: **(a)** to take part in the conduct of public affairs, directly or through freely chosen representatives; **(b)** to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and **(c)** to have access, under general conditions of equality, to the public service of his country.

2. The law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph only on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings.

Charter of the Organization of American States (1948)

Article 45. “The Member States, convinced that man can only achieve the full realization of his aspirations within a just social order, along with economic development and true peace, agree to dedicate every effort to the application of the following principles and mechanisms:... **(d)** Fair and efficient systems and procedures for consultation and collaboration among the sectors of production, with due regard for safeguarding the interests of the entire society;... **(f)** The incorporation and increasing participation of the marginal sectors of the population, in both rural and urban areas, in the economic, social, civic, cultural, and political life of the nation, in order to achieve the full integration of the national community, acceleration of the process of social mobility, and the consolidation of the democratic system. The encouragement of all efforts of popular promotion and cooperation that have as their purpose the development and progress of the community...”

Declaratory Instruments and Jurisprudence

Manama Declaration on Cities and human Settlements in the New Millennium (2000)

10. We reaffirm once more our commitments to the following: **(b)** Working toward full and progressive realization of the right to adequate housing as stipulated in the Habitat Agenda and international legal instruments within the framework of local legislation....**(e)** Working toward enabling and further enhancing the role of women in the decision-making process.

Arab Declaration on Sustainable Development for Human Settlements (Rabat Declaration) (1995)

General Principles and Goals...

3. Woman assumes a highly important role in society, not only in her capacity as a mother, but also as a fundamental contributor to sustainable development. It is imperative to provide the necessary requirements to improve her quality of life and to ensure her participation in all phases of housing production, planning and management of human settlements....

5. The youth are the main element of society's development and production, must be provided with wide-ranging opportunities to exercise their right to education and training, and to secure work and adequate housing in order to start and maintain families. They must be enabled for effective and collective participation in all activities of sustainable development....

10. Popular and collective participation in drawing up and reviewing policies, in decision making, implementation, follow-up and mobilizing and domestic resources are fundamental to the development of human settlement and the achievement of sustainable development.

Commitments...

9. To strengthen the role of women and youth regarding participation in decision making and in the management and development of human settlements....

Committee on Economic, Social and Cultural Rights (CESCR) General Comment No. 4, "the right to adequate housing" (1991)

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... 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..."

12. "...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."

ICOMOS Charter for the Conservation of Historic Towns and Urban Areas (1987)

3. "The participation and the involvement of the residents are essential for the success of the conservation programme and should be encouraged. The conservation of historic towns and urban areas concerns their residents first of all."

Vancouver Declaration Human Settlements (1976)

13. "All persons have the right and the duty to participate, individually and collectively in the elaboration and implementation of policies and programmes of their human settlements."

"Basic human dignity is the right of people, individually and collectively, to participate directly in shaping the policies and programmes affecting their lives. The process of choosing and

carrying out a given course of action for human settlement improvement should be designed expressly to fulfill that right (para. 10);”

Declaration on the Right to Development (GAR 41/128 [1986])

Article 1.1. “The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.”

Article 8.2. “States should encourage popular participation in all spheres as an important factor in development and in the full realization of all human rights.”

Agenda 21, adopted at the United Nations World Conference on Environment and Development (UNCED) (1992)

7.20. “...Additional initiatives involving the World Bank, the regional development banks and bilateral agencies, as well as other interested stakeholders, particularly international and national representatives of local authorities, should be strengthened and coordinated. Individual cities should, as appropriate:

Institutionalize a participatory approach to sustainable urban development, based on a continuous dialogue between the actors involved in urban development (the public sector, private sector and communities), especially women and indigenous people”

Istanbul Declaration on Human Settlements (Habitat II) (1996)

8. “We reaffirm our commitment to 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 nongovernmental 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”.

Habitat Agenda, adopted by the second United Nations Conference on Human Settlements (Habitat II) (1996)

Article 44. “We commit ourselves to the strategy of enabling all key actors in the public, private and community sectors to play an effective role—at the national, state/provincial, metropolitan and local levels—in human settlements and shelter development.”

Declaration on Cities and Other Human Settlements in the New Millennium (Habitat II +5 United Nations General Assembly resolution S-25/2 [2001])

44. “Commit ourselves to the goal of gender equality in human settlements development and resolve to promote gender equality and the empowerment of women as effective ways to combat poverty and to stimulate the development of human settlements that are truly sustainable. We further commit ourselves to formulating and strengthening policies and practices to promote the full and equal participation of women in human settlements planning and decision-making;”

45. “We further commit ourselves to the objectives of: **(f)** Promoting gender-sensitive institutional and legal frameworks and capacity-building at the national and local levels conducive to civic engagement and broad-based participation in human settlements development; **(h)** Institutionalizing a participatory approach to sustainable human settlements development and management, based on a continuing dialogue among all actors involved in urban development (the public sector, the private sector and communities), especially women, persons with disabilities and indigenous people, including the interests of children and youth; **(m)** Facilitating participation by tenants in the

management of public and community-based housing and by women and those belonging to vulnerable and disadvantaged groups in the planning and implementation of urban and rural development.”

Declaration of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (2001)

34. “We recognize that people of African descent have for centuries been victims of racism, racial discrimination and enslavement and of the denial by history of many of their rights...Recognition should therefore be given to their rights to...active participation in the design, implementation and development of educational systems and programmes, including those of a specific and characteristic nature; and where applicable to their ancestrally inhabited land;

102. “Urges States to promote residential integration of all members of the society at the planning stage of urban development schemes and other human settlements, as well as while renewing neglected areas of public housing, so as to counter social exclusion and marginalization;”

108. “We recognize the necessity for special measures or positive actions ... including social measures [aimed] at correcting the conditions that impair the enjoyment of rights and the introduction of special measures to encourage equal participation of all racial and cultural, linguistic and religious groups in all sectors of society...Those measures should include measures to achieve appropriate representation in...housing...which in some cases might involve electoral reforms, land reforms and campaigns for equal participation;”

World Summit on Sustainable Development Plan of Implementation (2002)

7(d) “Promote women’s equal access to and full participation in, on the basis of equality with men, decision-making at all levels, mainstreaming gender perspectives in all policies and strategies, eliminating all forms of violence and discrimination against women and improving the status, health and economic welfare of women and girls through full and equal access to economic opportunity, land, credit, education and health-care services;”

Self-expression

Customary International Law

Universal Declaration of Human Rights (UDHR) (1948)

Article 18. “Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.”

Article 19. “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

International Treaty Law

International Covenant on Civil and Political Rights (1966)

Article 19.1 & 2. “Everyone shall have the right to hold opinions without interference. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

Convention on the Elimination of All Forms of Racial Discrimination (1965)

Article 5. "...States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of... **(d) (vii)** The right to freedom of thought, conscience and religion; **(viii)** The right to freedom of opinion and expression... **(e) (iii)** The right to housing..."

Regional Treaty Law

European Charter of Fundamental Rights (2000)

Article 11. Freedom of expression and information

1. "Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers."

African Charter on Human and Peoples' Rights (1981)

Article 9. 2. "Every individual shall have the right to express and disseminate his opinions within the law."

American Convention on Human Rights (1969)

Article 13. Freedom of Thought and Expression:

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.

2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:

(a) respect for the rights or reputations of others; or

(b) the protection of national security, public order, or public health or morals.

3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.

4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.

5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.

European Convention for Protection of Human Rights and Fundamental Freedoms (1950)

Article 10.1. "Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises."

2. "The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and

are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

Declaratory Instruments and Jurisprudence

Declaration of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (2001)

34. We recognize that people of African descent have for centuries been victims of racism, racial discrimination and enslavement and of the denial by history of many of their rights, and assert that they should be treated with fairness and respect for their dignity and should not suffer discrimination of any kind. Recognition should therefore be given to their rights to development in the context of their own aspirations and customs; to keep, maintain and foster their own forms of organization, their mode of life, culture, traditions and religious expressions; to maintain and use their own languages....

42. “We emphasize that, in order for indigenous peoples freely to express their own identity and exercise their rights, they should be free from all forms of discrimination, which necessarily entails respect for their human rights and fundamental freedoms. Efforts are now being made to secure universal recognition for those rights in the negotiations on the draft declaration on the rights of indigenous peoples, including the following: to call themselves by their own names...to maintain their own forms of organization, lifestyles, cultures and traditions; to maintain and use their own languages...”

Committee on Economic, Social and Cultural Rights (CESCR) General Comment No. 4, “the right to adequate housing” (1991)

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...In addition, the full enjoyment of other rights—such as the right to freedom of expression...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...”

✓ Popular sources

Participation

Quito Declaration: Draft Charter for World Mountain People (2003)

(Association des populations des Montagnes du Monde, 2003)

“Mountain people must reclaim their role as the real agents of their future. They must recover the power to manage their territory, not without submitting to rules for public utility that must be developed democratically and in consultation with their representatives. We want to master exploitation of our resources and fully benefit from their economic results. We want to choose our own path for the development and management of our territory. By improving our capacity to conceive and decide, we want to gain better control of the channels for our products. We want scientists and experts, whatever their specialty to work alongside us. We want to be present at higher levels where strategic decisions that influence our future are taken. We want to be recognized as real partners, through our communities and our organizations, with a contractual right to contribute to decisions affecting us.”

Charter of the Inhabitants Organizations (2001)

Proposal submitted to the World Assembly of Citizens Alliance for a Responsible, Plural and United World

3. "Reclaim the right to popular social participation in the planning and definition of urban and housing policies, including disaster prevention, based on democratic management of territories and environmental protection. These policies must be inclusive and democratic, allowing full social and human development of all men, women, youth, children and elderly, as a way to fight against the social-urban problems emerging in our cities today such as urban violence."

Draft Global Charter on Local Government (2001)

Article 10.1 & 2. "Local authorities shall be entitled to define appropriate forms of popular participation and civic engagement in decision-making and in fulfillment of their function of community leadership. Local authorities shall be empowered to establish and develop partnerships with all actors of civil society, particularly nongovernmental organizations and community-based organizations, and with the private sector and other interested stakeholders."

WCaR NGO Forum Declaration (2001)

320. "We recommend that governments, and multilateral and bilateral development agencies ensure the right of ethnic and national groups to participate in the formulation, implementation and evaluation of...development plans and programmes that affect them. This participation must be comprehensive and transparent through all stages of the project cycle. The nature of participation should be consistent with the traditional decision-making processes of ethnic and national groups, if they so request. Equal consideration should be given to, inter alia, women, older people, persons with disabilities, children and those living with HIV and AIDS within ethnic and national groups, allowing them to express their own perception of rights and development needs."

375. "Recommends that Indigenous governments and States along with indigenous women and with their full and equal participation, develop programs to promote their civil, political, economic, social and cultural rights; to end disadvantage due to gender and race; to address urgent problems affecting them in all areas of life..."

The European Charter for Human Rights in the City (2000)

Article VIII. 'Right of Political Participation 1. All citizens have the right to take part in the local political life through free and democratic elections of local representatives. 2. The signatory cities are pressing for an extension of the right of active and passive suffrage in the municipal ambit to all the resident adult population which is not national after a period of residence in the city of two years. 3. Apart from the elections held periodically to renew the municipal governments, democratic participation is encouraged. To this end, the citizens and their organisations can access the public debates, interpellate to the municipal authorities over challenges which affect the interests of the local community and express their opinions, either directly through a "municipal referendum" or through public meetings and people's action. 4. The cities, to safeguard the principle of openness and in accordance with the legislative ordination of the different countries, organise the system of government and the administrative structure in such a way as to make effective the responsibility of the governors to the citizens, as well as the responsibility of municipal administration to governmental bodies.

Article IX. Right of Association, Meeting and Demonstration 1. The rights of the citizens to association, meeting and demonstration are recognised and guaranteed. 2. The local authorities encourage the associative life as an expression of citizenship, in respect of its

autonomy. 3. The city offers public spaces for the organisation of open meetings and informal gatherings. It ensures free access to these spaces for everyone, with respect for the regulations.

Article XXVIII. Taxation and Budgetary Mechanisms 1. The signatory cities undertake to draft their budgets in such a way that the provisions of income and expenditure allow the rights set out in this Charter to be made effective. For this they purpose they may establish a system of “participation budget”. The citizens, organised in assemblies or sectors, or in associations, are able to express in this way their opinion over the financing the necessary measures in order to enjoy these rights.”

Jerusalem Declaration (1995)

[Draft Charter of the Palestinian Housing Rights Movement]

2. “...Ensuring that no important decision regarding housing policy, planning, implementation and management is taken without the participation, through consultative bodies, of the people concerned, and especially women who are the first ones responsible for the management of the household, the care of the home, and the use of community services for the family. Reinforcing the power of the basic community, an the participation of women, in their capacity to contribute to the design and implementation of housing projects and their management.”

Bangkok NGO Declaration on Human Rights (1995)

6. “[Democracy] must be realised in the form of people's empowerment and participation at the grassroots and other levels with responsive and accountable processes and institutions at both the local and national levels. It demands good governance, freedom from corruption, and accountability of state and other authorities to the people. It involves the protection and participation of those groups which are not in the majority, namely minorities and disempowered groups. It is intertwined with the issue of land and social justice for rural people and other disadvantaged groups.”

Self-expression

Jerusalem Declaration (1995)

[Draft Charter of the Palestinian Housing Rights Movement]

2. “...Empowerment requires that all actions with regard to housing, services and infrastructure include all the population, especially women, in orientation and key decisions. This means: Guaranteeing the exercise of fundamental civil and political rights, including the right to information and to freedom of movement, expression, assembly and association.”

10.3. Over-riding principles

Principles found in the initial Articles common to all the major international human rights treaties affirm standards of justice arising from the major legal systems of the world. These include principles of immediate application, such as the inalienable rights to self-determination; non-discrimination, in general; gender equality; and the rule of law, including access to justice and domestic application of the human rights contained in each treaty, particularly by adopting legislative measures.

In the case of economic, social and cultural rights, the International Covenant on Economic, Social and Cultural Rights (ICESCR) is the principle source of these rights in treaty form. The Covenant also clarifies that the State party's treaty obligation entails ensuring the

“progressive realisation” of the rights “to the maximum of its available resources” (Article 2.1), including the human right to adequate housing (Article 11). Therefore, a process of realising the rights should not regress, but should ensure “the continuous improvement of living conditions” (Article 11).

The ICESCR’s Article 2.1 also requires States to undertake steps, individually and through international assistance and cooperation, especially economic and technical, progressively to achieve the full realization of the covenanted rights by all appropriate means. Thus, States party to the Covenant bear an obligation to apply these principles extraterritorially and in their international relations. Therefore, “international cooperation” forms an important practical aspect of ESC rights application and, therefore, one of the principles over-riding States’ duties to implement human rights.

Comprehensive monitoring of the human right to adequate housing requires assessing each entitlement (element) in light of the rights and corresponding obligations arising from these over-riding legal principles:

- **Self-determination**
- **Nondiscrimination**
- **Gender equality**
- **Rule of law**
- **Progressive realization (nonregressivity/nonretrogression)**
- **International cooperation**

The normative approach provided in the international human rights system prevails upon the monitor to pose a number of relevant questions related to implementation not only of the specific content of the particular right, but also these over-riding principles common to the principal human rights treaties and applicable to all rights. This section will guide the monitor in applying these six over-riding principles in the respect, defense, promotion and fulfilment of the human right to adequate housing and land.

✓ **Self-determination**

General description

The principle of equal rights and self-determination of peoples is considered to have been a general principle of international law arising from common State practice already at the founding of the League of Nations. However, self-determination was first codified in the Charter of the United Nations in 1945, which sets forth the purposes of the United Nations as:

2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace...⁹⁹¹

The Charter’s Article 55 stipulates further:

With a view to the creation of conditions of stability and well-being, which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

⁹⁹¹ Charter of the United Nations, 26 June 1945, Article 1(2).

- a. higher standards of living, full employment, and conditions of economic and social progress and development;⁹⁹²
- b. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and
- c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

Every State has the duty, therefore, through unilateral, bilateral and multilateral action to promote universal respect for, and observance of human rights and fundamental freedoms in accordance with the Charter. Its Article 2.2 clarifies the universal duty of State membership such that:

All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with the present Charter.

The principle of self-determination has been progressively reaffirmed and legally defined throughout the UN system since its founding.⁹⁹³ The material significance of self-determination is further elaborated in the Covenants on human rights adopted in 1966.⁹⁹⁴ The common Article 1(2) of both the ICCPR and ICESCR sets forth that:

All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

How concerned persons/communities exercise an effective role in determining the terms by which they realize the human right to adequate housing is also a subject of the inalienable right of self-determination. Self-determination is the right of peoples, not of States. It is the State, however, that is the legal personality obliged to ensure the protection, defense, promotion and fulfillment of self-determination as a duty under international public law, as well as the essential legitimizing factor of the State itself.⁹⁹⁵

The concept of, and right to self-determination manifest in a spectrum of types and expressions of effective local control over developments and relations within a community and territory may involve either external or internal self-determination; that is, national independence as in the formal distinction of a self-determination unit with its own internationally recognized borders, a self-determination unit within the internationally

⁹⁹² *Ibid.*, Chapter IX, "International Economic and Social Co-operation," Article 55.

⁹⁹³ For example, see Declaration on the Granting of Independence to Colonial Countries and Peoples (1960), preamble and Article 7; "Permanent sovereignty over natural resources," General Assembly resolution 1803 (XVII) (1962), preamble and paras. 1–2, 5–7; International Convention on the Elimination of All Forms of Racism and Racial Discrimination (1965), Articles 1 and 5; Declaration on Social Progress and Development (1969), Articles 2, 3 and Part II; Declaration on Principles of International Law (1970), preamble and, esp., "The principle of equal rights and self-determination of peoples"; ECOSOC Declaration on Race and Racial Prejudice (1978), Articles 1, 3, 5 and 9 Declaration on the Right to Development (1986) preamble and Article 1, 6 and 8.

⁹⁹⁴ International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI), 16 December 1966 (entered into force 3 January 1976 in accordance with Article 27); Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI), 16 December 1966 (entered into force 23 March 1966 1976 in accordance with Article 49).

⁹⁹⁵ Consistent with the principle of the Universal Declaration of Human Rights, Article 21, which states that "the will of the people shall be the basis of the authority of government."

recognized borders of a unitary State, or a community's⁹⁹⁶ effective control over developments and relations affecting it as an independent State.⁹⁹⁷

In its General Comment No. 12 on “the right of self-determination of peoples” (1984), The UN Human Rights Committee (HRC) gave its guidance on the corresponding obligations of States, with the following:

1. In accordance with the purposes and principles of the Charter of the United Nations, Article 1 of the International Covenant on Civil and Political Rights recognizes that all peoples have the right of self-determination. The right of self-determination is of particular importance because its realization is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights. It is for that reason that States set forth the right of self-determination in a provision of positive law in both Covenants and placed this provision as Article 1 apart from and before all of the other rights in the two Covenants.

2. Article 1 [of ICCPR] enshrines an inalienable right of all peoples as described in its paragraphs 1 and 2. By virtue of that right they freely "determine their political status and freely pursue their economic, social and cultural development". The Article imposes on all States parties corresponding obligations. This right and the corresponding obligations concerning its implementation are interrelated with other provisions of the Covenant and rules of international law.

3. Although the reporting obligations of all States parties include Article 1, only some reports give detailed explanations regarding each of its paragraphs. The Committee has noted that many of them completely ignore Article 1, provide inadequate information in regard to it or confine themselves to a reference to election laws. The Committee considers it highly desirable that States parties' reports should contain information on each paragraph of Article 1.

4. With regard to paragraph 1 of Article 1, States parties should describe the constitutional and political processes which in practice allow the exercise of this right.

5. Paragraph 2 affirms a particular aspect of the economic content of the right of self-determination, namely the right of peoples, for their own ends, freely to "dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence." This right entails corresponding duties for all States and the international community. States should indicate any factors or difficulties which prevent the free disposal of their natural wealth and resources contrary to the provisions of this paragraph and to what extent that affects the enjoyment of other rights set forth in the Covenant.

⁹⁹⁶ While a standard legal definition of nation and people remains a subject of debate, the International Court of Justice has offered criteria for a community, having distinct rights as “a group of persons living in a given country or locality, having a race, religion, language and traditions of their own and united by the identity of race, religion, language and traditions in a sentiment of solidarity, with a view to preserving their traditions, maintaining their form of worship, insuring the instruction and upbringing of their children in accordance with the spirit and traditions of their race and rendering mutual assistance to each other,” Permanent Court of International Justice, *The Greco-Bulgarian “Communities”* Advisory Opinion No. 17, 13 July 1939 (Leyden: Sijthoff, 1930), 21.

⁹⁹⁷ For a comprehensive consideration of the human right of self-determination and its applications, see Hurst Hannum, *Autonomy, Sovereignty, and Self-Determination: The Accommodation of Conflicting Rights* (Philadelphia: University of Pennsylvania Press, 1996).

6. Paragraph 3, in the Committee's opinion, is particularly important in that it imposes specific obligations on States parties, not only in relation to their own peoples but *vis-à-vis* all peoples which have not been able to exercise or have been deprived of the possibility of exercising their right to self-determination. The general nature of this paragraph is confirmed by its drafting history. It stipulates that "The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations". The obligations exist irrespective of whether a people entitled to self-determination depends on a State party to the Covenant or not. It follows that all States parties to the Covenant should take positive action to facilitate realization of and respect for the right of peoples to self-determination. Such positive action must be consistent with the States' obligations under the Charter of the United Nations and under international law: in particular, States must refrain from interfering in the internal affairs of other States and thereby adversely affecting the exercise of the right to self-determination. The reports should contain information on the performance of these obligations and the measures taken to that end.

7. In connection with Article 1 of the Covenant, the Committee refers to other international instruments concerning the right of all peoples to self-determination, in particular the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, adopted by the General Assembly on 24 October 1970 (General Assembly resolution 2625 (XXV)).

8. The Committee considers that history has proved that the realization of and respect for the right of self-determination of peoples contributes to the establishment of friendly relations and cooperation between States and to strengthening international peace and understanding.

Self-determination applied to communities

The over-riding principle of self-determination in this "Toolkit" is inspired by classic (customary and treaty) law criteria, as well as popular claims to the same. In both senses, the claim is legally fixed in the common Article 1 of the human rights treaties. Using the ICESCR as a basic and integrated instrument, the "ToolKit" especially applies this over-riding principle to Article 11, which guarantees the human right to housing.

In making the case for ultimate "self-determination" at the community level, this "Toolkit" draws on a number of popular instruments (mostly written and collectively endorsed statements, but also those rooted in oral traditions) asserting the "right" of communities to determine their own destiny. "Community" also enjoys a legal definition (see below).

Self-determination becomes as vital as any other need that grounds other human rights, including those other over-riding principles of rule of law, nondiscrimination, gender equality and international cooperation consistent with all human rights. In their collective dimension, these all become community "needs" and, consequently, "rights" insofar as their absence leads to erosion and violation of a bundle of individual, stand-alone rights and can lead to the deprivation or demise of a community as such.

It should be noted that States and others have recognized the real problem of "ethnocide" and "cultural genocide" resulting from assimilation policies so as to compel the rewriting of

the International Labour Organisation (ILO) Convention No. 107 on Indigenous and Tribal Populations in Independent Countries (1956), eventually to adopt the Indigenous and Tribal Peoples Convention No. 169 (1989). Relevant to the practice of self-determination is the question of land tenure, which ILO Convention No. 169 treats in Articles 13–19, while at the same time disclaiming that the term “people” in the Convention does not convey implications as a term of international law (i.e., conferring the right of self-determination).

However, it is the human consequence of the deprivation, rather than the legal “peoplehood,” that makes self-determination vital for any putative victims. Therefore, collective self-determination becomes the right of communities as necessary, even if they are not (or not yet) internationally recognized as a “people” or “nation,” the category To avoid the horrendous consequences of demise and deprivation, and to ensure survival of communities as a “right”—especially marginal and otherwise vulnerable ones such as those facing ethnic cleansing and/or elimination through military, administrative, globalization, forced eviction or development measures—local self-determination is vital, no matter what assimilationist governments individually or jointly say. In human rights, it is the human who has the first and final subject of respect, protection, promotion and fulfillment.

That having been said, and recognizing that self-determination can be either internal or external, the international public law term of art “internal self-determination unit” applies in the case of group or community, and is subject to case-by-case interpretation. This could refer to the rightful place of a minority or an indigenous people. It could conceivably apply also to a community of urban poor, particularly if their survival and/or well-being is threatened and their self-determination then becomes a need/right and requisite to the realization of other rights (life, adequate housing, culture, health, etc.).

In any case, the claimant of self-determination, whether an external or internal type, must meet the challenge and legal test of asserting that the claim at any level does not conflict with—or at least is balanced with—the rights of others. That may mean, of course, ensuring that self-determination claims do not negate general ecological values, others’ self-determination rights, the rights of women to gender equality, security of person, regional peace and security, etc.

What are the criteria for *bona fide* claimants to local self-determination in the terms of international law as developed? The criteria presented by Martinez-Cobo (*Study of Discrimination against Indigenous Peoples*, UN document E/CN.4/Sub.2/1986/7/Add.4) has grounded much of the self-determination thinking about indigenous peoplehood and the rights arising. Based on his criteria for indigenous “people,” the characteristics constituting a community with the right to claim external or internal self-determination could also be that the community (1) predate the influx of “others,” (2) possess distinct cultural attributes, (3) occupy an identifiable territory and (4) identify itself as a people/community having the right to self-determination.

Legally defining the subjects of self-determination

Definitions of “people” or “nation,” the legal self-determination rights holders, are generally unpopular with States and their sitting governments, unless the definition applies to an existing “nation-state.” Of course, very few States can claim adherence to this definition, that is, to contain a single native people or nation (except, perhaps, Portugal, excluding immigrants). The General Assembly has assumed the task of defining self-determination (particularly in resolution 1514(XV), 14 December 1960). That has been construed typically as applying to cases of decolonization (Angola, Algeria, Namibia, Mozambique, Palestine,

Puerto Rico, etc.). In its Advisory Opinion on Namibia, the International Court of Justice recognized Namibians as a “people” and “nation” in light of the value of, and for the purpose of decolonization. Despite this legal reference, the actual definition of “people” and “nation” remains under debate for political and practical reasons.

In addition to the guidance on “people,” including indigenous peoples, as explicit self-determination rights holders, we have an international law definition of what constitutes a “community.” The “community” definition does not deviate significantly from the four-part construct that Martínez-Cobo offered (above). It comes to us from the first International Court in a case sorting out criteria for transferring the ethnically Greek and Turkish communities between the Republic of Turkey and Greece after the First World War:

A group of persons living in a given country or locality having a race, religion, language and tradition of their own and united in the identity of race, religion, language and tradition in a sentiment of solidarity, with a view to preserving traditions, maintaining their form of worship, insuring the instruction and upbringing of their children in accordance with the spirit and traditions of their race and rendering mutual assistance to each other.⁹⁹⁸

Leaving aside the probability that the purpose of the Court’s opinion (population transfer) would be legally impermissible today,⁹⁹⁹ the legal definition of “community” it provided is actually less ambiguous than that of “people” or “nation.” The “people” definition remains elusive largely because some States find it a political Pandora’s box that could challenge their jurisdiction and/or effective control over territory. Until now, some governments instead persist in proffering the legally vacuous term “indigenous populations,” so that the legally more-significant term “people/s” would wane into disuse, as would also the corresponding rightful and self-preserving claims of its subjects to self-determination. However, if one is looking for a way to apply self-determination to “communities,” one has this definition of the ICJ’s predecessor as a reference.

Significant also is the fact that the Court’s definitive Advisory Opinion was intended for a narrow and specific purpose. That was not to recognize an external self-determination right, but to rationalize a population transfer scheme that today would be considered a clear violation of international public law. That is not only because of the absence of consent and the obvious human suffering population transfer causes, but also because it deviates from the most basic concept of contemporary statecraft and democratic governance, which is that the State administer—including by way of implementing the right to self-determination—for *all* of its citizens. Population transfers and external self-determination claims, therefore, serve as a seismograph of a government’s failure at effective statecraft.

This dissertation on self-determination has admittedly merged concepts and definitions of communities with peoples/nations, as the Permanent Court of International Justice effectively has done. Nonetheless, the values that sustain them are akin, and so should the safeguards that promise to prevent the worst of consequences arising from human rights violations against any identifiable group. In summary, self-determination has a local and community-based expression and basis as a right. For the purposes of advancing human rights through the “Toolkit,” both “communities” as well as “nations/peoples” hold the right and responsibility to determine their own habitat, the essence of a people and/or community’s survival and sustainability with dignity in its dwelling place.

⁹⁹⁸ Permanent Court of International Justice, The Greco-Bulgarian “Communities,” Advisory Opinion No. 17, 31 July 1930 (Leyden: Sijthoff, 1930), p. 21.

⁹⁹⁹ See report of the Special Rapporteurs Aun al-Khasawneh and Ribot Hatano, “The human rights dimensions of population transfer, including the implantation of settlers and settlements,” E/CN.4/Sub.2/1993/17.

Applied to the congruent rights of participation and self-expression

Applied to the congruent rights of participation and self-expression, the over-riding principle of self-determination, in its classical expression, means that every people has the inalienable right to determine the criteria of adequate housing and land in its administrative and territorial unit(s). This determination must be made according to local specificity, reflecting the consent of the people subject to self-determination, but also within the obligations provided in the ICESCR and the CESCR's General Comment No. 4 (cited above). Therefore, for peoples, as such, or for other affected persons, a measure of self-determination, assured through "genuine consultation," is required to realize the human right to adequate housing and land.

✓ Nondiscrimination

General description

Like self-determination, an inalienable human right common to the major legal systems throughout the world, a fundamental requisite of justice is the absence of discrimination on any arbitrary basis. Discrimination typically results in deprivation of human needs and rights.

Given its centrality, the principle of nondiscrimination, consequently, is an over-riding human rights principle embodied in the first Articles of each major human rights treaty. Nondiscrimination, and its corresponding State obligation to ensure nondiscrimination, are enshrined in the preamble of all international declarations and resolutions concerned with human rights matters, governance and the relations between and among States, nations and peoples.

Common to Article 2 in both the Covenants, nondiscrimination stands out as an over-riding principle with *immediate* application to all the rights contained in those instruments.¹⁰⁰⁰ The Covenants prohibit arbitrary preferential or punitive treatment and oblige States parties to undertake steps to ensure that rights be exercised without distinction or discrimination "of any kind [as to] race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."¹⁰⁰¹

The International Convention on the Elimination of All Forms of Racial Discrimination (1965) defines discrimination as:

any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.¹⁰⁰²

Article 5 of that Convention actually offers the historic first codification of the human right to housing, with particular reference to the over-riding principle of nondiscrimination. It reads:

In compliance with the fundamental obligations laid down in Article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial

¹⁰⁰⁰ For further guidance on the legal obligations to immediate implementation of the nondiscrimination principle applied to housing rights, see the report of the Special Rapporteur on Adequate Housing E/CN.4/2002/59.

¹⁰⁰¹ ICESCR, Article 2.2; ICCPR, Article 2.1.

¹⁰⁰² Article 1, International Convention on the Elimination of All Forms of Racial Discrimination, adopted by General Assembly resolution 2106 (XX) of 21 December 1965, entered into force, 4 January 1969.

discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of...(e) Economic, social and cultural rights, in particular: (iii) The right to housing...

In the Convention and its negotiation history, an important distinction emerges: While it is the obligation of States' parties and their governments to combat both "racism" and "racial discrimination," the former is a state of mind that should be eradicated through measures including education and other efforts to bring about a cultural and social transformation toward antidiscrimination. The latter, "racial discrimination" is the actual activation of prejudice which, in its manifestation, is a material violation of the rights of others. Any official action or omission of practicing or condoning racial discrimination is a violation of an *immediate* obligation of the State, not subject to "progressive realization."

This distinction between (1) theoretical racism and (2) racial discrimination in practice has historic roots. It is found also in moral systems, as reflected in the Holy Qur'an, which recognizes the existence of prejudice, but, nevertheless, entreats against putting that into practice:

O you who believe, be upright for God, bearers of witness with justice; and let not hatred of a people incite you not to act equitably. Be just, [for] that is nearer to the observance of duty [the nearest thing to piety].¹⁰⁰³

This moral distinction was found relevant nearly one millennium later, during the French Revolution. Then, the revolutionary slogan and moral call to the Human Rights of Man and Citizen was "*liberté, égalité, fraternité*. While all three qualities were found desirable and necessary to build a new, democratic society, only liberty and equality could actually be legislated. Fraternity (or sorority) could be developed and encouraged by the State and civil society much more likely than it could be enforced. Nonetheless, a range of practical measures can be undertaken to nondiscrimination in actual practice.

Inherent in the principle of nondiscrimination is the understanding that programs formally providing advantages to persons and groups historically subject to discrimination are not considered to constitute unlawful discrimination. On the contrary, international public law calls upon States to provide additional assistance to those persons and groups subject to past and/or present discrimination, as in corrective/positive discrimination or affirmative action programs that redress foregoing patterns of deprivation.¹⁰⁰⁴

Applied to the congruent rights of participation and self-expression

Applied to participation and self-expression, the nondiscrimination principle ensures that individuals and groups are not deprived of opportunities participate and expression their views with regard to their housing. No one may be denied this entitlement on the basis of race, color, creed, gender, sex, sexual orientation, political opinion, social or economic status, language, physical ability/disability, property, form of legitimate work, descent, or any other origin or arbitrary criterion. For indigenous, tribal or other land-based peoples, the State has the obligation to recognize their congruent rights to participation and self-expression in law and in administrative matters. Likewise, no State possesses the legal

¹⁰⁰³ Chapter 5: The Food [al-Ma'da], Section 2: "Duty of Uprightness," verse 8. Maulana Muhammad Ali, transl. The Holy Qur'an (Lahore: Ahmadiyya Anjuman Isha'at Islam, 1963), p. 243.

¹⁰⁰⁴ See Marjorie Cohn, "Affirmative Action and the Equality Principle in Human Rights Treaties: United States' Violation of Its International Obligations," Virginia Journal of International Law, Vol. 43 (2002), 249-74.

authority to practice or condone *de jure* or *de facto* discrimination that leads to the loss or denial of participation and self-expression rights to any member of any group, particularly to the unfair advantage of another. This applies to the practice of nepotism and all other forms of corruption that allow disproportionate benefits to family members or political partisans, as well as preferences given to groups that breed conflict. Nondiscrimination in the exercise of the congruent rights to participation and self-expression are not subject to “progressive realization,” but obligations to be enforced immediately upon ratification of human rights treaties.¹⁰⁰⁵

International public law calls States to provide special assistance to persons and groups who have been subject to past and/or present discrimination, as in affirmative action programs that redress foregoing patterns of deprivation.¹⁰⁰⁶

✓ Gender equality

General description

Despite the universal acceptance of the principle of gender equality in international law, many women are denied equal treatment and discriminated against in their housing on the basis of sex or gender. Approximately one-third of the world’s women may be homeless, living in inadequate housing and own less than one percent of the world’s property.¹⁰⁰⁷ The intersectionality of poverty or other factors (i.e., class, indigenous, refugee, migration, caste, sexual orientation, ethnic minority, age, disability, widowhood, citizenship or nationality status, etc.) further marginalize women. In the context of the increased feminization of poverty, decreased access to public services, and destruction of natural environments, all of which are accelerating with the process of globalization, women are increasingly placed in situations where they do not have adequate housing.

The denial of adequate housing for women is a violation of women’s human rights. It can also result in the violation of women’s other human rights such as rights to life, livelihood, adequate food, employment and political participation (e.g., voting rights). In particular, the lack of adequate housing also can make women more vulnerable to various forms of violence against women (e.g., domestic violence, trafficking, sexual and gender-based violence against migrant workers etc.).

The right to nondiscrimination in gender relations, as an over-riding principle in human rights implementation, is generally stated in UDHR, Article 2 (nondiscrimination) and throughout the Declaration in its language of human rights for “everyone” and “all are equal before the law.” More specifically, gender equality has emerged as a binding, over-riding principle in the two Covenants’ common Article 3:

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all...rights set forth in the present Covenant.

This principle is further elaborated in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).¹⁰⁰⁸ Article 13 obliges States parties to take all appropriate measures to eliminate discrimination against women in areas of economic and

¹⁰⁰⁵ For further guidance on the legal obligations to immediate implementation of the nondiscrimination principle applied to housing rights, see the report of the Special Rapporteur on Adequate Housing E/CN.4/2002/59.

¹⁰⁰⁶ See Marjorie Cohn, “Affirmative Action and the Equality Principle in Human Rights Treaties: United States’ Violation of Its International Obligations,” *Virginia Journal of International Law*, Vol. 43 (2002), 249–74.

¹⁰⁰⁷ COHRE Fact Sheet on Women’s Right to Housing, Land and Property.

¹⁰⁰⁸ Adopted and opened for signature, ratification and accession by General Assembly resolution 34/180, 18 December 1979; entered into force, 3 September 1981, in accordance with Article 27(1).

social life, and to ensure women's equal right to bank loans, mortgages, and other forms of social credit. In Article 14, paragraph 2, CEDAW specifically addresses women's equal rights in human settlements as the right of women in rural areas to enjoy adequate standard of living conditions, particularly, in relation to housing sanitation, electricity and water supply, transportation, education, communications and access to credit. This extends explicitly to women's "equal treatment in land and agrarian reform as well as in land resettlement schemes." Article 15 also addresses women's equal right to conclude contracts and administer property; while Article 16, paragraph 1 (c) guarantees women's equal rights and responsibilities during marriage and its dissolution, including equal rights for both spouses in respect of ownership, acquisition, management, administration, enjoyment and disposition of property.

This legal norm is carried forward in the Beijing Platform for Action (BPFA), which calls on Governments to remove all obstacles for women in obtaining affordable housing and access to land.¹⁰⁰⁹ This remains standard in the subsequent multilateral agreements formulated in the Istanbul Declaration and the Habitat Agenda (1996)¹⁰¹⁰ and the World Summit on Sustainable Development (WSSD) Plan of Implementation (2002).¹⁰¹¹

The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (1997), which were developed for understanding and determining violations of economic, social and cultural rights, affirmed that, in order to eliminate discrimination against women's rights recognized in the Covenant, the State party should face the need and legal obligation to eliminate discrimination against women that arises out of social, cultural and other structural advantages.¹⁰¹²

Typically, for women the home is the single most important place in the world. Beyond shelter, it is a place for the vast majority of woman to generate income, care for children, and seek respite from violence and patriarchy in the community at large. For many still, it is the only place where women can participate fully in decisions and social activities.

Applied to the congruent rights of participation and self-expression

With increased feminization of poverty, women are increasingly placed in situations where they do not have adequate housing, including by denying secure tenure to them, or simply passing them over in the scramble for ever-scarcer resources. The intersectionality of poverty or other factors (i.e., class, indigenous, refugee, migration, caste, sexual orientation, ethnic minority, age, disability, widowhood, citizenship or nationality status, etc.) further marginalize women and prevent their free participation and self-expression.

Freely exercising one's own culture (cultural adequacy) is understood to mean allowing for cultural choice and expression within the human rights framework; that is, within limits beyond which the rights of others are adversely affected. Preserving a practice of unequal rights to participation and self-expression is inconsistent with the present framework and

¹⁰⁰⁹ Para 58(m).

¹⁰¹⁰ Para 40 (b), 78 (e) and (g).

¹⁰¹¹ Para 67 (b).

¹⁰¹² Related sources of gender equality for women in human settlements can be found in CEDAW Articles 1, 2(f), 3 and 5 (a); UDHR, Articles 2, 16, 17 and 25; UDHR, Articles 5 (d) (v) and (vi), 5 (e) (iii); ICERD, Article 2, para 1, Articles 3, 9, 16, 17, Article 23, para 4, ICCPR, Article 26; ICESCR, Article 2, para 2, Article 3, and Article 11, para 1; and CRC, Article 1, 16, para 1 and Article 27.

likely would violate both the gender-equality provisions of ICESCR, ICERD, ICCPR and CEDAW, as well as provisions of the Vienna Convention on the Law of Treaties (1969).¹⁰¹³

✓ Rule of law

General description

In the over-riding principles pertaining to previously discussed forms of discrimination, human rights are, by their nature, equal, inalienable and universal. By this is meant that the criteria for applying the standards and norms are to be inconsistent in their application. One way to ensure that is through the formal and institutionalized rule of law.

As enshrined in UDHR, Article 6, “Everyone has the right to recognition everywhere as a person before the law.” This right is codified in the ICCPR (Article 16), and is supported by regional instruments affirming the same.¹⁰¹⁴ The equal inalienable and universal right to a fair trial, including the presumption of innocence, is enshrined in ICCPR,¹⁰¹⁵ as well as the regional instruments.¹⁰¹⁶

The law-abiding State and its officers must not withhold or impede remedies, apply the law inconsistently or arbitrarily, or exercise any form of discrimination that affects the human right to adequate housing. Inhabitants who have lost or undergone damage to their housing unjustly or illegally have the right to unobstructed access to legal remedy, including compensation for victims, which the State bears the corresponding obligation to respect, defend, promote and fulfill.

States are required to maintain the rule of law in order to ensure a consistent, predictable and accessible resolution of disputes with remedy and compensation for the victims. This covers the right of equal access to public services, such as law enforcement, public defense and judicial services. The conduct of law enforcement officers, prosecutors and judges can determine whether or not the rule of law is respected or violated. Therefore, there is a tremendous need for the State to train, discipline and rehabilitate legal enforcers and practitioners. In the case of police services, the use of force is required to follow strictly the principle of presumed innocence and the criteria of necessity and proportionality in case where State force is used.¹⁰¹⁷ Where local statutory law may be silent on housing rights safeguards, lawyers and judges bear an extra professional duty to apply the human rights norms to the extent possible.

The principles of remedy and reparation have been firmly established in instruments declaratory of the human right to access to justice. Culminating the development of international law derived from the major legal systems in the world, the revised Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations

¹⁰¹³ The Vienna Convention sets forth, in Article 27, that “[A] party may not invoke the provisions of its internal law as justification to perform a treaty,” and the customary law principle, arising from Article 8 of the Universal Declaration of Human Rights, states that “everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him [or her] by the constitution or by law.”

¹⁰¹⁴ African Convention on Human and Peoples’ Rights, Article 5; Inter-American Convention on Human Rights, Article 3.

¹⁰¹⁵ Article 10 reads: “Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his[her] rights and obligations and of any criminal charge before him[her].” [Bracketed text added.] Article 14.2 sets forth that “Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to the law.”

¹⁰¹⁶ African Charter, Article 7; Inter-American Convention, Article 8; European Convention on Human Rights, Article 6.

¹⁰¹⁷ Code of Conduct for Law Enforcement Officials, adopted by General Assembly resolution 34/169, 17 December 1979, Article 3; Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted at the Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August–7 September 1990, preamble and Articles 1–11.

of International Human Rights and Humanitarian Law (2003) outline the right and corresponding State obligations as follows:

VII. Victim's Right to Remedy

Remedies for violations of international human rights and humanitarian law include the victim's right to:

- (a) Access justice;
- (b) Reparation for harm suffered; and
- (c) Access the factual information concerning the violations.

VIII. Victims' Right to Access Justice

A victim's right of access to justice includes all available judicial, administrative and other public proceedings, mechanisms and modalities that exist under domestic laws, as well as under international law. Obligations arising under international law to secure the individual or collective right to access justice and fair and impartial proceedings should be made available under domestic laws. To that end, States should:

Make known, through public and private mechanisms, all available remedies for violations of international human rights and humanitarian law;

Take measures to minimize the inconvenience to victims, protect their privacy as appropriate, and ensure their safety from intimidation and retaliation, as well as that of their families and witnesses, before, during, and after judicial, administrative, or other proceedings that affect the interests of victims;

Facilitate assistance to victims seeking access to justice.

Make available all appropriate diplomatic and legal means to ensure that victims can exercise their rights to a remedy and reparation for violations of international human rights or humanitarian law.

In addition to individual access to justice, adequate provisions should also be made to allow groups of victims to present collective claims for reparation and to receive reparation collectively.

The right to an adequate, effective and prompt remedy against a violation of international human rights or humanitarian law includes all available international processes in which an individual may have legal standing and should be without prejudice to any other domestic remedies.¹⁰¹⁸

The restitution of housing and property is one form of restitutive/restorative justice sought in the rule of law applied to housing rights violation victims. Efforts continue to develop these methods and disparate efforts, not least in the development of draft guidelines on restitution for refugees.¹⁰¹⁹

Applied to the congruent rights of participation and self-expression

In the case of a dispute over the congruent rights of participation and self-expression, the State bears an obligation to ensure that the rule of law is applied in a context of equality, inalienability and universality of rights, particularly with regard to the human right to adequate housing. In the case where the State (e.g., courts or police) assume a role in a dispute over participation and self-expression, the State bears the responsibility to abide by its human rights obligations and refrain from violations of the right to housing and ensure the congruent rights of participation and self-expression.

¹⁰¹⁸ As revised in accordance with UN Commission on Human Rights resolution E/CN.4/2003/34 (2003).

¹⁰¹⁹ Progress report of the Special Rapporteur, Paulo Sérgio Pinheiro, "Housing and property restitution in the context of the return of refugees and internally displaced persons," E/CN.4/Sub.2/2004/22, 2 June 2004.

The law-abiding State, its agents and offices must not withhold the rights of participation and self-expression arbitrarily or exercise any form of arbitrary discrimination. Inhabitants who have lost their the rights of participation and self-expression unjustly or illegally have the right to unobstructed access to legal remedy, including compensation for victims, for which the State bears the corresponding obligation.

✓ Nonretrogression/progressive realization

General description

ICESCR's Article 2 identifies the State party's obligation to ensure the "progressive realisation" of ESC rights. That is widely interpreted to mean that the State party breaches this provision if it tolerates or causes "regressivity" in the enjoyment of the right. The relevant jurisprudence has established that, even in the case of scarce resources, the State must exert good-faith efforts, including through international cooperation, to advance—and not derogate—the enjoyment of ESC rights, including adequate housing and its constituent entitlements.

The treaty bodies have clarified further that neither political processes, domestic legislation, scarcity of resources, or agreements with other parties can be invoked to justify nonimplementation of human rights treaty obligations.¹⁰²⁰ For example, the binding nature of a treaty obligation is further clarified in the Vienna Convention on the Law of Treaties (1969), clarifying in its Articles 27 and 46, that invoking an internal law is not admissible as a justification for nonimplementation of a treaty obligation.¹⁰²¹ To harmonize treaty obligations with local implementation, human rights obligations arising from the treaties and case law should guide policy formulation and decision-making processes in law-abiding States. Therefore, a process of realising the rights should not regress, but should ensure "the continuous improvement of living conditions" (Article 11).

This over-riding principle of "nonregressivity" has been reaffirmed in the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights (1986) and Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (1997),¹⁰²² as well as numerous cases of international jurisprudence through the monitoring functions of CESCR.

The many examples of globalization-era economic reforms demonstrate how the withdrawal of the State from its obligations to fulfill economic/social/cultural rights can lead to deprivation. The State nonetheless bears a covenanted obligation to ensure that economic policies do not make tenure more precarious and insecure, whether arising from domestic political change or pressures of an external actor, such as an international financial institution. In order to ensure "progressive realization," therefore, it is vital to ensure that the human right to adequate housing forms a part of the overall human rights framework for

¹⁰²⁰ Letter of CESCR Chairperson Mme. Virginia Bonoan-Dandan to S.E. M. Yaakov Levy, Permanent Representative, Permanent Mission of Israel to the United Nations Office and Specialized Agencies at Geneva, 11 May 2001, annex to Letter by the Chairperson of the Committee on Economic, Social and Cultural Rights to the President of ECOSOC (11 May 2001).

¹⁰²¹ Article 27 (Internal law and observance of treaties): "A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to Article 46." Article 46 (Provisions of internal law regarding competence to conclude treaties) states that: 1. A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance. 2. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith."

¹⁰²² Text available at <http://ip.aaas.org/escrdocs.nsf/>.

development policy, especially guiding international cooperation arrangements. This civilizing process requires improved coordination among the relevant government bodies, such as ministries of Justice, Finance and Foreign Affairs. This is not only out of domestic duty toward citizens for States to ensure that development partnerships effect “progressive realization,” but also an extraterritorial obligation of the State party under ICESCR, Article 2.

The CESCR has commented also on the “core obligations” of States to implement the human right to adequate housing. It noted that, regardless of the state of development of any country, certain steps must be taken immediately, in addition to the over-riding principles of human rights law. These include abstaining from measures that would impinge upon the right, as well as to engage positively in practices to facilitate the people’s processes of groups seeking to improve their living conditions, in accordance with the specific elements outlined above.¹⁰²³

Applied to the congruent rights of participation and self-expression

All levels of the State and government should ensure that inhabitants have full opportunity to exercise their congruent rights to participation and self-expression in the housing sphere. This means that new laws, budgets, plans and policies, as well as patterns of civil servant behavior and practice should improve access to participation and self-expression for inhabitants. It also means that those same parties should develop remedies for those who have been deprived of their rights to participation and self-expression in matters affecting their housing.

✓ International Cooperation

General description

States parties to both Covenants bear an obligation to implement human rights within a context of “international economic cooperation.”¹⁰²⁴ The ICESCR’s Article 2.1 requires States party to undertake steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

In the spirit of the numerous multilateral agreements on human rights and development, “progressive realization of ESC rights,” as a borderless objective, logically engages “international cooperation” duties for States to conduct themselves accordingly through their relations with other States, nations and peoples:

In fraternity and solidarity
Domestically and extraterritorially
Individually, jointly and/or collectively.

The preamble of the United Nations Charter specifies the purposes of the world organization insofar as “we the peoples of the United Nations” are determined “to promote social progress

¹⁰²³ “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.” General Comment No. 4, para. 10.

¹⁰²⁴ Common Article 1.2.

and better standards of life in larger freedom." Article 1, para. 3 of the Charter sets out one of the UN's purposes as "to achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion."

Linking international cooperation and self-determination as essential to the peaceful order of the United Nations, the Charter's Article 55 reads:

With a view to the creation of conditions of stability and well-being[,] which are necessary for peace and friendly relations among nations based on respect for the principles of equal rights and self-determination of peoples, the United Nations shall promote universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

The Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations considers as essential:

the progressive development and codification of the following principles:... (d) the duty of States to cooperate with one another in accordance with the Charter;...(g) the principle that States shall fulfill in good faith the obligations assumed by them in accordance with the Charter, so as to secure their more-effective application within the international community would promote the realization of the purposes of the United Nations;...¹⁰²⁵

The UN States members share a duty to cooperate with one another, irrespective of their differences, to maintain international peace and security and promote international economic stability and progress, the general welfare of nations and international cooperation free from discrimination. To this noble end, the Declaration embodied by UN members commitments such that:

(c) States shall conduct their international relations in the economic, social, cultural, technical and trade fields in accordance with the principles of sovereign equality and nonintervention;

(d) States Members of the United Nations have the duty to take joint and separate action in cooperation with the United Nations in accordance with the relevant provisions of the Charter.

States should cooperate in the economic, social and cultural fields as well as in the field of science and technology and to the promotion of international cultural and educational progress. States should cooperate in the promotion of economic growth throughout the world, especially that of the developing countries.¹⁰²⁶

¹⁰²⁵ Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly in its resolution 2625 (XXV) of 24 October 1970 Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly in its resolution 2625 (XXV) of 24 October 1970

¹⁰²⁶ Ibid.

In addition to its Article 2, ICESCR also sets out to identify the UN systems itself as a vehicle for international cooperation to uphold the Covenant. The Covenant empowers ECOSOC to raise the Covenant-monitoring reports as a guide for UN technical assistance.¹⁰²⁷

Other instruments of international public law are dedicated to specifying norms for international cooperation agreements between and among States. Consistent with human rights norms and other *jus cogens* principles of law, the Vienna Convention, Article 53, provides clarity:

A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

States parties adhering to the international law principles of international cooperation are required to behave extraterritorially consistent with the progressive realization of economic/social/cultural rights. For our purposes, this extends especially to the human right to adequate housing and land.

As a donor country, a State must ensure that the projects and programs it supports do not erode any of the entitlements contained in their right to adequate housing for inhabitants in beneficiary countries. That includes avoiding any action that leads to forced evictions, confiscation or demolition of housing. In the case of development assistance resulting in dislocation of inhabitants, all aspects of the undertaking are to be the subject of consultation with the affected persons, and the efforts should enhance legal security of tenure as a result within the covenanted human rights framework.

As a recipient country, structural adjustment, deregulated foreign investment, privatization and related measures typified by today's bilateral and multilateral arrangements assistance agreements and programs must be compatible with the human rights obligations of the affected State. Measures that deny or reduce tenure security would be illegal and unaccepted as a condition of the assistance. States parties to the human rights instruments have a self-preserving opportunity and responsibility to uphold their prior treaty obligations as a form of (moral, legal and practical) resistance to negotiation pressures or conditionalities that may derogate the terms of legal security of tenure for inhabitants.

As all human rights implementation ultimately is a local matter, regional instruments can be a source a greater specificity in determining of State obligations and practical measures needed to uphold economic, social and cultural rights. For example, the African Charter on Human and Peoples' Rights (1981) provides a broad agreement on the term of international cooperation in its Article 21: 1, which establishes that:

All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it. 2. In case of spoliation, the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation. 3. The free disposal of wealth and natural resources shall be

¹⁰²⁷ Article 22 reads: "The Economic and Social Council may bring to the attention of other organs of the United Nations, their subsidiary organs and specialized agencies concerned with furnishing technical assistance any matters arising out of the reports referred to in this part of the present Covenant which [sic] may assist such bodies in deciding, each within its field of competence, on the advisability of international measures likely to contribute to the effective progressive implementation of the present Covenant."

exercised without prejudice to *the obligation of promoting international economic cooperation based on mutual respect, equitable exchange and the principles of international law*. 4. State Parties to the present Charter shall individually and collectively exercise the right to free disposal of their wealth and natural resources with a view to strengthening African Unity and solidarity. 5. *State Parties to the present Charter shall undertake to eliminate all forms of foreign exploitation particularly that practised by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources.* [Emphasis added.]

States Parties are required to review multilateral agreements on investment, trade-related intellectual property arrangements, poverty-reduction strategy papers (PRSPs), bilateral and multilateral relations in the World Trade Organization context, World Bank lending and assistance terms, and the International Monetary Fund programs operating in, or otherwise affecting the State, in order to ensure consistency with covenanted obligations and avoid either retrogressivity or violations of its citizens' ESC rights. The State party is obliged to apply the Covenant *a priori* to ensure that any such conditionality would be subject to the ESC rights safeguards for its own inhabitants, and for those of another State party.

Privatization programs may lead to deprivation of the housing rights entitlement to tenure security. In the event of workers living in administrative housing who become laid off as part of a privatization or State-enterprise sell-off arrangement may lose their tenure altogether. Even in cases where local legislation is silent, international treaty obligations remain for the State party to defend the workers' human right to adequate housing by legal and enforceable protection for their secure tenure and all other housing rights entitlements.

As an extreme example of international cooperation conducted in explicit violation of ESC rights applying to adequate housing and secure tenure would be a scenario wherein a State engaged in, or condoning third parties to engage in acts or omissions that would contribute to population transfer or any of its related international crimes, such as mass deportations, ethnic cleansing, destruction of civilian or private property, implantation of settlers and settler colonies, or other forms of demographic manipulation of an internal or external self-determination unit. Duty prohibits States party from allowing public or private resources to accrue to settler colonies in an occupied territory, for example, or engage in any other acts or omissions that would facilitate another State party's violations of the Covenant or Convention in this way. There are numerous examples today in countries where these forms of violation continues unaddressed with the accomplice and collaboration of other States. Impunity still characterizes the conduct of many of these crimes, as the perpetrators have not yet been prosecuted at any level, including at the International Criminal Court.

A State's participation in international economic sanctions or blockades that lead to violations of the ESC rights of persons other than the State Party's own residents, citizens and nationals may lead to conditions that undermine housing rights. CESCR has provided guidance to States parties of the Covenant on ESCRs affected by sanctions regimes and subject to protection measures to avoid regressivity and violation.¹⁰²⁸

Direct provision, or participation in multilateral programs of development and financial assistance actually may lead to violations of rights embodied in the Covenant (e.g., stagnation, deterioration or denial of work, education, health or housing rights, forced eviction, etc.) and constitute a breach of treaty obligations. Specifically, ICESCR and its enshrined rights should guide and govern a State's policies and conduct in any multilateral

¹⁰²⁸ See CESCR General Comment No. 8, "the relationship between economic sanctions and respect for ESC rights."

institution that imposes economic conditionalities on other States or their agents that bring about a negative consequences effect inhabitants housing rights conditions. The legacy of development banks' support for forced evictions of all possible scales and levels of deprivation has become notorious, and States that promote, finance or engage directly or indirectly in making decisions or executing these policies may be in breach of their human rights treaty obligations.

Applied to the congruent rights of participation and self-expression

Enjoyment of the rights to participation and self-expression should improve as a result of international development cooperation, whatever form. Any cross-border cooperation and investment in human settlements and/or in other sector should not in any way inhibit the exercise participation and self-expression.

✓ Other principles of application

The principles discussed above are those explicitly stated in the major international human rights treaties. At the same time, we can consider additional principles and concepts that also guide the application of the human right to adequate housing. These arise from the international jurisprudence of individual State party reviews by the treaty-monitoring bodies, as well as from their General Comments and General Recommendations. They also come to us from popular claims of people's movements, from the political resolutions of the multilateral organizations, from expert opinions found in the legal literature, and from the evolving experience at implementing human rights. Three such principles of application for us to consider are known as the "indivisibility of rights," "minimum core obligations" and "universality."

Indivisibility

The concept of all human rights as indivisible is as practical as it is theoretical. It arises from the realization that, when we unpack the contents of a right, we encounter aspects of the other rights as well.

Take, for example, the "habitability" entitlement contained in the human right to adequate housing. The deterioration of the structural features of the home leaving the inhabitants exposed to the elements, or pollution in the immediate vicinity of the housing surely effect the enjoyment of the human right to "a standard of living adequate for the health and well-being of himself and of his family," as recognized in Article 25 of the 1948 Universal Declaration of Human Rights (UDHR), and codified as the "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health" in Article 12 of the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR).

Likewise, homelessness is a status synonymous with the denial of voting rights in most States, where registration and voting require a *domicile fixe*. Thus, the human right to adequate housing is linked with everyone's "right to take part in the government of his [sic] country, directly or through freely chosen representatives," as promised in UDHR (Article 21), and codified in the Covenant on Civil and Political Rights (ICCPR), in 1966, as everyone's "right to take part in public life, directly or through freely chosen representatives" (Article 25). Incorporating the experience of HIC members and others around the globe, it has become clear that our monitoring methodology calls our attention also to the "congruent"

human right to participation and self-expression among the constituent entitlements of the human right to adequate housing.

Sorting, categorizing and distinguishing subjects of any kind can be a useful exercise that makes manageable order out of complexity and facilitates understanding. Human rights are no exception. However, in practice, we find that human rights are interdependent, and categorical separation can become artificial and actually impede understanding. One example is in the division of human rights found in the UDHR into the two, separate Covenants. The reason for adopting two basic Covenants, instead of one, is largely attributed to the divergent Cold War ideologies that dominated the General Assembly when it adopted the Covenants in 1966. Ideology is also the reason that one of the largest and wealthiest industrialized States has failed to ratify the ICESCR until today, and ideology also prevailed to exclude a “human right to own property” from that Covenant, although that right is included in the UDHR (Article 17). Despite the false impression left by the Covenants dividing human rights into two instruments camps, the ICCPR’s nonetheless recognizes, in its preamble, that:

... in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights.

Without appreciating the over-riding principle of indivisibility, other distortions can arise. With civil and political rights traditionally gaining from more attention and specificity than economic/social/cultural rights (consistent with some Western Bloc preferences), some authors have proposed that we consider “generations” of rights.^{1029[1]} Presenting distinct rights in such a priority order perpetuates the historic neglect of economic/social/cultural rights and promotes a logic that may culminate in violations. Nominating civil and political rights in a hierarchical order as “first generation” rights classifies economic/social/cultural rights as secondary: the “second generation” of rights. Group rights, as distinct from individual rights, environmental rights and, in certain cases, self-determination thus become degraded as “third generation.” This view is kept alive by a simple misunderstanding of “progressive” realization, required in ICESCR, such that slow realization of economic/social/cultural rights is acceptable and that all aspects of economic/social/cultural rights, as such, are subject to gradual implementation. The indivisibility of human rights belies such gradualist or generational notions. Therefore, this toolkit cannot accommodate

^{1029[1]} French jurist Karel Vasak is attributed with first proposing the division of human rights into three generations, while at the International Institute of Human Rights (Strasbourg), in 1979. His division adapted the French Revolution’s slogan of Liberté, Égalité, Fraternité as ordinal categories. The three generations are subsequently reflected in some of the rubrics of the European Charter of Fundamental Rights.

First-generation human rights deal essentially with liberty. In Vasak’s view, these are seen as fundamentally civil and political in nature and serve to protect the individual from excesses of the State. First-generation rights include, inter alia, freedom of speech, the right to a fair trial, and freedom of religion, as enshrined in Articles 3–21 of UDHR and ICCPR.

Second-generation human rights would be those related to equality, and are supposedly the social, economic, and cultural rights. This theory sees these essentially as positive rights; that is, actions that the State is required to provide to the people under its jurisdiction, as opposed to actions from which the State should refrain—e.g., forced eviction—in order to realize rights.

Third-generation human rights correspond with fraternity, or involving “solidarity.” They include group and collective rights, such as self-determination, economic and social development, sovereignty over natural resources, and the right to participate in the common heritage of mankind. Treated as third generation, the generational theory of rights presumes that these rights are not yet binding and dubiously judicial.

In an alternative explanation for the three-generational approach rests on the political divisions of the Cold War, where the West promoted allegedly first-generation (civil and political) rights, and the East promoted second-generation (economic, social and cultural) rights. The Third World (i.e., third priority in the putative hierarchy) promoted (third-generation), solidarity rights, as in the decolonization struggles of the 1970s, including decolonization processes delayed until today.

the divisive, generational approach to human rights not for ideological reasons, but for the fact that theories neatly segregating rights are not sustained in practice.

It is with this recognition of the indivisibility of rights that CESCR commented:

...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...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.^{1030[2]}

Core obligations

Alone, the very general reference to the human rights in treaty texts does not provide the specific guidance needed for States parties around the world to know their precise obligations. ICESCR’s English-language version requires States to “take steps.” The French texts calls on States “to act” (*s’engage à agir*) and, in Spanish, the Covenant requires States “to adopt measures” (*a adoptar medidas*), but offers little about what those steps/actions/measures should be, except to say that these should be “appropriate,” “progressive” (nonregressive/ nonretrogressive), nondiscriminatory (nondiscrimination), involve international cooperation and include legislative measures (rule of law). Therefore, the treaty-monitoring bodies bear the task of issuing General Comments and General Recommendations to supply the needed specificity, based on international public law and the implementation experience of all States parties.

In its General Comment No. 3: “The nature of States parties’ obligations,”^{1031[3]} CESCR addressed the principle of “minimum core obligations”:

...a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party. Thus, for example, a State party in which any significant number of individuals is deprived of ...basic shelter and housing...is, *prima facie*, failing to discharge its obligations under the Covenant. If the Covenant were to be read in such a way as not to establish such a minimum core obligation, it would be largely deprived of its *raison d’être*.^{1032[4]}

The General Comment, like the Covenant, takes into consideration material limits of States. However, the Covenant’s Article 2 (1) obligates each State party to take the necessary steps “to the maximum of its available resources,” and the treaty body has determined that the nature of treaty obligations are such that a State bears a heavy burden of proof to demonstrate that “every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations.”^{1033[5]}

^{1030[2]} General Comment No. 4: “the right to adequate housing” (1991), para. 9.

^{1031[3]} Adopted by the CESCR in its fifth session (1990), E/1991/23.

^{1032[4]} *Ibid.*, para. 10.

^{1033[5]} *Ibid.*

The “minimum core obligations” also include those appropriate steps to respect, defend, promote and fulfill the human right to adequate housing, like other economic/social/cultural rights, as a matter of immediate application. Among the appropriate measures, in addition to harmonizing domestic legislation with the covenanted rights, is to provide judicial remedies to victims within the national legal system. That would be among the most effective measures to ensure compliance with obligations to implement certain aspects of economic/social/cultural rights *immediately*, such as by ensuring nondiscrimination. The Committee has determined that it is “difficult to sustain” any suggestion that these immediate obligations are inherently non-self-executing. This legal authority is consistent also with the terms of the Vienna Convention on the Law of Treaties (1969), which provides that “A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.”^{1034[6]} The treaty bodies have clarified further that neither political processes, domestic legislation, scarcity of resources, nor agreements with other parties could be invoked to justify nonimplementation of human rights treaty obligations.^{1035[7]}

Nondiscrimination is perhaps the most obvious and urgent of the immediate principles in implementing the human right to adequate housing. CESCR has provided specific guidance such that, among other things, “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.”^{1036[8]}

The measures needed for States parties to comply with obligations of immediate application include negative obligations. That is, many of the measures to realize the human right to adequate housing would require little more than the State and its agents to refrain from certain harmful practices, such as arbitrary house demolitions and forced eviction, or a meaningful commitment to enabling “self-help” or “social production of habitat” by affected groups. Such changes in State behavior would not require significant expenditure of public resources.

Universality

The principle of human rights’ “universality” is simply expressed in the UDHR’s recognition that “All human beings are born free and equal in dignity and rights” (Article 1). Everyone, without exception, is entitled to human rights by virtue of belonging to the human family. From a moral point of view, the universality of human rights is an essential principle if the human civilization is to advance for the better. In international law, the text of ICESCR also speaks consistently of right of “everyone,” which obliges States not to discriminate in

^{1034[6]} Vienna Convention on the Law of Treaties, signed at Vienna, 23 May 1969; entered into force, 27 January 1980, Article 27: “Internal law and observance of treaties.” The Article also goes on to state that “this rule is without prejudice to Article 46.” Article 46: “Provisions of internal law regarding competence to conclude treaties” states that “1. A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance. 2. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith.”

^{1035[7]} Letter of CESCR Chairperson Mme. Virginia Bonoan-Dandan to S.E. M. Yaakov Levy, Permanent Representative, Permanent Mission of Israel to the United Nations Office and Specialized Agencies at Geneva, 11 May 2001, annex to Letter by the Chairperson of the Committee on Economic, Social and Cultural Rights to the President of ECOSOC (11 May 2001).

^{1036[8]} General Comment No. 3: “The nature of States parties’ obligations,”^{1036[8]} CESCR addressed the principle of “minimum core obligations,” adopted by the CESCR in its fifth session (1990), E/1991/23, para. 11.

^{1036[9]} The Vienna Convention sets forth, in Article 27, that “[A] party may not invoke the provisions of its internal law as justification to perform a treaty,” and the customary law principle, arising from Article 8 of the Universal Declaration of Human Rights, states that “everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him [her] by the constitution or by law.”

adherence to minimum core obligations. In the field of housing, in particular, States are not permitted to interpret its minimum core obligations to apply selectively, that is, only to citizens, or only certain citizens, but also to ensure the human right to adequate housing is realized also for “everyone,” including residents, immigrants and migrant workers, etc. The only conditionality permitted in law is that the subjects of human rights qualify as members of the human family.

Before the Universal Declaration, the social movements, revolutions, antislavery struggles and intellectual contributions of the past have served as vehicles for the promotion of human rights that eventually have been incorporated into local and international law and practice. However, many of these famous accomplishments were limited in their substance or application, geographically or socially, or were subject to reversal. Social science and philosophy have contributed greatly to the recognition of human rights, but have not carried the force of law. The recognition of the universality of human rights overcomes the shortcomings left by these otherwise-significant accomplishments:

Limits in scope of application:

- The rights and ethics delivered through the worlds moral systems, especially those found in the religions, also are limited in scope by the fact that they apply to adherents to a particular faith group, not applying universally;
- The Magna Carta of 1215 imposed limits on royal impunity that equate as new rights for citizens, especially property-owning citizens. However, this historical achievement had only local application in the geographical realm of the English king.

Exclusion of social sectors and substantive rights:

- The “American Revolution,” in the English colonies that eventually became the original United States of America, realized the right to self-determination as a legal right and *raison d'état*. However, the right to self-determination, as inalienable as it is, applied in the American Revolution case as a right limited only to the white colonizers who identified themselves as a distinct people. The remaining indigenous peoples—whom the settlers mostly largely and replaced—have yet to achieve their self-determination to this day;
- The French Revolution, for all its achievements, realized rights for individuals. French farmers and workers sought recognition of their group rights in the context of the revolution; however, its leadership rejected those expansive notions of rights and insisted on *liberté, égalité and fraternité* with an individual focus;
- The results of the Bolshevik Revolution institutionalized recognition of group rights for workers, etc.; however, rejected a right to property ownership. However ethically grounded the rationale for that omission, the denial of property rights also has emerged as a common tool for depriving persons, communities and entire peoples of their means of subsistence, thereby demonstrating, by its violations, the importance of that neglected human right.

Retrogression:

- The antislavery movement in Haiti at the end of the 18th Century resulted in a democratic regime and Constitution under the leadership of former slave and eventual General Toussaint Louverture. However, the same France that produced the world-changing Revolution only 12 years before saw the French General

Napoleon I crush the new democracy in 1801 for reasons of imperial interest, reversing the accomplishments of Haitian antislavery democracy, with consequences extending to this day.

Despite their shortcomings, these episodes in the gradual achievement of rights through local struggle all have contributed to the accumulation of human rights recognition as universally applicable. Human rights law today embodies that cumulative recognition into an international and universal code that seeks to leave no human group, geographical region or human need without mutual protection in the multilateral legal regime.

Universality of human rights now means that it is impermissible to neglect certain rights as if they were intended selectively for certain cultures, as if and people of other cultures deserve an inferior standard. Universality also means that no State or government is exempt from its obligations, either for reasons of specificity of local law, as the Vienna Convention has addressed, or to uphold traditional practices that violate rights or their over-riding principles of application.

Interpreting rights consistent with one's own culture (as in the cultural adequacy of housing) means applying locally specific options and idiomatic expressions consistent with the human rights framework. However, practices that preserve or condone unequal rights to secure tenure, inheritance or other entitlements of the human right to adequate housing are not consistent with the present framework and likely to violate both the gender-equality provisions of the Covenant, as well as essential provisions of the Vienna Convention on the Law of Treaties (1969).^{1037[9]}

While local experience of application and struggle continue to provide specificity on how to realize human rights, reveal a variety of possible strategies and define emerging rights (such as the rights to water, land and energy), cultural specificity does not mean allowance for the derogation of rights to something short of the over-riding principles and entitlements reflected in this toolkit. As affirmed by moral arguments and legal authority, adequate housing is the right of everyone, everywhere.

Conclusion

The over-riding principles featured in the monitoring steps of this toolkit are those explicitly mentioned in the major human rights treaties. The "Other principles of application" are implied in the human rights instruments or recognized in international jurisprudence, but are not less important to keep in mind.

The HLRN toolkit attempts to go further than merely encouraging the monitor to keep these additional principles in mind, however. The toolkit's design actually incorporates all of these three principles, but without culling them out as additional steps in the monitoring process.

The indivisibility of rights is already present in the 12 entitlements; whereas, the first eight derive directly from the CESCR's General Comment No. 4 specifically on the right to housing. The "Congruent rights" derive from rights whose sources and concepts arise from the ICCPR, Refugee Convention and other instruments. Therefore, the housing rights entitlements themselves embody the indivisibility concept in a practical form.

The core minimum obligations applying in the case of the human right to adequate housing also are consistent with those entitlements outlined in the General Comment No. 4, which

are embedded in this methodology (human right to adequate housing entitlements A–H). Naturally, the local specificity as to the nature and level of effort required to realize the human right to adequate housing is precisely your contribution through your monitoring effort, your critical process and by posing your solutions to problems in the field.

The universality of the human right to adequate housing is also inherent to this toolkit, by design. That is manifest in the wide range of international and regional instruments guaranteeing the right and incorporated into the Step 2 presentation of both the Sources in international law and Popular sources.

The good news is that, with these principles integrated in the design of the toolkit, you are able to apply them as a matter of course. Therefore, it would be unnecessary and redundant to create corresponding, additional tasks. By applying the methodology in this Housing and Land Rights Monitoring Toolkit, you will be putting all of these inter-related and interdependent principles into living practice.

10.4. Guarantees

Guarantees of the Human Right to Adequate Housing

We will now determine the existing assets guaranteeing the entitlements of the human right to adequate housing in your country situation. We can begin by making our assessment at the general and international level, then proceeding to the more instrumental and local level. The “guarantees” do not mean only legal provisions, but also institutional, policy and other assets that function to ensure, or at least contribute to implementation of the various contents of our human right to adequate housing.



Therefore, one should assess first the State’s current obligations by its ratification of international (and then regional) treaties recognizing the human right to adequate housing, its over-riding principles and its specific entitlements. Then this method would have us determine any similar guarantees in the national constitution (or equivalent). At the more-specific level of legislation, the inquiry should have us identify which statutes, regulations and even municipal ordinances actually guarantee the right or any entitlement within the right. Presumably, public policies, programs, institutions and budgets in place should form the practical implementation counterparts to complement these legal criteria and the respect, defense, promotion and fulfillment of the human right at the most-localized operational level.

Inquiry Begins Here

Following this logic, our line of inquiry on “guarantees” poses a number of questions for the monitor to provide the answer. Now your role will become more active. Accordingly, we will follow the method of assessing the guarantees in your country situation for implementation of the human right to adequate housing from general to specific, thus, focusing on:

- Ratifications and multilateral commitments:** Obligations arising from multilateral (international and regional) ratification of relevant treaties;
- Constitutional provisions** relevant to the human right to adequate housing and land;
- National legal system:** Legislation and other local law;

- Institutions:** both binding and bonding institutions, whether as a formal structure, or a more-customary, social character;
- Policies:** having nationwide application;
- Programs:** long-term, policy-based and systematic efforts;
- Projects:** having more temporary and localized application; and
- Budgets** of public institutions.

In that order, our line of inquiry will explore these guarantees for each of the twelve entitlements of the human right to adequate housing and land. You will likely find that you may already have the answers to many of these questions from the previous sections on “Sources” and “Over-riding Principles.” For instance, you have already learned about, and identified many multilateral treaty instruments guaranteeing the human right to adequate housing. Now, you will be able to fill in the rest of the guarantees to complete the picture of how these norms translate into legal and functional assurances locally for this and every entitlement of our human right that you choose to monitor and assess.

This method ensures that the monitor take into consideration also the guarantees of the over-riding human rights principles (as explained above in “Over-riding principles applied to legal security of tenure and freedom from dispossession” in Step 3 of this toolkit). These principles, found in the first Articles of all the major human rights treaties, are to be generally and universally applied in order to ensure a context for the realization of all rights, not least the human right to adequate housing and land. Since these principles over-ride, or sit on top of the human rights framework applied to housing and land, they appear first in the list of questions in our line of inquiry. These questions include a list of legal instruments and commitments by States to guarantee these over-riding principles. (Please note that these are illustrative lists; they are not exclusive lists. You may know of other such guarantees, and you may find that some listed do not apply to your country situation.)

In the same way that we proceed from the general to the specific, the inquiry about the guarantees of the over-riding principles is followed by the more precise, practical guarantees that ensure the human right to adequate housing and land is made real in practice. Therefore, the systematic questions here include a test of (1) the present (general and contextual) guarantees for applying the over-riding principles of international human rights law in the case of the entitlement legal security of tenure and freedom from dispossession (i.e., self-determination, nondiscrimination, gender equality, rule of law, nonregressivity/nonretrogression and international cooperation), as well as (2) the (functional and specific) local guarantees of legal security of tenure and freedom from dispossession deriving from the guaranties listed above.

✓ Guarantees for applying the over-riding principles

Self-determination

Which international treaties has the State ratified, acceded to or succeeded to that guarantee that the principle of self-determination be applied, including in the housing context?

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention on the Elimination of All Forms of Racial Discrimination (1965)
- Convention on the Rights of the Child (1989)
- International Covenant on Civil and Political Rights (1966)

- International Covenant on Economic, Social and Cultural Rights (1966)
- ILO No. 107 concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (1957)
- ILO Convention No. 169 concerning Indigenous Peoples in Independent Countries (1989)
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee that the principle of self-determination be applied, including in the housing context?

- Declaration on the Right to Development (1986)
- Declaration on Social Progress and Development (1969)
- Habitat II Agenda (1996)
- Istanbul Declaration (1996)
- Social Summit Declaration and Programme of Action (1995)
- Universal Declaration of Human Rights (1948)
- United Nations Commission on Human Rights resolutions
- UN General Assembly resolutions [various]
- Vienna Declaration and Programme of Action (1993)
- Durban Declaration and Programme of Action [of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] (2002)
- Johannesburg Declaration of the World Summit on Sustainable Development and Plan of Implementation (2001)

Which regional treaties has the State ratified, acceded to or succeeded to that guarantee that the principle of self-determination be applied, including in the housing context?

- African Charter on Human and Peoples Rights (1981)
- American Convention on Human Rights (1969)
- American Declaration of Human Rights (1948)
- Arab Charter on Human Rights (1994)
- (European) Convention for Protection of Human Rights and Fundamental Freedoms (1950)
- European Social Charter (1961)

Has the State participated in the adoption of multilateral agreements in the form of regional conferences, summits, or congresses, etc., or voted in favor of resolutions in regional organizations that guarantee that the principle of self-determination be applied, including in the housing context?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (2000)
- Rabat Declaration (1995)

Nondiscrimination

Which international treaties has the State ratified, acceded to or succeeded to that guarantee that the over-riding principle and human right to freedom from discrimination be applied, including also in the housing context?

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention on the Elimination of All Forms of Racial Discrimination (1965)
- Convention on the Rights of the Child (1989)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- International Labour Organisation Convention No. 107 concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (1957)
- International Labour Organisation Convention No. 117 *on Social Policy (Basic Aims and Standards)* (1962)
- ILO Convention No. 169 concerning Indigenous Peoples in Independent Countries (1989)
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)
- Refugee Convention (1951)
- Convention relating to the Status of Stateless Persons (1954)
- Convention on the Reduction of Statelessness (1961)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee that the over-riding principle and human right to freedom from discrimination be applied, including also in the housing context?

- Declaration on Asylum (1967)
- Declaration on the Right to Development (1986)
- Declaration on Social Progress and Development (1969)
- Declaration on the Elimination of Violence against Women (1993)
- Habitat II Agenda (1996)
- Declaration on Cities and Other Human Settlements in the New Millennium [Habitat II+5 UNGAR S-25/2] (2001)
- UN Guidelines on Internally Displaced Persons (1998) [vote in favor of adoption in UNHRCR E/CN.4/1998/53/Add.2, dated 11 February 1998]
- International Labour Organisation Recommendation No. 162 concerning Older Workers (1980)
- Istanbul Declaration (1996)
- Rio Declaration and Agenda 21 (1992)
- Social Summit Declaration and Programme of Action (1995)
- Universal Declaration of Human Rights (1948)
- UN General Assembly resolutions [various]
- United Nations Commission on Human Rights resolutions [various]
- Vancouver Declaration Human Settlements (1976)
- Vienna Declaration and Programme of Action (1993)
- Durban Declaration and Programme of Action [of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] (2002)
- Johannesburg Declaration of the World Summit on Sustainable Development Plan of Implementation (2001)

Which regional treaties has the State ratified, acceded to or succeeded to that guarantee that the over-riding principle and human right to freedom from discrimination be applied, including also in the housing context?

- African Charter on Human and Peoples Rights (1981)
- American Convention on Human Rights (1969)
- Arab Charter on Human Rights (1994)
- (European) Convention for Protection of Human Rights and Fundamental Freedoms (1950)
- European Social Charter (1961)

Has the State participated in the adoption of multilateral agreements in the form of regional-level conferences, summits, or congresses, etc., or voted in favor of resolutions in regional organizations that guarantee application of the over-riding principle and human right to freedom from discrimination, including also in the housing context?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (2000)
- Rabat Declaration (1995)

Gender equality

Which international treaties has the State ratified, acceded to or succeeded to that guarantee the application of the over-riding principle of gender equality be applied, including also in the housing context?

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention on the Rights of the Child (1989)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- International Labour Organisation Convention No. 117 *on Social Policy (Basic Aims and Standards)* (1962)
- International Labour Organisation Convention No. 131 Concerning Minimum Wage Fixing, with Special Reference to Developing Countries (1970)
- International Labour Organisation Convention Recommendation No. 115 concerning Workers' Housing (1961)
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee the application of the over-riding principle of gender equality be applied, including also in the housing context?

- Declaration on Asylum (1967)
- Declaration on the Right to Development (1986)
- Declaration on Social Progress and Development (1969)
- Habitat II Agenda (1996)
- Declaration on Cities and Other Human Settlements in the New Millennium [Habitat II+5 UNGAR S-25/2] (2001)
- International Labour Organisation Recommendation No. 162 concerning Older Workers (1980)
- Istanbul Declaration (1996)
- Rio Declaration and Agenda 21 (1992)
- Social Summit Declaration and Programme of Action (1995)
- Universal Declaration of Human Rights (1948)
- United Nations Commission on Human Rights resolutions
- Vienna Declaration and Programme of Action (1993)
- Durban Declaration and Programme of Action [of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] (2002)
- Johannesburg Declaration of the World Summit on Sustainable Development and Plan of Implementation (2001)

Which regional treaties has the State ratified, acceded to or succeeded to that guarantee the application of the over-riding principle of gender equality be applied, including also in the housing context?

- African Charter on Human and Peoples Rights (1981)
- American Convention on Human Rights (1969)
- American Declaration of Human Rights (1948)
- Arab Charter on Human Rights (1994)
- (European) Convention for Protection of Human Rights and Fundamental Freedoms (1950)
- European Social Charter (1961)

Has the State participated in the adoption of multilateral agreements in the form of regional conferences, summits, or congresses, etc., or voted in favor of resolutions in regional organizations that guarantee the application of the over-riding principle of gender equality be applied, including also in the housing context?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (2000)
- Rabat Declaration (1995)

Rule of law

Which international treaties has the State ratified, acceded to or succeeded to that guarantee the State's application of the over-riding principle of the rule of law, which also extends to the housing sphere?

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention on the Elimination of All Forms of Racial Discrimination (1965)
- Convention on the Rights of the Child (1989)
- Rome Statute on the Establishment of the International Criminal Court (1998)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- International Labour Organisation Convention No. 107 concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (1957)
- International Labour Organisation Convention No. 117 *on Social Policy (Basic Aims and Standards)* (1962)
- International Labour Organisation Convention No. 131 Concerning Minimum Wage Fixing, with Special Reference to Developing Countries (1970)
- ILO Convention No. 169 concerning Indigenous Peoples in Independent Countries (1989)
- International Labour Organisation Convention Recommendation No. 115 concerning Workers' Housing (1961)
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)
- Refugee Convention (1951)
- Convention relating to the Status of Stateless Persons (1954)
- Convention on the Reduction of Statelessness (1961)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee the State's application of the over-riding principle of the rule of law, which also extends to the housing sphere?

- Declaration on Asylum (1967)
- Declaration on the Right to Development (1986)
- Declaration on Social Progress and Development (1969)
- Habitat II Agenda (1996)
- Declaration on Cities and Other Human Settlements in the New Millennium [Habitat II+5 UNGAR S-25/2] (2001)
- International Labour Organisation Recommendation No. 162 concerning Older Workers (1980)
- Istanbul Declaration (1996)
- Rio Declaration and Agenda 21 (1992)
- Social Summit Declaration and Programme of Action (1995)
- Universal Declaration of Human Rights (1948)
- United Nations Commission on Human Rights resolutions
- Vancouver Declaration Human Settlements (1976)
- Vienna Declaration and Programme of Action (1993)
- Durban Declaration and Programme of Action [of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] (2002)
- Johannesburg Declaration of the World Summit on Sustainable Development and Plan of Implementation (2001)

Which regional treaties has the State ratified, acceded to or succeeded to that guarantee the State's application of the over-riding principle of the rule of law, which also extends to the housing sphere?

- African Charter on Human and Peoples Rights (1981)
- American Convention on Human Rights (1969)
- American Declaration of Human Rights (1948)
- Arab Charter on Human Rights (1994)
- (European) Convention for Protection of Human Rights and Fundamental Freedoms (1950)
- European Social Charter (1961)

Has the State participated in the adoption of multilateral agreements in the form of regional conferences, summits, or congresses, etc., or voted in favor of resolutions in regional organizations that guarantee the State's application of the over-riding principle of the rule of law, which also extends to the housing sphere?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (2000)
- Rabat Declaration (1995)

Nonregressivity/nonretrogression

Which international treaties has the State ratified, acceded to or succeeded to that guarantee the State's implementation of the principle of nonregressivity/nonretrogression in the respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human right to adequate housing and land?

- Convention on the Elimination of All Forms of Racial Discrimination (1965)
- Convention on the Rights of the Child (1989)
- International Covenant on Economic, Social and Cultural Rights (1966)
- International Labour Organisation Convention No. 117 on Social Policy (Basic Aims and Standards) (1962)
- International Labour Organisation Convention Recommendation No. 115 concerning Workers' Housing (1961)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee the State's implementation of the principle of nonregressivity/nonretrogression in the respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human right to adequate housing and land?

- Declaration on the Right to Development (1986)
- Declaration on Social Progress and Development (1969)
- Habitat II Agenda (1996)
- Declaration on Cities and Other Human Settlements in the New Millennium [Habitat II+5 UNGAR S-25/2] (2001)
- Istanbul Declaration (1996)
- Rio Declaration and Agenda 21 (1992)

- Social Summit Declaration and Programme of Action (1995)
- Universal Declaration of Human Rights (1948)
- United Nations Commission on Human Rights resolutions
- Vancouver Declaration Human Settlements (1976)
- Vienna Declaration and Programme of Action (1993)
- Durban Declaration and Programme of Action [of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] (2002)
- Johannesburg Declaration of the World Summit on Sustainable Development and Plan of Implementation (2001)

Which regional treaties has the State ratified, acceded to or succeeded to that guarantee the State's implementation of the principle of nonregressivity/nonretrogression in the respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human right to adequate housing and land?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (200)
- Rabat Declaration (1995)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee the State's implementation of the principle of nonregressivity/nonretrogression in the respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human right to adequate housing and land?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (2000)
- Rabat Declaration (1995)

International Cooperation

Which international treaties has the State ratified, acceded to or succeeded to that guarantee the State's implementation of the principle of international cooperation to ensure respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human rights to adequate housing and land?

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention on the Elimination of All Forms of Racial Discrimination (1965)
- Convention on the Rights of the Child (1989)

- Rome Statute on the Establishment of the International Criminal Court (1998)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- International Labour Organisation Convention No. 107 concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (1957)
- International Labour Organisation Convention No. 117 *on Social Policy (Basic Aims and Standards)* (1962)
- International Labour Organisation Convention No. 131 Concerning Minimum Wage Fixing, with Special Reference to Developing Countries (1970)
- ILO Convention No. 169 concerning Indigenous Peoples in Independent Countries (1989)
- International Labour Organisation Convention Recommendation No. 115 concerning Workers' Housing (1961)
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)
- Refugee Convention (1951)
- Convention relating to the Status of Stateless Persons (1954)
- Convention on the Reduction of Statelessness (1961)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee the State's implementation of the principle of international cooperation to ensure respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human rights to adequate housing and land?

- Agenda 21 (1992)
- Declaration on Environment and Development (1992)
- Declaration on Asylum (1967)
- Declaration on the Right to Development (1986)
- Declaration on Social Progress and Development (1969)
- Habitat II Agenda (1996)
- Declaration on Cities and Other Human Settlements in the New Millennium [Habitat II+5 UNGAR S-25/2] (2001)
- International Labour Organisation Recommendation No. 162 concerning Older Workers (1980)
- Istanbul Declaration (1996)
- Rio Declaration and Agenda 21 (1992)
- Social Summit Declaration and Programme of Action (1995)
- Universal Declaration of Human Rights (1948)
- United Nations Commission on Human Rights resolutions
- Vancouver Declaration Human Settlements (1976)
- Vienna Declaration and Programme of Action (1993)
- Durban Declaration and Programme of Action [of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] (2002)
- Johannesburg Declaration of the World Summit on Sustainable Development and Plan of Implementation (2001)

Which regional treaties has the State ratified, acceded to or succeeded to that guarantee the State's implementation of the principle of international cooperation to ensure respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human rights to adequate housing and land?

- African Charter on Human and Peoples Rights (1981)
- American Convention on Human Rights (1969)
- American Declaration of Human Rights (1948)
- Arab Charter on Human Rights (1994)
- (European) Convention for Protection of Human Rights and Fundamental Freedoms (1950)
- European Social Charter (1961)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee the State's implementation of the principle of international cooperation to ensure respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human rights to adequate housing and land?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (2000)
- Rabat Declaration (1995)

What additional multilateral commitments has the State made to guarantee nondiscrimination in the respect, protection, promotion and fulfillment of the human right to adequate housing and, by extension, participation and self-expression?

Do not forget that the body of the binding international treaties that the State already has ratified contains binding human rights obligations that take precedence over nonbinding declarations of mere intent or political will. Monitoring these obligations is the covenanted task of the treaty parties [ratifying States], which has been delegated to neutral treaty-monitoring bodies that are supported in their task by government and civil-society monitors. Keep in mind also that some multilateral declarations and many agreements with international financial and development institutions may contain standards less protective of human rights and freedoms than those of a binding nature under human rights treaties. Those agreements may even impede the enjoyment of economic/social/cultural rights. Such agreements are to be evaluated subject to prior human rights treaty obligations—not vice versa.

✓ Local guarantees

Ratifications and international commitments

Which international treaties has the State ratified (acceded or succeeded to) that guarantee the human right to adequate housing, in particular participation and self-expression?

Constitutional provisions

- Does the State have a Constitution, or equivalent, guaranteeing the right to human right to housing and land, including participation and self-expression?

- Does the State have a Constitution, or equivalent, guaranteeing the right to local self-determination?
- Does the State have a Constitution, or equivalent, guaranteeing the right to freedom from discrimination?
- Does the State have a Constitution, or equivalent, guaranteeing gender equality?
- Does the State have a Constitution, or equivalent, guaranteeing the rule of law, including access to justice and democratic participation and representation?
- Does the State have a Constitution, or equivalent, guaranteeing the right to the continuous improvement of living conditions?
- Does the State have a Constitution, or equivalent, providing that international relations be conducted within the framework and objectives of human rights, including economic, social and cultural rights?

National legal system

- Is the right to adequate housing, including participation and self-expression recognized as a distinct right in the country's legal system?
- Is national and local legislation consistent with the human rights right to housing and land, including participation and self-expression?
- Is national and local legislation consistent with the principle of local self-determination?
- Is national and local legislation consistent with the right to freedom from discrimination? What statutes has the State/government legislated, and are in force, to ensure nondiscrimination in the respect, defense, promotion and implementation of the human right to adequate housing, in particular, participation and self-expression?
- Do the concerned persons or community have the sense that the terms of their entitlement to participation and self-expression are equal and consistent with others'?
- Does national and local law maintain the principle of gender equality, particular as it relates to housing, land and participation and self-expression?
- Do local and national laws and regulations uphold the rule of law, including access to justice and democratic participation and representation in matters related to housing, land and participation and self-expression?
- Does the State's legal system maintain the right to the continuous improvement of living conditions?
- Are the laws and regulations of the State consistent with the principle that international relations, including international entities operating locally, conduct themselves within the framework and objectives of human rights, including economic, social and cultural rights, in particular, the human right to adequate housing and land, including participation and self-expression?

- Does the performance of the law-enforcement services guarantee the practice and enforcement of the respect, defense, promotion and implementation of the human right to adequate housing, including participation and self-expression?
- Are judges and lawyers performing sufficiently and consistently to uphold the human right to adequate housing, including the entitlement of participation and self-expression? What are some examples?

Institutions

- Is there a sense in the community that the State and government institutions represent their aspirations to self-determination?
- What State and public institutions exist as a guarantee of nondiscrimination in the respect, defense, promotion and implementation of the human right to adequate housing, in particular, participation and self-expression?
- Do the concerned persons or community have the possibility to exercise an effective role in determining the terms and conditions of participation and self-expression?
- What State and public institutions exist as a guarantee of gender equality in the defense, promotion and implementation of the human right to adequate housing, in particular, participation and self-expression?
- What private and nongovernmental institutions exist as a guarantee of gender equality in the defense, promotion and implementation of the human right to adequate housing, in particular, participation and self-expression?
- What informal institutions (including social norms) function so as to help implement the human right to adequate housing and, in particular, participation and self-expression?¹⁰³⁸
- What social institutions and consistent social practices exist as a guarantee of gender equality in the defense, promotion and implementation of the human right to adequate housing, in particular, participation and self-expression?
- How have these institutions actually improved capacity to protect, or actual protection of participation and self-expression for those in need?

Policies

- What statewide policies are in place and implemented to guarantee of the human right to adequate housing and, in particular, participation and self-expression?

Keep in mind that the body of the binding international treaties that the State has ratified contain provisions that call for human rights to be implemented in the presence of the over-riding principles of self-determination, nondiscrimination, gender equality, the rule of law, international cooperation in the implementation of human rights, and progressive

¹⁰³⁸ The operative concept of institutions here encompasses both bonding and bridging institutions. "Institutions," in this sense, involve the rules of the game under which formal and informal activity is conducted, and include public institutions, private institutions, collective practices and norms, as well as changing norms (e.g., brought about through the youth, technology, economic or demographic shifts, and other emerging behaviours). According to Douglas C. North, 1993 Nobel economics laureate, institutions are "humanly devised constraints that shape human interaction."

realization (nonregressivity/ nonretrogression) and the continuous improvement of living conditions.

- How have national policies enhanced local self-determination so as to ensure acceptable levels of participation and self-expression?
- How have national policies to ensure nondiscrimination positively affected participation and self-expression in the country?
- How have national gender policies led to improvements in the conditions of participation and self-expression in the housing sphere, especially for those in need?
- How have the State's policies on access to justice enhanced conditions of participation and self-expression, especially for those in need?
- How have national housing policies ensured the continuous improvement of living conditions, in particular the housing rights entitlement of participation and self-expression, especially for those in need?
- In what ways have national housing policies ensured that international relations and international entities operating within the country respect, defend, promote and fulfil the human right to housing, in particular the entitlement of participation and self-expression for those in need?
- To what extent have external parties positively influenced your country's official policies or practices in guaranteeing the entitlement to participation and self-expression?

Programs

- What progressive steps has the State made on a national scale in the past period (year[s], or since your last assessment) to improve housing rights, especially the entitlement of participation and self-expression? (These may include: law reforms, improved infrastructure, more effective implementation methods, population registry programs, programs to consider ratification of international covenants, and evaluations of housing rights implementation, etc.)

Keep in mind that the body of binding international treaties that the State has ratified contain provisions that call for human rights to be implemented in the presence of the over-riding principles of self-determination, nondiscrimination, gender equality, the rule of law, international cooperation in the implementation of human rights, and progressive realization (nonregressivity/ nonretrogression) and the continuous improvement of living conditions.

- What private-sector or NGO programs are in place and implemented to guarantee the human right to adequate housing and, in particular, participation and self-expression?
- How have these national programs enhanced local self-determination in a way that has improved the conditions of participation and self-expression?
- What national programs are completed, ongoing, or planned to ensure nondiscrimination positively affected participation and self-expression in the country?

- ❑ Are there any national gender programs completed, ongoing or planned with the purpose and effect of improving the conditions of participation and self-expression in the housing sphere, especially for those in need? Do they cover land rights and inheritance issues?
- ❑ What are have the State's recent, present or future programs to enhance access to justice that are intended to improve housing and living conditions, especially for those in need? How have those programs implemented to date succeeded in enhancing participation and self-expression of housing?
- ❑ How have national housing programs ensured the continuous improvement of living conditions, in particular the housing rights entitlement of participation and self-expression, especially for those in need?
- ❑ In what ways have national housing programs ensured that international relations and international entities operating within the country respect, defend, promote and fulfil the human right to housing, in particular the entitlement of participation and self-expression for those in need?
- ❑ Has the government in the concerned State cooperated with other State or non-State parties to find identify and adapt good practices locally to improve participation and self-expression for all those living there?

Projects

- ❑ What progressive actions has the State undertaken in the way of limited-scale or pilot projects in the past period (year[s], or since your last assessment) to improve housing rights, especially the entitlement of participation and self-expression?
- ❑ What private-sector or NGO projects are in place and implemented to guarantee the human right to adequate housing and, in particular, participation and self-expression?
- ❑ How have such local projects enhanced local self-determination in a way that has improved the conditions of participation and self-expression?
- ❑ What projects completed, ongoing, or planned to ensure nondiscrimination positively affected participation and self-expression in the country?
- ❑ Are there any gender-based projects completed, ongoing or planned with the purpose and effect of improving the conditions of participation and self-expression in the housing sphere, especially for those in need? Do they cover land rights and inheritance issues?
- ❑ What are have the State's recent, present or future projects to enhance access to justice that are intended to improve housing and living conditions, especially for those in need? How have those programs implemented to date succeeded in enhancing participation and self-expression of housing?
- ❑ How have these projects ensured the continuous improvement of living conditions, in particular the housing rights entitlement of participation and self-expression, especially for those in need?
- ❑ In what ways have public or private projects ensured that international relations and international entities operating within the country respect, defend, promote and fulfil the

human right to housing, in particular the entitlement of participation and self-expression for those in need?

- Has the government in the concerned State cooperated with other State or non-State parties to find identify and adapt good practices locally through projects that actually improve participation and self-expression for all those living affected?
- Are there foreign State or foreign private interests operating projects affecting the housing and human settlements sector in the country and affecting the situation under review? Are their roles positively affecting the enjoyment of participation and self-expression?

Budgets

- What public budgets are in place to guarantee the human right to adequate housing and, in particular, participation and self-expression? How does the budget correspond to actual spending and implementation targets?
- Is the necessary public budget information available to conduct a multiyear assessment of the financial performance of policies, programs and projects affecting housing and living conditions of those vulnerable and needy inhabitants of the country?
- Does the public have access to the budgets of private companies and organizations operating in the housing sphere and having an effect on the housing rights entitlement of participation and self-expression?
- Does the reliable budget information support the public claims of those responsible for the budgets intended for improvement of living conditions of the needy, particularly in the housing rights entitlement of participation and self-expression?
- What international obligations and commitments affect the public budget with ramifications on the housing sector, including the entitlement of participation and self-expression?
- What national obligations and commitments affect the public budget with ramifications on the housing sector, including the entitlement of participation and self-expression?
- What financial policies affect the public budget with ramifications on the housing sector, including the entitlement of participation and self-expression?

10.5. Obstacles, impediments, barriers

At the present stage in the monitoring process, you have well identified the elements arising from the human right and legal concept of adequate housing. You have completed the necessary review of international minimum standards that codify the right, along with the corresponding obligations on the ratifying State. Your process has taken you through the moral arguments of social movements and others, who are the very source of human rights throughout history. Those sources fill legal gaps and provide specificity to local human rights priorities and application. In your context, you also have identified which of the binding instruments and other theoretical guarantees apply to the case at hand.

At this point, you are advancing beyond the theoretical dimensions of the human right to adequate housing, its constituent elements and its guarantees. As a housing-and-land-rights monitor, you will now enter the practical dimension and assess the most difficult challenge in the field of human rights: implementation. The following sample questions guide the monitor to prepare needed data and arguments by detailing the present obstacles, impediments, barriers, threats and constraints that have brought about, or threaten to bring about a violation or deprivation of the right and the element of participation and self-expression, which you are currently addressing.

When monitoring documenting any stage of this toolkit inquiry, or assessing the conditions affecting any right, it is essential to ensure the highest quality of information possible. It has been said often that information is power. In our case, this is especially true, but the degree of that power will depend largely on the following qualities of your information:

- Completeness
- Level of detail and specificity
- Date (freshness) of the information
- Integrity of the information (i.e., lack of contradictions)
- Effective (articulate, concise, understandable and correct) use of language
- Relevance: linkage to the question of housing and land rights implementation
- Credibility of source (reputation, effective presentation, link to issue and community)

In order to begin assessing the compatibility of the theoretical affirmations of the human right to housing and land with the local reality, you will determine now whether, and to what extent barriers, contradictions, obstacles, and impediments contribute to actual and/or potential violations of the congruent right to participation and self-expression. This process is aided with the following battery of questions:

- Are the prevailing terms and conditions of decision-making processes affecting housing and community development contradictory to the traditional institutions of the community? [See also the housing rights entitlement of “**Cultural adequacy**” in this toolkit.]
- Do obstacles and impediments to adequate information related to housing and community development impede the human right to participation? [See the congruent right to “**Information, education, capacity and capacity building**” in the present toolkit.]

✓ **Obstacles to the over-riding principles**

Self-determination

- Are the people dissatisfied with the terms of their participation and self-expression?
- Do the concerned persons or community lack the possibility to exercise an effective role in determining the terms of participation and self-expression?
- Does nepotism or other forms of corruption impede individuals or communities from exercising their congruent right to participation and self-expression in the housing context?
- Does the community lack sufficient information or capacity sufficiently to enjoy the human right to adequate housing, in particular, the entitlement and congruent right to

participation and self-expression? [See the “**Information, education, capacity and capacity building**” entitlement in this toolkit.]

- Is illiteracy an impediment to the community’s access to sufficient information to enjoy the human right to adequate housing, in particular the congruent right to participation and self-expression? [See the “**Information, education, capacity and capacity building**” entitlement in this toolkit.]

Nondiscrimination

- To what extent is discrimination an issue in realizing the congruent right to participation and self-expression?
- Is there (does the affected community report) any type of discrimination practiced randomly, occasionally or on the social level, or institutionalized in some form, affecting participation and self-expression?
- What are the nature of the discrimination and its effects of the entitlement of participation and self-expression?

Gender equality

- Is there any gender-based discrimination applied in realizing the congruent right to participation and self-expression?
- Is the discrimination practiced randomly, occasionally or on the social level, or is it institutionalized in some form such that affects participation and self-expression?
- Does local law on inheritance, divorce or other specialization fail to provide equal rights to males and females of all ages? How?

Rule of law

- Has the State failed to ratify any of the relevant international or regional treaties guaranteeing the human right to adequate housing?
- Has the State issued any reservations, declarations or understandings to international or regional treaties that possibly limit the affect of human right to adequate housing guarantees, particularly so as to affect the entitlement of participation and self-expression?
- Has the State government failed to conduct a legal evaluation of housing rights implementation?
- Has the State government failed to present timely reports to the relevant treaty-monitoring bodies covering the human right to adequate housing?
- Has the State and its government failed to implement in good faith the Concluding Observations of the various treaty bodies concerning implementation of the human right to adequate housing?
- Do the three branches of government (judiciary, legislative and executive) operate with autonomous authority?



- Do the three branches of government coordinate to uphold and enforce a single system of law?
- Does the State lack a Constitution, or equivalent, guaranteeing gender equality?
- Does the State lack a Constitution, or equivalent, guaranteeing the rule of law, including access to justice and democratic participation and representation?
- Does the State lack a Constitution, or equivalent, guaranteeing the right to the continuous improvement of living conditions?
- Does the State lack a Constitution, or equivalent, providing that international relations be conducted within the framework and objectives of human rights, including economic, social and cultural rights?
- Does the country's legal system lack recognition of the human right to adequate housing, including participation and self-expression?
- Do legal or procedural shortcomings impede the admissibility of claims invoking international treaty obligations in the defense of human right to adequate housing, in particular, the entitlement and congruent right to participation and self-expression?
- Has the State failed to ratify the Rome Statute on the International Criminal Court, limiting the options to seek justice and remedy for gross violations of the human right to adequate housing?
- Does the political system in the country lack coordination among branches of executive, legislative and judicial government?
- Does the State lack a Constitution, or equivalent, guaranteeing the rule of law, including access to justice and democratic participation and representation?
- Are there contradictions in the national law affecting participation and self-expression?
- Is there insufficient enforcement of laws and/or policies against arbitrary eviction enforced, including safeguards for vulnerable groups, such as: women, children, orphans, etc.?
- Do local authorities fail to recognize explicitly the application of the international human rights treaties that the State has signed and/or ratified and that guarantee the human right to adequate housing, including the entitlement of participation and self-expression?
- Has the legislature failed to harmonize national laws with international human rights treaty obligations in the formulation of policies affecting the human right to adequate housing, in particular, with affect on the congruent right to participation and self-expression?
- Is national and local legislation inconsistent with the human rights right to housing and land, including participation and self-expression?
- Is law enforcement inadequate to ensure enjoyment of the entitlement of participation and self-expression?

- Are law enforcement officers in need of training in, and information about the human right to adequate housing in order to uphold the entitlement of participation and self-expression?
- Do lawyers, prosecutors and/or judges lack awareness and training in the housing and land rights law in order to uphold and defend the entitlement of participation and self-expression?
- Has the national court system failed in any way to admit claims of housing and land rights victims, including those whose congruent right to participation and self-expression has been violated?
- Do the rule-of-law, regulations, or their enforcement fail to govern market forces effectively to ensure the respect, protection, promotion and fulfilment of the right to adequate housing (e.g., governing monopolies, procedures for legal redress)? How does fact affect the enjoyment of the housing rights congruent right to participation and self-expression?
- Does local law restrict civil society associations from advocating rights or providing services that would advance the respect, defense, promotion and fulfillment of the human right to housing, including the congruent right to participation and self-expression?

Nonregressivity / nonretrogression

- Has the State failed to take steps to improve housing rights, especially affecting participation and self-expression, in the past period (year[s], or since your last assessment)?
- Have new laws degraded protection of human right to adequate housing in the recent period, particularly affecting participation and self-expression?
- Have new policies degraded protection or enjoyment of human right to adequate housing in the recent period, particularly affecting participation and self-expression?
- Have national programs led to a decline in the enjoyment of human right to adequate housing in the recent period, particularly affecting participation and self-expression?
- Have infrastructure or physical features of the built or natural environment led to a decline in the enjoyment of human right to adequate housing, particularly affecting participation and self-expression?
- Have nationwide programs failed to improve, or led to a decline in, the enjoyment of human right to adequate housing, in particular the terms of participation and self-expression?
- Have local projects supported by State or local authorities failed to improve, or led to a decline in, the enjoyment of human right to adequate housing, in particular the terms of participation and self-expression?
- Have public budget allocations failed to improve, or led to a decline in, the enjoyment of human right to adequate housing, in particular the terms of participation and self-expression?

- ❑ To what extent has the State government's efforts fallen short in the improvement the terms of participation and self-expression, especially of the poor, vulnerable and minorities?

International cooperation

- ❑ Are foreign State or non-State interests operating in the housing and human settlements sector in the country and affecting the entitlement of participation and self-expression? Are their roles negatively affecting the enjoyment of participation and self-expression?
- ❑ To what extent have external parties (States, or international financial institutions) negatively influenced your country's official policies or practices in guaranteeing the right to participation and self-expression?
- ❑ Has the State neglected to take steps, "individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources" and capacities to ensure (especially poor and vulnerable) people's participation and self-expression?

✓ Local obstacles

Institutions

- ❑ As far as human right to adequate housing and participation and self-expression are concerned, are there gaps or shortcomings in the State, government and other public institutions positioned to improve living conditions, including the housing-rights entitlement of participation and self-expression?
- ❑ Has there been a recent decrease in the quantity or quality of civil society institutions upon which the community now relies.
- ❑ Do the concerned private and nongovernmental institutions fail to guarantee gender equality in the defense, promotion and implementation of the human right to adequate housing, in particular, participation and self-expression?
- ❑ What informal institutions (including social norms) function so as to impede the enjoyment of the human right to adequate housing and, in particular, participation and self-expression?¹⁰³⁹
- ❑ Do these institutions actually lack the will or capacity to protect legal participation and self-expression for those in need?



¹⁰³⁹ The operative concept of institutions here encompasses both bonding and bridging institutions. "Institutions," in this sense, involve the rules of the game under which formal and informal activity is conducted, and include public institutions, private institutions, collective practices and norms, as well as changing norms (e.g., brought about through the youth, technology, economic or demographic shifts, and other emerging behaviours). According to Douglas C. North, 1993 Nobel economics laureate, institutions are "humanly devised constraints that shape human interaction."

- Do these institutions actually lack the will, knowledge or capacity to use the relevant treaty body Concluding Observations in work of monitoring and lobbying officials

Policies

- Do the relevant ministries omit to incorporate international human rights treaty obligations in the formulation of policies affecting the human right to adequate housing, in particular, with affect on the congruent right to participation and self-expression?
- What statewide policies are still needed to guarantee of the human right to adequate housing and, in particular, participation and self-expression?
- Have the relevant national policies neglected to ensure acceptable levels of self-determination in determining the terms and conditions of participation and self-expression? How and why?
- Have national policies failed to reach their targets (even despite announcements of official intent) positively to affect participation and self-expression? How and why?
- Have national gender policies led to improvements in the conditions of legal participation and self-expression in the housing sphere, especially for those in need? How and why?
- Have the State's policies on access to justice failed to improve conditions of legal participation and self-expression, especially for those in need?
- Have national housing policies failed to ensure the continuous improvement of living conditions, in particular, by stagnating or degrading the housing rights entitlement of participation and self-expression, especially for those in need? How and why?
- Do national housing policies lack consideration of, and/or reference to the international human rights instruments relevant to the human right to adequate housing and participation and self-expression, and to which the State is bound?
- To what extent have external parties negatively influenced your country's official policies or practices in guaranteeing the participation and self-expression?
- Have State housing-policy implementing institutions omitted to seek international cooperation in the human right framework by conditioning international entities operating within the country also to respect, defend, promote and fulfil the human right to housing, in particular the entitlement of participation and self-expression?

Programs

- What negative steps has the State taken on a national scale in the past period (year[s], or since your last assessment) to improve housing rights, especially the entitlement of participation and self-expression? These may include declining legal assistance laws, deteriorating infrastructure without repair, declining implementation efforts?
- What related private-sector or NGO programs have failed to enhance the enjoyment of the human right to adequate housing, in particular, participation and self-expression?
- Is there a lack of, and need for national gender programs completed, ongoing or planned with the purpose and effect of improving the conditions of legal participation and self-expression in the housing sphere, especially for those in need?

- Do existing programs omit to cover land and inheritance rights?
- Have the intergovernmental relations declined between your State and others leading to a decline on options for international cooperation in advancing the respect, defense, promotion and/or fulfilment of the human right to adequate housing, in particular participation and self-expression?
- Has the government in the concerned State declined to cooperate with other States, intergovernmental agencies, or foreign non-State parties to identify and adapt good practices locally to improve the congruent right to participation and self-expression?

Projects

- What relevant State actions or omissions have led to the failure of limited-scale or pilot projects in the past period (year[s], or since your last assessment) to improve housing rights, especially the entitlement of participation and self-expression?
- What private-sector or NGO projects have failed to seek, or fallen short of their intended goal to guarantee the human right to adequate housing and, in particular, participation and self-expression?



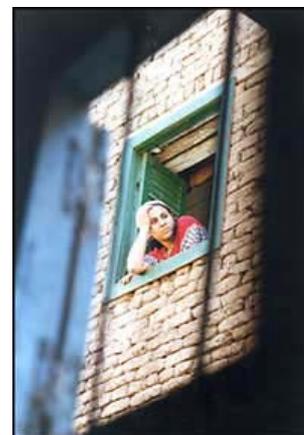
- Have such local projects undermined local self-determination with negative effect on the conditions of participation and self-expression? How and why?
- Are foreign State or foreign private interests operating projects negatively affecting the housing and human settlements sector in the country and affecting the entitlement of participation and self-expression? How and why?
- Have projects conducted by local or international entities in the country privatized the provision of housing or public services replaced the role and responsibility of the State and local authorities to fulfil the human right to adequate housing, in particular the entitlement of participation and self-expression for those in need?

Budgets

- Are there obstacles to obtaining adequate information about public expenditures in the housing sector, or in areas affecting the enjoyment of the human right to adequate housing, including participation and self-expression?
- Is there a lack of legal and actual protection of the right to information, including information and documentation on public budget expenditures in the housing sphere related to the entitlement of participation and self-expression?
- Are public budgets inadequate to guarantee the human right to adequate housing and, in particular, participation and self-expression?
- Is there underspending of the budget such that impedes the achievement of policy, program or project implementation targets, affecting participation and self-expression?
- Do public budget items and actual financial performance reflect a lack of sufficient priority given to implementing policies, programs and projects to improve housing and living

conditions, affecting also participation and self-expression, of those vulnerable and needy inhabitants of the country?

- Does the public have access to the budgets and financial performance data of private companies and organizations operating in the housing sphere and having an effect on the housing rights entitlement of participation and self-expression?
- Does the reliable budget information contradict the public claims of officials and institutions responsible for the continuous improvement of living conditions of the needy, particularly in the housing rights entitlement of participation and self-expression?
- Do international obligations and commitments negatively affect the public budget with ramifications on the housing sector, including with negative affect on the entitlement of participation and self-expression?
- What national obligations and commitments affect the public budget with ramifications on the housing sector, including the entitlement of participation and self-expression?
- What financial policies constrain the public budget with negative consequences on the housing sector, including the entitlement of participation and self-expression?
- Is the achievement of participation and self-expression accompanied by an inordinate economic burden?
- Is the State failing to regulate effectively the terms and conditions of housing market, so as to avoid corruption, collusion, fraud, discrimination, nepotism and any arbitrary criteria? How is this affecting the entitlement of participation and self-expression?
- Is the State prohibiting or impeding individual and community initiatives toward obtaining participation and self-expression, individually as well as collectively?
- Are State authorities permitting other parties to interfere with community efforts toward obtaining participation and self-expression, individually as well as collectively?
- Are present government mechanisms and structures inefficient at assisting the needy population from gaining access to participation and self-expression?
- Does the State lack needed resources to ensure participation and self-expression, especially for the poor, vulnerable and needy?
- Does national political disharmony impede enjoyment of the human right to adequate housing and participation and self-expression?
- Is there armed conflict in the country impeding the private and/or public institutions from carrying out development and delivering services that safeguard and improve participation and self-expression conditions?
- Has a natural disaster inflicted parts of the country, creating conditions that negatively affect the human right to adequate housing, including the congruent right to participation and self-expression? Do these conditions impede relief or reconstruction assistance by public and private actors?



10.6. The victims and vulnerable persons: the actors

At this step in the housing and land rights monitoring process, you will have to provide relevant facts and figures concerning the people who already have been affected and those who remain vulnerable. You should also identify and describe precisely which part of the population is affected.

Those affected (victims or vulnerable) individuals and groups could be, for example, an indigenous community historically undergoing discriminatory treatment and land confiscation. It is essential to report the number of affected people, among them proportions of children, women and other groups having special needs, such as the elderly, who may be particularly affected.

In your inquiry into the identities of the victims and the vulnerable inhabitants, it is vital that you determine the place and time, as well as the characteristics of the affected persons in the case. The numbers and any demographic data of the composition of the affected population are critical to understanding the case and characterizing the type of violations. The violation or vulnerability may be multidimensional (or intersectional), involving more than one form of discrimination. Knowing the victims and vulnerable persons can help determine which combinations of housing rights elements are simultaneously affected. In describing the population, knowing the particular vulnerabilities and special needs of the affected persons or community (whether arising from historical factors, gender, age or other demographics) complete the picture that you eventually will present to your intended audience.

✓ Distinguishing between the victims and vulnerable

It is also important for the monitor to distinguish between those victims, whom already have been violated, and those who are vulnerable to future violation or deprivation. Of course, this distinction will be strategically important later in the process, when the housing and land rights monitors and defenders choose an action in response to the violation. You will have to determine then if your intervention is to be remedial or preventive. In any case, an eye to those who remain vulnerable even after the principal violation, as well as after a particular solution to a case, will maintain the monitors focus—as necessary—on the further interventions needed toward the ultimate realization of the human right to adequate housing and land.



The following sample questions guide the monitor to prepare needed data and arguments, in the case of any present obstacles, but focusing on the human dimension in the case of a violation of the congruent right to participation and self-expression.

Victims

- Identify the type and form of violation of the congruent right to participation and self-expression:
 - Homelessness
 - Forced eviction
 - Arbitrary demolition
 - Denial of equal inheritance rights
 - Confiscation of property by public officials and bodies

- Confiscation by private actors (criminal gang, settlers, armed groups)
- Who has been affected by the violation of the entitlement of participation and self-expression?
- How many people have been affected in the same way in the last year (any time period)? Does it demonstrate a pattern?
- Identify and provide demographic details of the victims:
 - Numbers and proportions of refugees
 - Numbers and proportions of migrant workers
 - Numbers and proportions of minority persons
 - Numbers and proportions of males and females
 - Numbers and proportions of indigenous and/or tribal and semitribal people
 - Numbers and proportions of elderly, disabled, medically challenged persons with special needs
 - Numbers and proportions of members of groups subject to (current and historic) discrimination
 - Numbers and proportions of impoverished inhabitants, including those subject to discrimination on the basis of their economic status or work (e.g., Dalits)
 - Numbers and proportions of any other relevant group identity of victims
- Where does the violation of this right mostly occur (i.e., rural, urban, slums)?
- When does this violation mostly occur? Day or night? Weekend? Certain times of the year? Why does the violator choose this timing?

Vulnerable individuals and groups

- Identify the type and form of vulnerability to future violation of the congruent right to participation and self-expression:
 - Homelessness
 - Forced eviction
 - Arbitrary demolition
 - Denial of equal inheritance rights
 - Confiscation of property by public officials and bodies
 - Confiscation by private actors (criminal gang, settlers, armed groups)
- Who are the populations most likely to experience the violation of the right to participation and self-expression? Why are they vulnerable?
- Identify and provide demographic details of the concerned vulnerable persons or groups:
 - Numbers and proportions of refugees
 - Numbers and proportions of migrant workers
 - Numbers and proportions of minority persons
 - Numbers and proportions of males and females
 - Numbers and proportions of indigenous and/or tribal and semitribal people
 - Numbers and proportions of elderly, disabled, medically challenged persons with special needs
 - Numbers and proportions of members of groups subject to (current and historic) discrimination

- Numbers and proportions of impoverished inhabitants, including those subject to discrimination on the basis of their economic status or work (e.g., Dalits)
 - Numbers and proportions of any other relevant group identity of vulnerable persons
- Explain the insecurity of their situation and give details about the naturally vulnerable populations (women, children, indigenous, slum dwellers, refugees, workers/migrant workers, farmers, etc.).

Focus on multidimensional / intersectional affects

Your case will be enhanced when your information includes emphasis on the particular types of victimization or vulnerability by focusing on the social groups typically subject to multidimensional, or intersectional types of deprivation. The monitor should identify such multiple forms of deprivation for each of the groups already identified in this section (above). This step allows you to identify the nature and causes of the particular affects on certain groups who may be made vulnerable already in addition to, or in advance of the specific housing land rights violation, or anticipated violation. The following sample questions will lead you to clarify this point.

Women

- Are women in the given community or case subject to deprivation of their congruent right to participation and self-expression?
- What are the reasons for this condition? Is it by some custom, religion or other ideological motivation?
- Does the practice of domestic or social violence against women somehow impede women's enjoyment of their congruent right to participation and self-expression?
- Are the formal or informal terms of inheritance already biased against women in a way that negatively affects the enjoyment of the congruent right to participation and self-expression?

Children

- Do housing conditions impede acceptable access to public goods and services as an element of the RAH, so as to obviate violence and abuse, including psychological & sexual abuse, within the home or community?
- Are housing conditions, in particular, the rights element of participation and self-expression, suitable for children to carry out their studies?
- Are housing conditions, including participation and self-expression, conducive to achieving the highest attainable standard of physical and mental health?

Racial, ethnic or other groups

- Who are the victims or vulnerable persons or community subject to discrimination that includes denial of participation and self-expression?

- ❑ Have the affected persons or groups (either the vulnerable or the victims) been denied their right to suitable housing, and particularly to participation and self-expression, because they belong to a specific minority, ethnic or indigenous group?
- ❑ How has historic discrimination, if any, affected the current situation?

✓ **Victims' case documentation form**

10.7. Losses/consequences

✓ **Quantification methodology**

Quantifying violations to the right to adequate housing: a tool for evaluating the effects of demolitions, confiscations and forced evictions

The purpose of this tool is to help determine the value of costs and losses that victims incur as a consequence of the violation their housing rights. Using this tool will aid in the various necessary stages of proper monitoring of specific violations of the right to housing, including:

1. Documentation and recording
2. Monitoring and reporting
3. Quantifying/evaluating
4. Identifying and solving problems
5. Follow-up assessments
6. Fact-finding missions
7. Public information and campaigns
8. Social mobilization
9. Media work
10. Compensation efforts
11. Legal defense and prosecution
12. Monitoring international obligations

The quantification methodology and “Loss Matrix” are designed to aid human rights workers responsible for each stage in the monitoring process, including interventions that are both preventive and remedial. These stages may involve the same individual human rights worker at each stage, or may involve a division of team labor. In either case, this tool also can serve as a vehicle for organizing tasks in a coordinated and complementary way, when more than one individual or organization is involved in the process. For instance, if different teams or organizations are specializing in respective geographical areas, applying this tool commonly aids the process to avoid duplication and the discrediting contradiction of facts.

Whether or not your monitoring objective is legal defense, policy analysis, compensation or public information, the quantification of the effects of the violation strengthen your argument and, consequently, help mobilize support for the movement to end, redress and compensate/obtain restitution for the violations. In particular, your findings will substantiate the assertion that many housing rights violations actually widen and deepen poverty, having a de-development effect on the community and country.

The material and otherwise-calculable costs resulting from the violation are determined for each unit (household) affected and then totaling them. Alternatively, in the case of multiple units affected, a representative sample should be obtained to determine the average values, which then are to be multiplied by actual numbers of units affected.

Other incalculable losses still have to be recorded and reported in narrative terms. Such narrative explanation and analysis will be useful as an accompaniment to this quantification table.

Both short-term and long-term values are to be assessed.(You can follow examples of traffic dispute jurisprudence, or the law pertaining to insurance or divorce cases in your country to come up with a methodology of determining personal injury and pain-and-suffering damages claims for compensation purposes.) Accurate and thorough quantification of costs and losses calls for both a great deal of cooperation between the monitor and the affected community, and a continuous relationship over time.In order to capture many of the values, sustained monitoring and calculation are required over time. It is, therefore, recommended that such monitoring effort be undertaken or coordinated by those who maintain a program and commitment to the affected community over the long term.

This tool seeks to quantify the costs of victims, as well as public, or social costs. For our purposes, the principal victim(s) would be those persons whose property and lives are directly affected by the act, be it a demolition, confiscation and/or eviction, etc.(This tool would be used for any and all categories of violation.) Ancillary or indirect victims would be those who undergo the cost or other harm as a result of an act intended or directed at others. The indirect victims' losses and damage should be included in the overall assessment of the violation's effects.

The middle column, entitled "Methodology," in the quantification table found at the "[Loss Matrix](#)" link contains commentary on the contents of the calculated costs/losses and provides guidance on how to calculate them. It is there where you will record in your applied version of the "Loss Matrix" the type of items or values totaled under the particular type of cost/loss. There, too, you could cite whether or not the values are losses/costs to the principal victims only, or include those of indirect victims, such as those enduring collateral damage from a house demolition. The "Methodology" description should be as complete but concise as possible, within a short line or two.

It is possible to modify "Loss Matrix" to the user's discretion. (However, we emphasize that any modifications be shared among the community of monitors to ensure compatibility of findings.) For example, certain direct and indirect victims' losses may need to be separately calculated for some reason. In that case, an additional column can be added. In any case, however, it is important to arrive at a global cost figure for the violations under review. The column at the far right under each category of cost should be totaled using the imbedded Excel formula.

Follow the links to access the details of the quantification methodology and "[Loss Matrix](#)."

- Victim's material losses
- Victim's nonmaterial losses
- Other than victim's material losses (public costs)
- Other than victim's nonmaterial losses (including social costs)

Contents and methodology for determining each category of loss/costs

Victims' Material Losses

The Structure

The fair market value of the house, shelter or other structure(s). This is probably greater than the cost, as indicated in official records of the most recent tax assessment, for example. That price may be a guide, but is likely to be out of date with the value that would be obtained if the property were to be sold on the market. The market value would also likely be less than the “speculative value,” which is considered to be that value (price) that a speculator, investor or other interested party would anticipate after the demolition/eviction and after converting the structure—if partially retained—for eventual exchange or reassessment. The reference for determining the market value would be reliable real estate agents, banks, or other parties involved in the sale and exchange of such properties. The standard methodology would involve collecting three quotes/estimates and selecting the average, or taking the middle quote as the fair market value.

In the likely event that no such property market is actively issuing quotes on the value of the affected property. The remaining alternative method for determining market value would be the estimated cost of replacing the property at current market values.

Note that the victim incurring the loss in this case would be the owner(s) and or title holder(s), including those owning the property individually, or collectively, under formal title, or by traditional tenure systems.

Plot

The plot and the structure are considered separately in this methodology to accommodate systems where the two aspects of property value are determined separately, or by different methods. For example, a cooperative arrangement may provide for outright title to the structure, but a “share” of the land area under it. It also allows for disaggregating these values in the event of a dispute over one and not the other. In the event that the structure and the land are both held in title by the same owner and the values are customarily assessed in combination, the structure and plot values could be combined in the matrix.

The eviction and/or demolition may not involve the dispossession of land title or ownership of the plot on which the structure stands. In that case, the evaluator would proceed to the next categories and not enter a value for the plot. However, in some cases, such as in Israel, the land plot under a demolished structure may, perforce, be assumed by, or “revert to” the state as “state land” or “national land.” The evaluator must be familiar with the local laws and regulations to determine if that is the case in the event of an eviction or demolition. That may determine whether or not a value is entered in this category of the matrix or not.

In the case of a housing plot being confiscated by the state, determining the value of that plot may be difficult if, again, no market value can be determined for the affected area. In that case, the methodology would involve determining the cost at current market value of a comparable site in another location.

Contents

Each affected party should cooperate with the field workers to provide an inventory of the actual contents lost and damaged in the demolition. The value of those contents for this quantification purpose is the **replacement value** of the items, not the market value. The contents (furniture, clothing, foodstuffs, electronics, housewares items, etc.) would be subject to depreciation and the resale or fair-exchange values would not be sufficient to cover the cost of replacement. The replacement value represents the actual cost of

repurchasing items comparable in quality to those lost or damaged by the demolition. (For heirlooms and other items sentimental value, a replacement costs should be included in this category; however, the nonmaterial loss or irreplaceability should be expressed in the “Victims’ Nonmaterial Losses” section of the matrix, with a narrative either included in the matrix or attached to it.

Collateral damage

This section of the matrix allows for inclusion of the material losses to the indirect victims in particular, including neighbors’ and public property that are affected by the act. In cases of violent eviction or demolition, using bulldozer or explosives, for example, nearby property can be damaged in various degrees, or destroyed.

Infrastructure

This section refers to services and other infrastructure lost in the demolition/eviction/confiscation that would have to be replaced after the event. For example, electricity provided at the original site may have to be replaced by a generator or purchasing energy from an alternate source. Water, previously available from installed or nearby facilities may have to be replaced by purchasing water or hauling it from another source. The resulting added cost—including the relative cost of labor at the going rate of such work for hire, which is beyond the existing regular costs of obtaining same—is the value to be calculated here.

Business losses

If the demolition/eviction/confiscation results in the loss of a business, or a portion of business, that cost is to be included here. Those losses are the subject of subcategories to be detailed below.

Equipment/inventory

This includes the value of machinery and equipment, other installations, such as furnishings and built ins, as well as all stock and supplies. This should include also the property belonging to others lost or damaged in the event. For example, a laundry or repair service would hold clients’ property to be processed and returned. The values of those items are also to be included in this figure.

Prospective income

The loss resulting from inability to deliver goods and services, and the anticipate profit from existing stores, orders, contracts, etc. that would be unfulfilled due to the event. The short-term and long-term affects are to be calculated by different methods. This category of loss follows the method developed locally for determining “goodwill” as an asset, which would include the projected income from a pattern of business developed through the lifetime of the enterprise. [Refer to insurance law methods.]

Mortgage, other debts and penalties

The demolition/eviction/confiscation removes the owner’s relationship with the land and/or structure, contents, livestock, inventory and other matters of material value, such as

materials and work performed for physical improvement to the property. However, the event does not relieve the owner from responsibility to repay for those values obtained on a credit basis. Those values, including any penalties and increased interest resulting from the event, are to be included here for both the short-term and long-term. If a situation prevails, as in many legal systems, that a debtor relinquishes claims (as in a natural disaster, for example), then that cost should nonetheless be calculated and listed under the category of “Other than Victim’s Losses.”

Livestock

The value of livestock lost and the treatment of those injured by the event is calculated here. This would include also the labor costs for time spent in rounding up dispersed livestock at the rate of pay for such work for hire. The calculus for these values includes the loss of anticipated returns from normal sale of, and/or produce from the animals, including their normally anticipated progeny over the short-term and long-term. In the case of the animals’ value as beasts of burden, the returns on their labor are to be included in the figures provided under lost revenue, increased transportation costs, returns from crop loss, or other appropriate category.

Land

The landed property not associated with the affected structure itself is to be calculated on the basis of fair market value, as with the structure and its plot entered above. This could be land adjacent to the dwelling or other affected structure, or land confiscated separately. This land could be lost entirely through confiscation, or its value could be reduced as a result of the eviction or demolition. In the case of eviction, land title might not be lost outright, but the conditions created by the eviction may prevent the owner(s) from returning to or reclaiming their land. In that case, the land in question would be calculated as an outright loss.

Trees/crops

The value of a lost or damaged nonfruit-bearing, or otherwise unharvestable tree or other vegetation would be determined by the cost of purchasing and replanting a comparable replacement. The nonmaterial, aesthetic, or sentimental value of the tree or other vegetation would be included by narrative in the Victim’s Nonmaterial Losses item under Environment or Heritage, as appropriate. The value of harvestable trees and crops would include the value of the replacement itself for fruit-bearing trees and crops, as well as the (short-term and long-term) value of the harvest. The loss of timber would be calculated accordingly also, with the value being the anticipated return from the harvesting or sale of the tree itself.

The ecological loss of vegetation, depending on the nature of the event—if by demolition were by fire or other destructive means—also carries a value. Ecological damage is calculated on the basis of the restoration costs entailed. Collateral damage to wildlife and other natural assets, owing to the damage and the time required to restore it, may be of both a calculable and incalculable loss. Where possible, such calculable values should be included here. Otherwise, those losses are to be recorded in the narrative section of both the Victim’s and Nonvictim’s Nonmaterial Losses, for those losses would be of a more public nature.

Lost/decreased wages/income

The loss of a home, including subsequent short-term or long-term resettlement, may involve the loss of livelihood, whether that livelihood is linked to the dwelling and/or land lost. In any event, wages would inevitably be lost (to victim or her/his employer) for nonproductive time attending to the event and its aftermath. Resettlement can lead to loss of a job or jobs altogether, or necessitate securing alternative employment, especially if temporary or long-term resettlement is far from the regular workplace. To calculate that value, one would subtract the short-term and long-term wages and other income of affected persons from the normal, anticipated wages and other income before the event. Since obtaining new employment and other income involves a loss of certain benefits, such as accumulated vacation leave, seniority and other benefits, the relative loss of those values should be included here if calculable. Job seniority may not be calculable value in monetary terms if it involves merely standing vis-à-vis colleagues. However, if that seniority arguably would have led to promotion with material effect in the short or long terms, that value is to be factored here as well.

Health care

The event itself or its aftermath may have negative health consequences. Social science has recorded the effects of eviction and resettlement upon the increased mortality and morbidity rates of the affected communities. While these notable consequences belong among the Victim's Nonmaterial Losses, the care for these consequences has clearly calculable values. The loss of life, limb and other health effects are the subject of the laws of states for the purposes of calculating victim compensation in insurance and other cases involving law suits. A sample of such methods taken from such statutes could form a composite methodology for calculating victims' health losses here.

The overcrowding, such as in interim or alternative housing arrangements, often leads to negative health consequences for those evicted, as well as for those providing the alternative shelter in their own quarters. The care and treatment of these health consequences (such as influenza, scabies, malnutrition, etc.) are an additional value added to these health care costs.

Interim housing

Eviction, confiscation and demolition victims often seek alternative housing with relatives or friends, either within the community or elsewhere. This housing has a value, which is to be calculated on the basis of fair rental rates for such shelter, whether rent is paid or not. It remains a cost and value that is subsidized in one form or another. It also can lead to an actual expanded definition of what constitutes the victim, for persons and groups offering assistance in various forms can be counted as second tier victims by virtue of the loss—voluntary or otherwise—incurred as a result of servicing the persons directly affected by the eviction, confiscation or demolition.

Bureaucratic and legal fees

While under threat of a violation, such as eviction, demolition and confiscation, the eventual victim would likely undergo costs related to both time spent and out-of-pocket costs in order to restrain or defend against the impending violation (if the threat is known in advance). Both the time and monetary costs incurred by both bureaucratic processes and legal advice and defense work should be quantified. Even if the legal advice given is free of charge to the affected person(s), those rendering the advice (NGO, CBO, other *pro bono* service) should

put a value on that service for the purposes of this costing exercise. (The costs of bureaucratic efforts by public personnel is determined below under “Other than Victims’ Nonmaterial Costs.”)

Before the victim(s) can restore their proper housing, s/he conventionally undergoes a procedure and cost toward obtaining a license to rebuild or otherwise restore a dwelling. The costs incurred in this process, including fees, legal service, bribes and other out-of-pocket expenses should be included as a category in its own right.

Alternative/replacement housing

The cost of securing comparable housing on a permanent basis is represented here. (Temporary lodging costs are treated above under “Interim housing.”) The comparable housing is meant to include a dwelling with similar spatial dimensions, infrastructure, location and services as the home lost in the violation. This may involve calculation of the replaceable features of the original dwelling with some adjustments, depending on circumstances. For instance, a comparable dwelling space may be found near the source of livelihood, but may be in a differently priced market, and the adjusted figure would account for that. That dwelling may be comparable in most aspects, but lack services or infrastructure. In that case, the cost of obtaining the replacement services or infrastructure at the local rate would have to be added. Likewise, if the replacement housing is comparable to the original dwelling lost, but its location is less convenient for commuting to one’s source of livelihood or family and original community members, that additional transportation cost would be included in the “Transportation” item below.

Since this category of cost is of a more-or-less permanent nature, it should be cited in the “Long-term” cost column of the matrix. Typically, obtaining permanent replacement housing is a lengthy process; therefore, calculating this costs would be a subject for, and a further argument for follow up monitoring of violation cases.

Resettlement

The expenses of traveling and transport of goods to both interim and replacement housing sites form part of the resettlement cost. This, too, would likely involve the efforts and time on the part of several persons—with equivalent values—in order to locate and secure the short-term and long-term housing alternatives. All related costs should be calculated as much as possible.

Transportation costs

This category is the amount of difference between the amounts spent on transportation as a result of the eviction, demolition or confiscation and the amounts spent (if any) on transportation in the normal conduct of life at the original place of residence. Such values include expenses *and* time spent commuting to and from the source of livelihood, visiting family and community members, going to market, carrying out cultural and religious activities, visiting grave sites, conducting other official or private business, etc.

Victims’ nonmaterial losses

Health

In addition to the cost of medical treatment, the loss of health has a value seldom calculated in monetary terms. Methods for calculating the values of losses of life and limb can be found in local legal practice concerning divorce, traffic and insurance. This loss will have to be described in some detail in order to make your case.

Living space

A reduction in living space can have negative physical and emotional effects, as when an evicted family takes refuge with friends and relatives in small, temporary quarters. Consequences may include nervousness, loss of sleep or skin ailments. Be sure to describe this situation as part of the victim's experience.

Reconstruction licensing

Long waiting and frustration may result from the search for a license to rebuild after demolition, eviction or confiscation. This loss can be measured in time and stress, and should be included here.

Psychological harm

The victims may suffer mental stress and psychological harm, especially in the context of violence during eviction, or the trauma that accompanies homelessness after the violation. Children are particularly susceptible. Their story needs to be told. You may find criteria for quantifying the value of pain and suffering from the specialized practice of local law on traffic and insurance.

Disintegration of family

Displacement and other violations of adequate housing could lead to separation of family members and the deterioration of family relationships. With the psychological depression arising from housing and land loss, some victims may engage in antisocial behavior, such as violence or substance abuse that harms family relations.

Loss of community

Eviction, resettlement or land loss can fragment communities and reduce social capital built up over time. It can separate people from support systems (including child-care arrangements, domestic division of labor, etc.) upon which they depend for livelihood and social activities, while women bear an extra burden of maintaining an uprooted home.

Investment in infrastructure

Even—and especially—the most-impooverished communities have to invest in local infrastructure (e.g., electricity, water, transport, roads), particularly if the municipal institutions exclude them. Separation from these facilities by forced eviction, confiscation or demolition means a total loss of that investment, which may not be quantified, partly because they are the product of volunteer labor.

Investment in sanitation and waste-management systems

A community may provide its own waste-management solutions, however simple it may be, especially in the absence of public services. The vital functions of waste management may no longer be possible because of the separation, causing a loss of labor divisions or disposal options and spell a deterioration in the quality of life, including entitlements to environmental health as a result of the violation.

Investment in security protection systems

Informal communities are typically forced to seek their own security arrangements, since civil police may fail to serve them, or deteriorating living conditions may coincide with increased social violence.

Investment in educational infrastructure

Local communities' arrangements for popular education may be curtailed with eviction, leading also to the disruption of formal education (e.g., lost school days). Each home also is a locus of educational infrastructure, especially where children carry out their homework.

Heritage

For heirlooms and other items of sentimental value, as for land-based identity and culture, a replacement cost should be included in this category. However, the incalculable nonmaterial dimension, or irreplaceability should be expressed in the "Victims' Nonmaterial Losses" section of the matrix, with a narrative either included in the matrix or attached to it.

Victims' nonmaterial costs

Environment/ecology

Various forms of housing rights violation can spell the loss of environmental safety, health and recreation. Displacement and eviction sever the relationship between the inhabitants and their habitat. It may also force them to live in precarious or unsafe environments as a consequence.

Standing/seniority

A home owner who loses her/his housing also loses the status that comes with the property and securely tenured lifestyle. The formerly real or perceived capacity of the victims to advise and support others dissipates with the violation of their right to adequate housing, especially through land loss.

Relocating long-standing communities to new areas makes them low-status newcomers in competition with new, indigenous neighbors. Environmental degradation or rezoning may affect the status of a community negatively, leading to intangible—but sometimes also quantifiable—losses.

Political marginalization

Homeless people in many States are denied the right to vote for lack of a fixed address. Resettlement renders inhabitants politically weak vis-à-vis new neighbors, especially without the benefit of local connections and established relationships.

Social marginalization

Losing one's home and place to live often means losing also the social integration once enjoyed in the former residence. Spatial marginalization to the outskirts of the city may be synonymous with exclusion from social services and infrastructure.

Further vulnerabilities

The loss of home, land and social capital (i.e., productive relations within the community) can leave the victim(s) without protection from the natural elements, and/or without livelihood and sources of income. The homeless woman becomes further vulnerable to threats against her personal security and integrity long after the housing-rights violation.

Other-than-victims' material costs (public costs)

Police

The law enforcement officials engaged in either committing or remedying a housing and land rights violation, for example, represent a cost to the public purse. You can calculate their number, multiplied by the hours/days engaged and by corresponding wages and benefits to derive an estimate of the public costs incurred.

Bulldozers

In some cases (e.g., in Israel), courts issue orders to targeted inhabitants and communities to demolish their own homes. If they do not comply, the State carries out the deed and charges the victim for the service. In other cases, the housing rights monitor would have to calculate the cost of using the equipment and the wages of the operator to determine the public expenditure in carrying out that part of the violation.

Legal practitioners

Lawyers, either arguing against or defending housing and land rights, as well as judges, prosecutors and court staff dedicate time and materials that are covered from public budgets. Their level of effort and cost per unit of time (hours or days) could form a method of calculating these public costs.

Army

Military personnel and equipment used in the violation (or defense against a violation) also represent a cost. Quantifying these costs may be a more-elusive exercise, but it may be useful to pose estimates for your public's consideration.

Other forces

The public bodies may subcontract tasks and functions to private parties; however, those expenditures related to the case at hand would factor among the nonvictim's material costs.

Bureaucratic and personnel costs

The inspection, administrative processing, clerical and other desk work in public institutions may be carried out in connection with your case and paid by the tax payer. Your educated estimate of these values forms part of the public cost scenario.

Other-than-victims' nonmaterial costs

Social costs

Housing rights violations can be a cause or consequence of social unrest in a country. Depressed living conditions within a community often coincide with increased social violence, and dislocation often generates new adversary relations among inhabitants competing over territory and property, either at the original site, or in resettlement. Squalid living conditions also could give rise to practices and pathogens that bear a social cost in the form of declining public health.

Civic order

Linked to adequate housing and other economic and social rights, civic order typically deteriorates commensurate with the deprivation of living conditions. Resistance to eviction and forced relocation, demolitions and dispossession by any party is the natural response to a breakdown in civic order, including that characterized by the State omitting to implement its obligation to respect, defend, promote and fulfill the human right to adequate housing and land.

Political legitimacy

Depending on the facts and scale of a particular situation, a housing and land rights violation could undermine the legitimacy of the political party, government or even State in whose name the violation is committed. Alternatively, resolving and remedying a violation could have the opposite effect of recovering the loss of official credibility and legitimacy.

✓ **Loss matrix**

✓ **Housing contents inventory**

10.8. Duty holders

The professional monitor of the human right to adequate housing should provide a list as complete as possible of the duty holders both legally and morally responsible. This legal duty holder (i.e., the State and its agents) may be operating in conjunction with others in either the violation or the potential solution. The audience of your eventual action, whether they are the general public, journalists, or a prosecutor or judge, will need a clear and complete picture of the legal personalities, those who are responsible for their acts of commission and/or acts of omission, and who does what to whom, from the beginning to the present.

As borne out in the foregoing sections on sources of law and guarantees, the concerned State is always the principal duty holder. The State is the legal personality that is treaty bound by the obligation to respect, protect, promote and fulfil human rights, but also to aid those who have been deprived of them. The State's duties are threefold:

- To avoid deprivation,
- To protect and defend those facing deprivation,
- To provide remedy in the forms of assistance and justice to those deprived.

You may find that the State, as duty holder, has committed acts that cause deprivation, or omitted to protect or remedy a deprivation through the obstacles identified above. One might also find that the duty holder is constrained by other actors or factors, such as natural disaster, or global economic recession.

Identifiable institutions and man-made forces, either internal or external, may be known to contribute to a violation. These may include actors such as the International Monetary Fund (IMF), the World Bank, a multinational corporation or national planners. You may find that these parties are either directly or indirectly responsible for the deprivation, or conditions leading up to it. So, too, are factors such as debt or traditional social practices. Especially when the role of the State is passive (i.e., by denial or failure to protect and ensure remedy to the victims), other actors may come to the fore. Private companies, including multinational corporations, for instance, regularly acquire assets and carry out projects that involve forced evictions and land confiscation. In some cases, the regional and international development banks have their well-articulated policies on compensation/relocation. However, these companies may be the right hand of State policies, or implementers of international public projects. That is why it can be crucial to record the relations between the different actors forming a whole chain of duty holders.

One must not overlook the possibility that duty holders, particularly as violators owing remedy and restitution to victims, might also be members of the community, or even family members of the victim(s). Where does the State duty lie in such a situation?

As the legal personality obliged to respect, defend, promote and fulfil the human right to adequate housing, the State's duty lies squarely in the execution of its human rights obligations to regulate behavior of legal persons within its jurisdiction (and areas where it exercises effective control) in order to uphold rights. The human rights treaties and other instruments provide the guidance on how States—and statecraft—should address human rights violations by third parties not only as matters of civil or criminal law, but also as means to ensure the legitimacy of the concerned government, or even State itself.

To have a full outline of questions for identifying the duty holders and the applicable legal obligations, you can use this "Toolkit" very effectively, since each element of the right to adequate housing that you have identified as relevant to your case has corresponding duty holders.

Primary duty holders: State authorities

- Has the State failed to take to prevent the violation of housing rights, especially participation and self-expression? What are those neglected steps?
- Has the State protected the impoverished and vulnerable inhabitants and aided the victims (e.g., by prosecution, return, compensation, etc.) in the violation of housing rights,

especially participation and self-expression? Which are the particular bodies responsible for these preventive and remedial steps?

- ❑ Has the State taken sufficient measures to promote the entitlement of participation and self-expression (e.g., human rights education, campaigns, public-service announcements, awareness-raising publications, etc)? Which are the specific bodies responsible for those measures?
- ❑ What is the State's relationship with other duties holders regarding the assessed violations? Explain the nature of that relationship. Is it a contract, foreign aid package, nepotism, political patronage, etc.?

Secondary: Have other actors affected the denial of the congruent right to participation and the freedom of expression?

- ❑ Are other local, non-State actors somehow engaged in the denial of participation and self-expression? Who are they and what is their role?
- ❑ What role do international financial institutions (IFIs) such as the World Bank, IMF, a regional development bank, or the World Trade Organisation have in determining the policies or conditions affecting participation and self-expression in the affected community/country?
- ❑ What role and influence do multinational corporations or international development agencies have in determining the policies or conditions of participation and self-expression in the affected community/country?
- ❑ How are these secondary duty holders responsible for the violation of the right to participation and self-expression? To what extent do they influence State policies, programs, and laws having an effect on the violation?
- ❑ Do the secondary duty holders have internal policies/codes of conduct regarding housing rights, especially affecting the congruent right to participation and self-expression? If so, are they publicly accessible?
- ❑ What are the relevant details of those policies or codes? How do they protect the human right to adequate housing and the entitlement of participation and self-expression?
- ❑ Are these conditions part of an implementation contract or other cooperative agreement with State bodies or other partners?
- ❑ Before implementation, do they study the impact the projects will have or consider the possible unintended consequences?
- ❑ If there are several secondary duty holders, what is their relationship to each other, and how do they share responsibility for the assessed violation of the congruent right to participation and self-expression? What is the relationship between each of them and the State?
- ❑ Do local authorities lack sufficient autonomy in housing and community development to apply locally relevant options to ensure the human right to adequate housing, especially participation and self-expression?

- ❑ Do local authorities use their autonomy to protect and influence the central authorities of the State in a positive way, or do they participate in the violation and denial of the State’s obligations and national policies?

Assessment

- ❑ To what extent is the State responsible for the vulnerability or violation of the housing rights congruent right to participation and self-expression?
- ❑ To what extent are non-State actors responsible for the vulnerability or violation of the housing rights congruent right to participation and self-expression?

10.9. Actions

The following table of actions (comprised of both preparation and implementation tasks) arranges a variety of possible problem-solving options for you by categorizing them for organizational and selective decision-making purposes. It is not an exhaustive set of options, but merely part of an array of possibilities for you to undertake with the affected community, depending on the present strengths (assets), weaknesses (liabilities), opportunities and threats.

Before selecting your actions, you should conduct a strategic planning exercise. For guidance click [here](#).

Footnotes shown here refer to relevant manuals, training materials, expertise, trainers, recorded experiences and/or methodologies already available to guide your chosen action toward a desired goal/result/solution. Toolkit users are encouraged to consult the HIC-HLRN website regularly for updates and further reference (www.hlrn.org) on constantly evolving updates, including strategies and practices arising from experiences throughout the global HIC and HIC-HLRN community.

Action		Solution
Preparation	Implementation	
Alternative tenure options		
Gather information for community to consider tenure options	Develop “limited equity cooperatives” ¹⁰⁴⁰	Legal secure tenure in adequate housing and sustainable land
	Inform and train community in pursuing land-tenure options ¹⁰⁴¹	
Community capacity building		

¹⁰⁴⁰ The limited-equity cooperative is a form of housing tenure in which shareholder residents manage their buildings, within limits imposed by a charter, and have the right to get back what they have paid for their shares plus an allowance for improvements, if and when they decide to leave. See Duncan Kennedy, “The Limited Equity Coop as a Vehicle for Affordable Housing in a Race and Class Divided Society,” 46 Howard Law Journal 85–125, 85 (Fall 2002).

¹⁰⁴¹ Luanne Warnock, Sharing the Cost of Land Tenure and Stewardship (Davis CA: Sustainable Agriculture Research and Education Program, University of California, 1996).

Conduct training for community on their human right to adequate housing ¹⁰⁴²	Mobilize community in local and national human rights campaigns	Greater community participation in projects, programs and policy formulation with well-defined human rights orientations
Legal service organizations and centers provide legal advice and representation to disadvantaged individuals and communities ¹⁰⁴³	Organize popular resistance to HRAH violations (demonstrations, petitions, sit-ins, street theater, etc.) ¹⁰⁴⁴	Community blocks housing rights violations by State and non-State entities
<i>Pro bono</i> (volunteer) lawyers provide legal advice and representation to disadvantaged individuals and communities	Organize national campaign on RAH ¹⁰⁴⁵	Coordinated community action and reaction to influence State authorities on housing policies
Build capacity of community-based and other civil society organizations to manage projects and campaigns ¹⁰⁴⁶		CBOs and NGOs more capable to support the affected people in responding rapidly and effectively to crises/violations
Train communities (in HRAH, strategic planning, technical skills, etc.) ¹⁰⁴⁷	Public agencies provide adequate technical, marketing and research assistance to disadvantaged community on an affirmative-action basis	Community better able to mount specific alternatives to official plans
Raise public awareness toward social mobilization through public education ¹⁰⁴⁸	Mobilize peaceful public protests to housing rights violations	Prevent forced evictions

¹⁰⁴² See Circle of Rights (Washington: 2000); Jules N. Pretty, Irene Guijt, John Thompson and Ian Scoones, Participatory Learning and Action, A Trainer's Guide (London: International Institute for Environment and Development, 1995), available from Earthprint at www.earthprint.com; also materials of Peoples' Movement for Human Rights Education, <http://www.pdhre.org>.

¹⁰⁴³ Gridley Hall and Burton Fretz, "Legal Services in the Third World," Clearinghouse Review (December 1990); Jose Diokno, Developmental Legal Aid in Rural Asean: Problems and Prospects (Washington: 1981); Richard J. Wilson and Jennifer Rasmussen, Promoting Justice: A Practical Guide to Strategic Human Rights Lawyering (Washington: Human Rights Law Group: 2001).

¹⁰⁴⁴ Morjane Baba, Guérilla Kit (Paris: La Découverte, 2003); Mike Prokosh and Laura Raymond, The Global Activist's Manual: Local Ways to Change the World (New York: Nation Books, 2002).

¹⁰⁴⁵ "Global Struggle and National Focus Note" (Geneva: HIC, 1996).

¹⁰⁴⁶ Kaplan, Allan, The Development of Capacity (Geneva: UN Nongovernmental Liaison Service, 1999); Goggey, Shirley, Rural Community Resource Centers: A Guide for Developing Countries (London and Basingstoke: MacMillan, 1988).

Enhance monitoring-and-documentation skills and methods (e.g., archiving, statistics, multimedia, etc.) to build strong argumentation ¹⁰⁴⁹	Urgent Action appeals (organize regional and/or international mobilization) ¹⁰⁵⁰	Convince public of violations and need for resolution
	Public-information campaigns ¹⁰⁵¹	
Design and implement alternative planning (community generated techniques in the people's initiative to design their own living environment) ¹⁰⁵²		Participatory alternative housing projects adapted to the community's needs
Conduct an inventory (enumeration) of community human resources and social capital ¹⁰⁵³	Organize and divide volunteer labor of affected communities; and to areas to develop alternative plans	Community housing and built environment upgraded on-site as alternative to relocation.
	Community representatives lobby officials and legislators to cooperate with/approve community-proposed alternatives	Obtain adequate relocation site with suitable location, environmental conditions and livelihood options
Community organizing		
Consult with community representatives and conduct an inventory (enumeration) of community human resources and social capital	Establish a tenants union ¹⁰⁵⁴	Community presents a common position in defense of its rights and interests

¹⁰⁴⁷ Barrameda, Teresita V. and Lea I. Espallardo, Learning, Reflecting and Acting for a Human Rights Future: A Training Manual for the Education of the Human Right to Housing in Urban Communities (Quezon City: Process, Inc. and New York: PDHRE, 2000).

¹⁰⁴⁸ Writing for change: An interactive guide to effective writing, writing for science, writing for advocacy [CD and user's guide] (Oxford: fahamu and IDRC, 2000); International Human Rights Internship Program, Ripple in Still Water: Reflections by Activists on Local- and National- Level Work on Economic, Social and Cultural Rights (Washington: University of Minnesota Human Rights Resource Center, 1997), Chapter 6, online at <http://www1.umn.edu/humanrts/edumat/IHRIP/ripple/toc.html>; Allan McChesney, Promoting and Defending Economic, Social and Cultural Rights: A Handbook (Washington: AAAS and HURIDOCS, 2000) Chapter 7 online at: <http://shr.aaas.org/escr/handbook/>.

¹⁰⁴⁹ For guidance and methodology in documenting housing rights cases, see HLRN, Urgent Action! HLRN Guide to Practical Solidarity for Defending the Human Right to Adequate Housing [Arabic, English, French and Spanish versions] (Cairo: HLRN, 2003); and HIC Housing and Land Rights Network website: www.hlrn.org.

¹⁰⁵⁰ For guidance and methodology in building housing rights cases argumentation and mobilise solidarity, see HLRN, Urgent Action! HLRN Guide to Practical Solidarity for Defending the Human Right to Adequate Housing [Arabic, English, French and Spanish versions] (Cairo: HLRN, 2003); and HIC Housing and Land Rights Network website: www.hlrn.org.

¹⁰⁵¹ Strategic Campaigning (London: Amnesty International, 2003).

¹⁰⁵² Youth in Unity for Voluntary Action--YUVA and University of Tasmania, "Settlement Upgrading Manual) [Sakkardara alterantive plan] (October 2000); UNCHS, Human Settlements Development through Community Participation (Nairobi, UNCHS, 1991); Nick Waters, The Community Planning Handbook: How People Can Shape Their Cities, Towns and Villages in Any Part of the World (London: Earthscan, 2001).

¹⁰⁵³ Ibid.

Identify and locate absentee landlord ¹⁰⁵⁵		
Cooperate and negotiate ¹⁰⁵⁶		
Learn/use conflict resolution techniques and, including alternative dispute resolution ¹⁰⁵⁷	Decriminalize actions taken to obtain elements of HRAH	Administrative recognition of tenure and the human right to adequate housing of people without economic access
Mobilize inhabitants	Organize squatter actions and squatter-empowerment interventions ¹⁰⁵⁸	
Cooperate with National Human Rights Institutions ¹⁰⁵⁹	Propose and lobby for the implementation of National Plans of Action for Human Rights ¹⁰⁶⁰	National housing shortage, upgrading needs and land conflicts addressed in a National Plan of Action with provision for law and policy reform
Negotiate with municipal authorities to include the community/civil society as a partner ¹⁰⁶¹	Increase community participation in design, planning, implementation	Maintained and upgraded social housing

¹⁰⁵⁴ Tenant organizing resources” on the National Alliance of HUD Tenants website: <http://www.saveourhomes.org/>. Practical steps for forming a tenants union can be found on http://www.radio4all.org/aia/pro_tenant.html.

¹⁰⁵⁵ “Who is my landlord anyway?” (Seattle: The Tenants Union, 2004), go to <http://www.tenantsunion.org/research.html>.

¹⁰⁵⁶ For a collection of popular experiences in government-nongovernment cooperation in the field of human settlements, see Habitat International Coalition, *Building the City with the People: New Trends in Community Initiatives with Local Governments* (Mexico City: Habitat International Coalition, 1997), contents also available on line at HIC General Secretariat website, at <http://www.hic-net.org/library.asp>.

¹⁰⁵⁷ American Arbitration Association (AAA), *Grievance Mediation Procedures* (New York: AAA, 1992); AAA, *Resolving Your Disputes* (New York: AAA, 1993); American Bar Association, *Alternative Dispute Resolution: An ADR Primer* (Washington: Standing Committee on Dispute Resolution, 1989); Carpenter, Susan L. and W.J.D. Kennedy, *Managing Public Disputes: A Practical Guide to Handling and Reaching Agreements* (San Francisco: Jossey-Bass Publisher, 1988); Cochrane, Michael G. ed., *Attorneys General and New Methods of Dispute Resolution* (Washington: American Bar Association, 1990); Costantino, Cathy, A. and Merchant, Christina, S. *Designing Conflict Management Systems* (San Francisco: Josey-Bass Publisher, 1996); Edelman, Lester, Frank Carr, and James L. Creighton, *The MiniTrial* (Ft. Belvoir VA: U.S. Army Corps of Engineers Institute for Water Resources, 1989); Edelman, Lester, Frank Carr, Charles Lancaster, and James L. Creighton, *Non-Binding Arbitration* (Ft. Belvoir VA: U.S. Army Corps of Engineers Institute for Water Resources, 1990); Fine, Erika S. and Elizabeth S. Plapinger, eds. for the CPR legal Program, *Containing Legal Costs: ADR Strategies for Corporation, Law Firms, and Government* (Butterworth Legal Publishers, 1988); ; Folberg, Jay and Alison Taylor, *Mediation: A Comprehensive Guide to Resolving Conflicts without Litigation* (San Francisco: Jossey-Bass Publishers, 1984). For a bibliography and resources guide on alternative dispute resolution, see Office of Personnel Management website: <http://www.opm.gov/er/adrguide/Section7.asp>.

¹⁰⁵⁸ Diana Mitlin and David Satterthwaite eds., *Empowering Squatter Citizen: Local Government, Civil Society and Urban Poverty Reduction* (London: International Institute for Environment and Development, 2004), available from Earthprint at www.earthprint.com.

¹⁰⁵⁹ OHCHR, *National Institutions for the Promotion and Protection of Human Rights* [Human Rights Series No. 19] (Geneva: OHCHR, undated), at <http://www.unhcr.ch/html/menu6/2/fs19.htm>.

¹⁰⁶⁰ Office of the High Commissioner for Human Rights, *Handbook on National Human Rights Plans of Action* [Professional Training Series No. 10] (Geneva and New York: OHCHR, 2002), at: <http://www.ohchr.org/english/about/publications/docs/nhrap.pdf>.

¹⁰⁶¹ Janelle Plummer, *Municipalities and Community Participation: A Sourcebook for Capacity Building* (London: Earthscan, 2001); Janelle Plummer, ed., *Focusing Partnership: A Sourcebook for Municipal Capacity Building in Public-Private Partnerships* (London: Earthscan, 2002); Diane Warburton, ed., *Community and Sustainable Development: Participation in the Future* (London: Earthscan, 200X).

	and maintenance of housing ¹⁰⁶²	
Train in negotiation and mediation skills ¹⁰⁶³	Negotiation toward reconciling evictions/removals and land grabbing ¹⁰⁶⁴	Indigenous peoples regain historic land claims
Develop community/local government cooperation	Monitor transparency in decision-making processes	Obtain social housing (provided by government), based on need, with amortization based on minimum wage level (affordability)
	Design infrastructure projects	
	Reform public policy toward providing affordable housing	
	Propose and implement National Shelter Strategy ¹⁰⁶⁵	
	Design national (comprehensive) development plans	
Develop the cooperative sector	Promote cooperative sector initiatives to provide affordable housing	
Use/lobby/cooperate with the international human rights system (interventions with factual, legal and political mechanisms of the UN and regional human	Undertake negotiations at international/ multilateral level (whereby negotiators representing the State assert their prior obligations under international human	Obtain/ensure continuous regulation of housing market practices (e.g., to ensure tenure security, accessibility of housing, building materials, direct investment, etc.)

¹⁰⁶² UNCHS, Human Settlements Development through Community Participation (Nairobi, UNCHS, 1991).

¹⁰⁶³ Scott Beattie, "Is Mediation a Real Alternative to Law? Pitfalls for Aboriginal Participants," Australian Dispute Resolution Journal 8 (1997) 57; Larissa Behrendt, Aboriginal Dispute Resolution: A Step towards Self-Determination and Community Autonomy. (Sydney: Federation Press, 1995).

¹⁰⁶⁴ Michael Asch and Norman Zlotkin, "Affirming Aboriginal Title: A New Basis for Comprehensive Claims Negotiations," in Michael Asch, ed., Aboriginal and Treaty Rights in Canada: Essays on Law, Equality, and Respect for Difference (Vancouver: University of British Columbia Press, 1997).

¹⁰⁶⁵ UNCHS, Developing a National Shelter Strategy: Lessons from Four Countries (Nairobi: UNCHS, 1990); OHCHR, Handbook on National Human Rights Plans of Action (Geneva: OHCHR, 2001)

¹⁰⁶⁶ See "NGO participation in the activities of the Committee on Economic, Social and Cultural Rights," UN doc. E/C.12/2000/6, 7 July 2000, website: <http://www.hchr.un.ch>; and "Revised general guidelines regarding the form and contents of reports to be submitted by states parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights," UN doc. E/C.12/1991/1, 17 June 1991.

rights systems) ¹⁰⁶⁶	rights treaty law against IFI [Word Bank, regional development bank, IMF, etc.] and WTO conditionalities leading to housing rights regressive / retrogressive violations) ¹⁰⁶⁷	End to practices of land confiscation through foreclosure, adverse possession and eminent domain without adequate, consensual alternatives
Develop / reform / enforce law¹⁰⁶⁸		
Initiate/reform legislation and regulatory processes in compliance with the human-right-to-adequate - housing framework	Undertake class action suits (with minimum of [e.g., at least 15] physical or legal persons undertaking a litigation action, generally in the name of a whole group of the population), or public-interest litigation (e.g., India) ¹⁰⁶⁹	Law and policy enforced to respect, defend, promote and fulfill housing rights
Collect sufficient data to determine material and nonmaterial losses to victims of housing and land rights violations		Law enforcement officers protect population from and implied protection
Conduct national housing and land rights assessment ¹⁰⁷⁰	Lobby parliament	Violators prosecuted and punished
	Raise test cases, constitutional challenges through court system	Victims receive restitution and full compensation for violation and material and nonmaterial losses
		Law promotes housing and land acquisition and retention in disadvantaged communities consistent with international commitments to

¹⁰⁶⁷ INCHRITI, Trade, Investment, Finance and Human Rights: Essential Documents (Geneva: INCHRITI, 2001).

¹⁰⁶⁸ Mario Rosário, "[Action "Tsimá Ga Ku Aka" to build together](#)" (1996); Janeth López, "[Asesoría en vivienda para el proceso de reinserción en Colombia](#)" (1996); K.A. Jayaratne, "[Collaborative Partnership to Improve the Low Income Neighbourhoods](#)," (1996); Michael Shapcott, "[Rupert Pilot Project. A self-Help and Community Rehabilitation Project in Canada](#)" (1996); Leopold Mutembei, "[Struggles of the urban poor to improve their living conditions](#)" (1996); Leonard Chileshe Mulenga, "[The case of Bauleni Upgrading](#)" (1995); Johan Silas, "[The Improvement of Low Cost Housing and Environment](#)" (1996); in Habitat International Coalition, Building the City with the People: New Trends in Community Initiatives with Local Governments (Mexico City: Habitat International Coalition, 1997), contents also available on line at HIC General Secretariat website, at <http://www.hic-net.org/library.asp>.

¹⁰⁶⁹ "Public interest litigation" (PIL) is a form of litigation filed in a court of law, for the protection of "public interest." Most prominently used in the Indian context, it is not defined in any statute or act. It has been interpreted by judges to consider the intent of public at large. Although, the main and only focus of such litigation is public interest, PIL can be filed in cases involving, e.g., such issues as pollution, "terrorism," road safety, constructional hazards, violated human rights of the poor, the content or conduct of government policy, to compel municipal authorities to perform a public duty, etc. See, for example: Upendra Baxi, "Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India" [revised], in Upendra Baxi, ed., Law and Poverty: Critical Essays (Bombay: Tripathi 1988); Mario Gomez, In the Public Interest: Essays on Public Interest Litigation and Participatory Justice (Colombo: Legal Aid Centre, University of Colombo, 1993); Sampat Jain, Public Interest Legislation (New Delhi, Deep & Deep, 2002); Shri. V.S.Vadivel, "Public Interest Litigation (PIL) A Boon or Bane?" (Legal Services India, 2004), <http://www.legalserviceindia.com/articles/pil.htm>; see also Help Line Law website:

<http://www.helpline.law.com/docs/main.php3?id=PIL1>.

¹⁰⁷⁰ Apply this HIC-HLRN Housing and Land Rights Monitoring Toolkit on a national scale to all elements of the human right to adequate housing.

	Develop laws on properties left without will and testate in order to narrow the class of heirs and prevent fractionation of the ownership	promote just patterns of land distribution
	Nationwide constitutional review campaign	Constitutional reform ¹⁰⁷¹
Institutional reform		
Establish and maintain an effective Land Trust to support communities subject to discrimination and dispossession		Land ownership expanded for disadvantaged communities on an affirmative-action basis
Monitor and survey practices of public and private lending institutions for discrimination practices and patterns	Lobby for disciplinary action and rehabilitation of institutions to end discriminatory practices	Institutions apply uniform criteria in housing and community development programs, policies and transactions
International human rights system interventions		
Prepare and present collective parallel report to human rights treaty bodies (or submit cases under individual complaints procedures under Optional Protocols)		UN treaty body Concluding Observations coincide with community's evaluation of housing rights conditions and proposals for solutions
Raise cases and submit briefs before regional human rights courts and commissions ¹⁰⁷²		State compelled to implement its treaty obligations to respect, defend, promote and fulfill the human right to adequate housing and land
Use Concluding Observations in public information and media campaigns, litigation		

¹⁰⁷¹ See, for example, "The history of constitutional reform in Kenya," World History Archives (2004), <http://www.hartford-hwp.com/archives/36/index-bbh.html>.

¹⁰⁷² Litigating Economic, Social and Cultural Rights: Achievements, Challenges and Strategies (Geneva: COHRE, 2004), available at <http://www.cohre.org/library/Litigating%20ESCR%20Report.pdf>; Amicus Curiae in Grupo Interdisciplinario por los Derechos Humanos v. Colombia [submitted by COHRE to Inter-American Commission on Human Rights on case of housing destruction by paramilitary groups in Ituango and El Aro, Colombia], on line at <http://www.cohre.org/downloads/amicuscolombia1.doc>; Amicus Curiae in Justiça Global, et al. v. Government of Brazil, Inter-American Commission on Human Rights [submitted by COHRE on actual and threatened violations of housing rights, including forced evictions, with the planned Alcântara Spaceport expansion, in Brazil] available at <http://www.cohre.org/downloads/amicusbrazil1.doc>; Amicus Curiae in CELS & CEJIL v. Argentina, Inter-American Commission on Human Rights [submitted by COHRE to Inter-American Commission on Human Rights on case local authorities conducting forced evictions in Barrio Ejército de los Andes, Provincia de Buenos Aires, Argentina], available at <http://www.cohre.org/downloads/amicusargentina1.doc>. See also COHRE Case Law Database on line at <http://www.cohre.org/iframe.htm>; Case law database for economic, social and cultural rights available on the ESCR-Net website at <http://www.escr-net.org/>; found in "Case Law" at http://www.escr-net.org/EngGeneral/Case_law.asp, or "Jurisprudencia" at http://www.escr-net.org/EspGeneral/Case_law.asp.

Submit cases to UN Commission on Human Rights 1503 Procedure		States intervene to resolve impasse in housing rights violation case
Submit question/case to UNESCO complaints procedure		States intervene to resolve impasse in housing rights violation case
Legal defense		
Develop and deliver legal literacy and litigation strategy training ¹⁰⁷³	Provide legal-aid services to defend individual and community housing and land rights	Judicial rulings include legal precedents for future litigation and law reform to ensure individual and group rights to adequate housing and land
Collect detailed data on violations, perpetrators, values of losses and other consequences ¹⁰⁷⁴	Present admissible evidence in litigation on behalf of victims ¹⁰⁷⁵	Crimes and perpetrators prosecuted and punished
		Judicial remedies, including legal precedents for future litigation and law reform to ensure gender equality
Develop gender-awareness and gender-justice training for communities, police, lawyers, prosecutors and judges ¹⁰⁷⁶	Provide legal-aid services to defend equal rights to housing and land for women and gender-discrimination victims	Victims receive restitution and full compensation for violation and material and nonmaterial losses ¹⁰⁷⁷
Develop judicial procedures and expertise to provide for land-consolidation courts	Consolidate and reduce unstable “in-common” tenancy to maintain family and community land retention, especially to uphold land base for minority groups and indigenous peoples	Communities restore and retain their land base

¹⁰⁷³ Margaret Schuler and Sakuntala Kadirgamar-Rajasingham, *Legal Literacy: A Tool for Women's Empowerment* (Washington: Women, Law and Development, OEF International, 1992).

¹⁰⁷⁴ See “Housing and Land Rights Violation Case Documentation Form” in this toolkit.

¹⁰⁷⁵ Domestic Implementation of International Human Rights: Litigating Economic, Social and Cultural Rights, on Human Rights Internet website at http://www.hri.ca/fortherecordCanada/vol1/guide-part_11.htm; Case Law Database for Economic, Social and Cultural Rights available on the ESCR-Net website at <http://www.escr-net.org/>; found in “Case Law” at http://www.escr-net.org/EngGeneral/Case_law.asp, or “Jurisprudencia” at http://www.escr-net.org/EspGeneral/Case_law.asp.

¹⁰⁷⁶ Shelter Rights Initiative, *Gender Specific Rights Litigation and Protection Strategies* (Lagos: SRI, 1998); SRI, *Manual on Judicial Protection of Economic, Social and Cultural Rights* (Lagos: SRI, 2000).

¹⁰⁷⁷ “Seminar on the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms,” *Netherlands Quarterly on Human Rights Special Issue* (1993); S. Nadasen, “Restitution, Reconstruction, Reconciliation and Restitution: Land Reform—Balancing the Interests of the Dispossessed, the Homeless and Development,” *Stellenbosch Law Review* (1997), 360–77. For a bibliography of global restitution and compensation experience, go to: <http://userpage.fu-berlin.de/~theissen/biblio/>.

Media cooperation and campaigns		
Conduct training for media professional in the human right to adequate, corresponding obligations, interviewing victims, quantifying victims' losses and community follow-up ¹⁰⁷⁸	Meet journalists and media professionals to follow-up on training and present new documentation and information on developments	Informed public supports community alternative-development and/or anti-eviction proposals
Provide media outlets with economic analyses of various possible alternatives (on-site upgrading v. relocation)		
Provide media outlets with alternative plans and community proposals for their development		
Policy reform		
Reverse and prosecute discriminatory practices toward disadvantages individuals and communities by both public and private lending institutions		Fairness-in-lending policy formulated and enforced for housing and land purchase, rehabilitation and sustainability
Expand public-private initiatives to stimulate investment and multipurpose development communities		Integrated development with low-cost housing on public and donated lands
Provide housing and relief		
Exchange expertise in temporary housing and relief provision	Organize emergency relief (immediate provision of housing and/or housing resources at no cost to those denied: water, medical services, economic relief, housing resources and building materials, etc.)	Eviction and displacement victims receive emergency (temporary) housing
Resource mobilization		

¹⁰⁷⁸ HIC-HLRN training module on "Housing and Land Rights for Media Professionals."

Conduct an inventory (accounting) of community (human and material) resources	Design, adapt and implement alternative-finance schemes; (e.g., small savings toward common projects) and self-financing for needy inhabitants (with freehold tenure options) ¹⁰⁷⁹	Upgrading and generally improved living conditions on site, as alternative to relocation
	Establish and operate nonbank institutions as lenders and builder of adequate, low-income housing ¹⁰⁸⁰	
	Organize self-help cooperation through rotating community credit (building & upgrading infrastructure, social production of housing) ¹⁰⁸¹	
	Immediate, diligent and effective increase in advice-and-lending services, on an affirmative-action basis within public lending institutions	

¹⁰⁷⁹ Alternative Financing Models: Hybrids of Homeownership Mutual Housing (The Enterprise Foundation, 2003); "Capitalizing on Collaboratives: New Partners for Comm. Dev. Finance" (Washington: Center for Policy Alternatives, July 1996); Enrique Ortiz, FONHAPO: The Experience of the National Fund for Low Income Housing in Mexico (London: International Institute for Environment and Development, 1998), available from Earthprint at www.earthprint.com.

¹⁰⁸⁰ Jeffrey Carmichael and Michael Pomerleano, The Development and Regulation of Non-Bank Financial Institutions (Washington: World Bank, 2002); Indonesia: Housing Finance for the Urban Poor (Manila: Asia Development Bank, 2001); Peer Smet, "Indian Housing Finance Alliances and the Urban Poor," Global Built Environment Review Vol. 2, No. 1, 58–66, <http://www.edgehill.ac.uk/gber/pdf/vol2/issue1/Eight.pdf>.

¹⁰⁸¹ Joseph Schechla, ed., *Anatomies of a Social Movement* (Cairo: HIC-HLRN, 2004); Habitat International Coalition, *Building the City With the People. New Trends in Community Initiatives in Cooperation with Local Governments* (Mexico City: Habitat International Coalition, 1997); Prem Pangora, *Citizen's Initiatives for environmental improvements: The case of River Sabarmati, Ahmedabad, India* (Mexico City: Habitat International Coalition, 1997); Joël Audefroy, *Construyendo la Ciudad con la Gente. Nuevas tendencias en la colaboración entre las iniciativas comunitarias y los gobiernos locales* (Mexico City: Coalitón Internacional para el Habitat, 1998); Gustavo Romero, La producción social del hábitat: reflexiones sobre su historia, concepciones y propuestas (2000), available on line at http://www.hic-net.org/online/Romero_PSH-intro.pdf; Eike Jacob, *Social Production of Habitat in Latin America* (2003); Habitat International Coalition-América Latina, "Social Production of Habitat. Conceptual framework" (2003); Enrique Ortiz, Social Production of Habitat: Marginal option or reality-transforming strategy? (2003), available on line at http://www.hic-net.org/online/Ortiz_SPH.pdf; Enrique Ortiz, *Vivitos y Coleando. 40 años trabajando por el hábitat popular en América Latina* (2002).

	Develop microcredit schemes (for upgrading and construction, but with social and legal components providing HRAH content) ¹⁰⁸²	
Analyze economic costs of the various possible alternatives (on-site upgrading v. relocation)		
Raise material support (raise funds) from private, public and intergovernmental donors), including microcredit ¹⁰⁸³		
Plan/undertake reconstruction, ¹⁰⁸⁴ upgrading and general improvement of living conditions (with multiple parties cooperating)		
Restoration and increase housing subsidy programs for low-income people, including by tax reform (e.g., reversal of tax cuts for the wealthiest tax payers)		Low-income people pay no more than 30% of monthly incomes for adequate housing
Conduct an inventory of community financial and material resources	Develop community savings schemes	Social production of habitat: Community/self-financed upgrading of housing and improvement of living conditions

¹⁰⁸² Nazrul Islam, [Grameen Bank Bangladesh. A credit institution for housing](#) (1996); Jaffer Murtaza, [The Tanzania-Bondeni Community Lands Trust](#) (1996).

¹⁰⁸³ Nazrul Islam, [Grameen Bank Bangladesh. A credit institution for housing](#) (1996); Jaffer Murtaza, [The Tanzania-Bondeni Community Lands Trust](#) (1996).

¹⁰⁸⁴ See York University Postwar Reconstruction and Development Unit, website: <http://www.york.ac.uk/depts/poli/prdu>.

Conduct public budget analysis from the housing rights perspective ¹⁰⁸⁵	Develop participatory budgeting ¹⁰⁸⁶ (ensuring that necessary programs and projects are budgeting according to housing rights obligations)	Public budgets comply with State's housing rights obligations to ensure "progressive realization" with "maximum of available resources"
Training other actors (outside community)		
Train civil servants in HRAH (including international treaty obligations upon the State and local authorities)	Reform urban/land planning criteria, procedures and objectives to harmonize with local community needs and criteria ¹⁰⁸⁷	Physical planning integrates human rights obligations, language and priorities directed to needy and vulnerable communities
Train lawyers in HRAH, (including international treaty obligations upon the State, as well as litigation strategies) ¹⁰⁸⁸	Legal argument, litigation and judicial decisions invoke international norms and treaty obligations	Legal recognition of traditional legal and tenure systems and provision of secure title ¹⁰⁸⁹
		Legal recognition of tenure and the human right to adequate housing of people without economic access

¹⁰⁸⁵ Ravikant Joshi, *A Case for Reform: how municipal budgets can change our cities* (Mumbai: YUVA Books, 2001); Maria Socorro I. Diokno, "A Rights-based Approach towards Budget Analysis" (Washington: International Human Rights Internship Program, 1999); Institute for Development Policy Analysis and Advocacy—IDPAA (Atiur Rahman et al.), *Alternative Budget Analysis: A Series of Studies on the National Budget for the Perspective of Poverty Eradication* [three volumes: Budget and the Poor, The Budget-making Process, People's Budget: An Alternative Exercise Using Participatory Tools] (Dhaka: University Press Ltd., 2002).

¹⁰⁸⁶ Rebecca Abers, 1998, "From clientelism to cooperation: Local government, participatory policy, and civic organizing in Porto Alegre, Brazil"; *Politics and Society*. 26(4)c 511–37; Rebecca Abers, *Inventing Local Democracy: Grassroots Politics in Brazil* (Boulder: Lynne Rynner, 2000); Baierle, Sergio, 1998, "The Explosion of Citizenship: The Emergence of a New Ethical-Political Principal in Popular Movement in Porto Alegre, Brazil," in Sonia E. Alvarez, Evelina Dagnino and Arturo Escobar, *Cultures of Politics/Politics of Cultures: Revisioning Latin America Social Movements* (Boulder: Westview Press, 1998); Sousa Boaventura de Santos, "Participatory Budgeting in Porto Alegre: Toward a Redistributive Democracy." *Politics and Society* 26(4) (1998), 461-509; *Quem é o público do Orçamento Participativo: se perfil, porque participa, e o que pensa do processo* (Porto Alegre: Cidade de Porto Alegre, 1999); Luciano Fedozzi, *Orçamento Participativo: Reflexões sobre a experiência de Porto Alegre* (Porto Alegre: Tomo Editorial, 1998); Pedro Jacobi and Macro Antonio Carvalho Teixeira, "Orçamento Participativo: co-responsabilidade na gestão das cidades," *São Paulo em Perspectiva*, 10 (3) (1996) 119–28; Brain Wampler, "Orçamento Participativo: Os paradoxos da participação e governo no Recife," *Cadernos de Estudos Sociais*, 15(2) (1999), 343–73; Brian Wampler, *A Guide to Participatory Budgeting* (October 2000). Internet sources: Participatory budget: The Case of Porto Alegre (Brazil) at:

<http://www.goethe.de/br/poa/buerg/en/framebag.htm> (2004);

World Bank: http://www.worldbank.org/html/fpd/urban/urb_age/porto.htm,

<http://www.worldbank.org/wbiep/decentralization/Topics13.7.htm>, <http://www.worldbank.org/participation/>; Inter-American Development Bank: <http://www.iadb.org/exr/IDB/stories/2000/eng/JAN00E/c200c1.htm>,

<http://www.iadb.org/exr/idb/sidebars/2000/eng/c200c4.htm>; Conference Proceedings on Participatory Budgeting:

<http://www.idre.ca/lacro/docs/conferencias/stren.html>, <http://www.ssc.wisc.edu/~wright/deliberative.html>,

<http://www.pqualc.org>.

¹⁰⁸⁷ UNCHS, *Developing a National Shelter Strategy: Lessons from Four Countries* (Nairobi: UNCHS, 1990); OHCHR, *Handbook on National Human Rights Plans of Action* (Geneva: OHCHR, revised draft May 2001).

¹⁰⁸⁸ Shelter Rights Initiative, *Gender Specific Rights Litigation and Protection Strategies* (Lagos: SRI, 1998); SRI, *Manual on Judicial Protection of Economic, Social and Cultural Rights* (Lagos: SRI, 2000).

¹⁰⁸⁹ Peter R. Grose, "An Indigenous Imperative: The Rationale for the Recognition of Aboriginal Dispute Resolution Mechanisms." *Mediation Quarterly* 12 (4) (summer 1995), 327–38.

		Judge issues restraining orders halting forced evictions and removals, land confiscation, property destruction and other housing and land rights
Train judges in HRAH (including international treaty obligations upon the State) ¹⁰⁹⁰		Judicial decision orders return, restitution and compensation for evictees, IDPs, refugees ¹⁰⁹¹
Train law enforcement officials in the human right to adequate housing (including international treaty obligations upon the State)	Quantify losses/costs of housing rights violations	Victims compensated for losses ¹⁰⁹²
Transitional justice (post conflict) ¹⁰⁹³		
Document details on violations, perpetrators, values of losses and other consequences ¹⁰⁹⁴	Present evidence to truth (and reconciliation} commission ¹⁰⁹⁵	Public aware of population transfer, mass dispossessions and other crimes committed during conflict

¹⁰⁹⁰ Shelter Rights Initiative, Manual on Housing Rights Protection Strategies for Lower Court Judges (Lagos: SRI, 2000).

¹⁰⁹¹ UNCHS, Housing and Property Rights in Kosovo (Pristina: UNCHS, March 2000).

¹⁰⁹² For elaboration of the principles of compensation to victims of human rights violations, see Theo Van Boven, "Basic Principles and Guidelines on the Right to Reparation for Victims of Gross Violations of Human Rights and Humanitarian Law, Appendix 8 ("The van Boven Principles"), Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, E/CN.4/Sub.2/1996/17; also E/CN.4/1997/104, annex and subsequently revised as "Basic principles and guidelines on the right to a remedy and reparation for victims of violations of international human rights and humanitarian law," by Cherif Bassiouni, independent expert, Commission on Human Rights (E/CN.4/2000/62, annex). John Dugard, "Is the Truth and Reconciliation Process Compatible with International Law? An Unanswered Question," South African Journal on Human Rights Vol. 13, 258–68. For quantification methodology, see HIC-HLRN Loss Matrix in this Housing and Land Rights Monitoring Toolkit, or go to www.hlrn.org; for implementation, see to UNCHS, Housing and Property Rights in Kosovo (Pristina: UNCHS, 2000).

¹⁰⁹³ For a general bibliography on transitional justice, go to <http://www.peacemakers.ca/bibliography/bib26reconciliation.html> or <http://userpage.fu-berlin.de/~theissen/biblio/> (on experiences of Germany and South Africa).

¹⁰⁹⁴ Use "Housing and Land Rights Violation Case Documentation Form" in this toolkit.

¹⁰⁹⁵ Kerry Able, and Jean Friesen, eds., Aboriginal Resource Use in Canada: Historical and Legal Aspects (Winnipeg: University of Manitoba Press, 1991); Alfred, Gerald R., and Franke Wilmer. "Indigenous Peoples, States and Conflict," in D. Carment and P. James, eds., Wars in the Midst of Peace: The International Politics of Ethnic Conflict (Pittsburg: University of Pittsburgh Press, 1997); Michael Coyle, "Claims Resolution: A Healing Process?" in J. Oakes, R. Riewe, K. Kinew and E. Maloney, eds., Sacred Lands: Aboriginal World Views, Claims and Conflicts (Calgary: Canadian Circumpolar Institute, 1998); Robert Rotberg and Dennis Thompson, eds., Truth v. Justice: The Morality of Truth Commissions (Princeton: Princeton University Press, 2000); Truth and Reconciliation Commission of South Africa Report, Vols. 1–5 (Cape Town: Juta, 1998); Theo van Boven, "Study Concerning the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms" [final report of Special Rapporteur] (Geneva: Commission on Human Rights, Subcommission on Prevention of Discrimination and Protection of Minorities) E/CN.4/Sub.2/1993/8. For an extensive bibliography of sources, go to: <http://userpage.fu-berlin.de/~theissen/biblio/>.

	Issue amnesty for past crimes and perpetrators of forced evictions/removals ¹⁰⁹⁶	Social reconciliation
	Present evidence to Truth and Justice Commission	Social reconciliation
		Crimes and perpetrators prosecuted and punished
	Present evidence to “mixed courts”	Return, restitution and compensation for evictees, IDPs, refugees ¹⁰⁹⁷

Of course, an illustrative list of potential interventions does not sufficiently convey the wealth of local governmental and nongovernmental experience available for review and exchange. Moreover, it is, as always, at the local level of implementation where human rights, including the human right to adequate housing, are transformed from moral suasion and legal theory to implementable reality. Therefore, both the practical, case-based perspective and the theoretical-and-comparative perspective become mutually dependent, mutually reinforcing and, hence, equally needed.

10.10. Evaluation & follow-up

Evaluation of any action you choose should be an ongoing function parallel to the events and development as they happen. This note offers some simple guidance on the specific evaluation tasks you will face. They are described in stages, with particular emphasis on the final stages and the vision for the future.

For our purposes, evaluation and follow-up imply two levels of assessment: (1) evaluation the action and (2) following the situation after the action concludes. The former is internal in nature and helps your organization, community or network become a learning institution by building on the lessons (successes, near-successes, failures and unanticipated results) of your efforts. The latter enables you, your organization, community or network to test the outcome to ascertain whether or not it has tangible benefits for those persons, communities, populations and peoples affected and targeted in your action. Ultimately, the follow-up process should lead you to the necessary conclusion as to what, if anything, to do next.

✓ Evaluating the action

¹⁰⁹⁶ John Dugard, *Dealing with Crimes of a Past Regime: Is Amnesty Still an Option?* [The Third Manfred Lachs Memorial Lecture] (1999); Carla Edelenbosch, “Human Rights Violations - A Duty to Prosecute?” *Leiden Journal of International Law* Vol. 7, No. 2 (1994), 5–22; Dianne F. Orentlicher, “Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime,” *The Yale Law Journal* Vol. 100, No. 8 (1991) 2537–615.

¹⁰⁹⁷ Uma Dhupelia Mesthrie, *The Truth and Reconciliation Commission and the Commission on Restitution of Land Rights: Some Comparative Thoughts* [“The TRC: Commissioning the Past” conference] (Johannesburg: University of the Witwatersrand, 1999); S. Nadasen, “Restitution, Reconstruction, Reconciliation and Redistribution: Land Reform: Balancing the Interests of the Dispossessed, the Homeless and Development,” *Stellenbosch Law Review* (1997) 360–77; David B. Southern, “Restitution or Compensation: The Land Question in East Germany,” *International and Comparative Law Quarterly* Vol. 42, No. 3 (1993), 690–97; David B. Southern, “Restitution or Compensation: The Open Property Question,” *German Politics* Vol. 2, No. 3, 436–49. For a bibliography of global restitution and compensation experience, go to: <http://userpage.fu-berlin.de/~theissen/biblio/>.

Evaluation your action includes three integrated but conceptually distinct processes: (1) monitoring progress, (2) formative evaluation and (3) measuring the development impact.

1. Monitoring implementation progress

Monitoring the implementation of your action is the most frequent—indeed constant—aspect of the learning process. This should involve periodic reports on production of outcomes, financial accounting and levels and nature of inputs (e.g., technical assistance, training, social production of habitat). The periodicity of the reporting could be quarterly, if the action is expected to proceed for a year or more. Alternatively, reporting could be more frequent, especially if it is a short-term action, or if it takes place in a fast-paced environment such as a threatened eviction or natural disaster situation, and particularly if extreme deprivation of human well-being is at stake.

The responsibility for monitoring is to be shared by a group of actors. Remembering that, like in the “Toolkit” guide for strategic planning, the more participation, the more-favorable the result (“more participation = more dignity”).

Reporting on the action, based on the monitoring of implementation progress, should be specifically assigned, most probably to the coordinator of the action or the chief executive officer of the principal body organizing the action. The audience of the reports should be both internal, for the benefit of those engaged, and external, depending on the obligations you have to supporters, members and/or funders. The assignment of duties, division of labor and timing of evaluation events should be completed also in the planning stage of your activity (see [“Strategic planning”](#) link above).

2. Formative Evaluation Indicators of Accomplishments

Midway in the process of your action, you should conduct an assessment of the *quality and adequacy* of the tasks undertaken by assessing the actual outcomes against the standard of expected results you already have set out for yourselves.

You should develop an evaluation plan and data collection instruments as part of the project implementation. That means, you should plan ahead to collect information that will verify your intended results, whether that be in the form of documents, press reports, opinion surveys, affidavits, water-quality test results, etc. The formative evaluation activities probably will require site visits, rapid assessment and low-cost data collection techniques such as focus groups, interviews, training evaluation forms, and simple targeted studies to identify key issues for action management.

3. Development-impact Assessment and Indicators

Development-impact assessments that you and your organization/community undertake less frequently, perhaps on an annual basis, will track changes in the outcomes, in order to determine the degree to which the larger environment of the human right to adequate housing is improving—or deteriorating, as the case may be.

Your action could—and should—produce an initial baseline report at the initial stage that coincides with your first inventory, site visits and/or assessment arising from your first use of this “Toolkit.” That report should record what you consider to be the key assumptions going into the activity, and will serve you in the subsequent stages of your action, especially at the

final stages, to test those assumptions and adjust strategies to incorporate the knowledge you have created.

For the purpose of your organization's integrity and the tactical responses you may require in the future, your action should be seen critically in the light of the purposes and goals you set out in your planning process (see "**Strategic planning**" link above). Some sample questions to include in your evaluation include the following:

- How does the action relate to your purpose statement of your organization/ community?
- How does the action relate to the goals(s) of your organization/community?
- Was the action planned or spontaneous?
- What was the expected result?
- Was that result achieved? If not, why?
- Were unintended results achieved?
- What were the lessons learned from this activity?
- How did this activity build/strengthen/develop your organization? What gains did you and others realize?
- How did your organization/community record and report the experience?
- How did your organization/community share and exchange the experience and lessons learned with others? Who? When? Where? What was the result?
- Has there been follow-up? Why? What? Who? When? Where?
- Click on "Following up the situation" for guidance on the last point.

✓ **Following up the situation**

Each successful or unsuccessful action needs to be tested further for at least two reasons: (1) in order to determine if the achievement is real or merely theoretical and (2) to determine what your next move is going to be.

The now famous *Irene Grootboom and Others v. Oostenberg Municipality*¹⁰⁹⁸ case before the South African Constitutional Court (1999) found in favor of the plaintiffs by applying the principles of international law on the human right to adequate housing and the legal strictures on the practice of forced eviction. The Court ordered the Western Cape Provincial Government and the Oostenberg Municipality to grant housing and utilities to the 390 adults and 510 children wrongfully evicted community at Wallacedene their right to return and remain and to benefit from public services corresponding to that right. Until today, that decision has not been fully implemented.

Likewise, the landmark case of *Qa'dan v. Katzir*,¹⁰⁹⁹ in Israel, resulted in the 2000 High Court ruling that Katzir (a settlement built on Palestinian land, directed and funded in large part by the Jewish Agency) acted unlawfully when discriminating on the basis of "nationality" by excluding a non-Jewish from obtaining housing there. Until this day, that decision has not been honored, the indigenous Adil and Iman Qa'dan family of Arab citizens of Israel do not have their home in Katzir, and the Jewish Agency continues to provide land and housing benefits only to those holding "Jewish nationality," and to the exclusion of others.

¹⁰⁹⁸ Irene Grootboom and Others versus Oostenberg Municipality, Cape Metropolitan Council, the Premier of the Province of the Western Cape, National Housing Board, and Government of the Republic of South Africa, Constitutional Court of South Africa Case No: 6826/99..

¹⁰⁹⁹ Qa'dan versus Israel Lands Administration (ILA), Ministry of Construction and Housing, Tal-Iron Local Municipal Council, Jewish Agency for the Land of Israel (JA), KATZIR: Cooperative Association for Community Settlement in Samaria Ltd., and the Farmers Association; Case No. 6698/95 of the Israeli Supreme Court, sitting as the High Court of Justice.

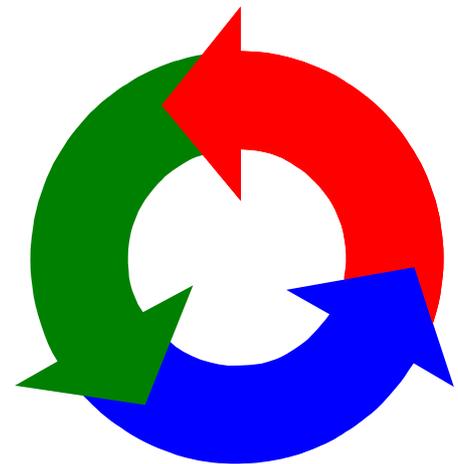
There are numerous examples of slum clearance and resettlement that result in the promised secure tenure of housing, but fail to comply with other elements of the human right in their implementation. [Note: HLRN and this “Toolkit” do not advocate slum clearance or resettlement.] Inhabitants in resettlement often lack access to public goods and services, suitable location, are denied compensation for losses and are subject to a process inconsistent with the over-riding principle of self-determination.¹¹⁰⁰

All such gaps and shortcomings in the outcome of any housing rights defense effort remain to be addressed, even though some advocates and service-providing NGOs may consider these developments to be victorious at some level. The true test remains, however, to determine the tangibility of the results within the framework of the human right to adequate housing, and over the long term.

With all of its emphasis on the law, this “Toolkit” is intended to assist in the realization of the human right to adequate housing as a complement to the theoretical elaboration of the right in law. Implementation is the ultimate objective of human rights, as well as this “Toolkit.” Therefore, the tools provided here should serve also as the final evaluation criteria to examine whether or not the composite dimensions of the human rights are implemented and present or not.

You should use the elements (entitlements) of the human right to adequate housing here as your guide; these are also the binding criteria for all State parties and their representatives to apply as well. If you and your organization/community determine that certain criteria have been breached or neglected, then, alas, further remedial action will be required.

The bad news, perhaps, is that there may yet be more work to be done. However, even if one has to go back to the drawing board, at least the needed tools are available to the cyclical task. So, now, you can just do it.



¹¹⁰⁰ See Housing and Land Rights Network, *Restructuring New Delhi’s Urban Habitat: Building an Apartheid City?* (HIC-HLRN: New Delhi, 2002).

11. Movement, resettlement, *nonrefoulement*, return & restitution

11.1. Concept and meaning

Movement and resettlement may be essential to survival in the case of natural or human-made disaster. Therefore, the congruent right to freedom of movement can be a prerequisite to the fulfillment of all other rights. Any resettlement arrangement, whatever the cause, must be consensual, fair and adequate to meet individual and collective needs. It must provide sufficient access to the sources of livelihood, productive land, infrastructure, social services and civic amenities. Moreover, there must also be fair and adequate restitution and/or compensation for losses, particularly when human caused.

11.2. Sources

In this section, your **Step 2**, the HLRN “Toolkit” provides the most important international legal basis and the popular claims that ground each element of the human right to adequate housing. This compilation attempts to be as comprehensive as possible; however, additional popular sources and legal developments will augment this inventory in the future.

It is vital to establish both the established sources in international law and the popular claims. The authority of the legal sources carries corresponding obligations on most States, and applies universally to all people on the planet as *human* rights. The popular sources advance claims that are “emerging” with human rights language eventually to be codified in the law. All legally established human rights norms originated as popular claims carried forth through various forms of historic struggle.

The Legal Authority

Please note that the legal instruments cited here carry differing levels of obligation, and they are organized for you accordingly. Customary law is made up of those norms and principles that legal opinion and interstate institutions consider so basic and so repeatedly affirmed as to be binding on all legal personalities. The Universal Declaration of Human Rights, the antecedent to all subsequent human rights treaties, is the most relevant example of customary law for our purposes, even though it does not establish a monitoring and enforcement mechanism to ensure compliance.

The ratified treaties (Covenants, Charters, Conventions, etc.) are binding on all their ratifying States parties, and each establishes an independent body to monitor and guide implementation. The treaty-monitoring process provides an opportunity for civil society, States and the international legal bodies each to play a role. These international treaties are also characterized as hard law (*lex lata*), because of their binding nature. Treaty law, by definition, is any agreement between two or more States. The treaties considered here are those of both international and regional nature.

The “soft-law” instruments (*lex feranda*) include the Declarations, Basic Principles, Minimum Rules, General Comments, etc., that are the multilateral commitments arising from international conferences, assemblies, summits, congresses and other specialised meetings. Also included in this category are the general and country-specific guidance that the treaty-monitoring bodies issue to guide and specify treaty obligations, as well as those instruments of inter-State agreement (decisions and resolutions) arising from the various political bodies of the international system (e.g., UN Commission on Human Rights, International Labour Organisation General Assembly, etc.). These instruments contain standards that are declaratory of already-binding international law, reflect the collective political will of States and provide specificity to the general Articles in the binding instruments. However, these

form legal and policy guidance without the corresponding obligations of treaty law and without the corresponding legal monitoring mechanisms.

Thus, the list of legal sources in this section of the HLRN “Toolkit” maintains a corresponding priority order such that presents the binding instruments first (in chronological order of their adoption), and follows with the nonbinding, declaratory sources (in their chronological order):

- ***International Treaty Law***
- ***Regional Treaty Law***
- ***Declaratory Instruments and Jurisprudence***

The Moral Argument

The popular sources are useful especially in demonstrating ground-level recognition of the various elements of adequate housing as rights in and of themselves, but also provide a list of human rights that reflect common human needs, but await codification as *bona fide* rights. The “emerging rights” include elements inextricable from the human right to adequate housing: water, land and energy, among others. The popular sources are indicators of the ever-evolving specificity of human rights law and the legal and problem-solving horizons toward which social movements and the human rights community are heading.

The relevant excerpts from these collective moral are listed in the “Toolkit” Sources (Step 2) as *Popular Sources*. These are moral, rather than legal, in nature. However, as claims, they bear legal dimensions in the sense that they are the substance of future legal standards. We continue to include these claims in the HLRN “Toolkit” as they emerge from popular struggles, natural and social sciences, nongovernmental forums, social movements, campaigns and labour action (strikes), as well as other forms of popular and collective problem-solving initiatives.

In this “Toolkit,” *Popular Sources* are distinguished from the legal sources by their presentation in *italic* script.

Another source of the human right with a legal dimension is the jurisprudence of course-based decisions on cases involving housing and land rights. These also could provide the basis for legal argument even in distant jurisdictions. Examples include the case-specific—but internationally relevant—rulings in famous decisions in favor of housing rights claims such as those arising from legal struggles in Cyprus, Palestine/Israel and South Africa:

Qa’adan versus Israel Lands Administration (ILA), Ministry of Construction and Housing, Tal-Iron Local Municipal Council, Jewish Agency for the Land of Israel (JA), KATZIR: Cooperative Association for Community Settlement in Samaria Ltd., and the Farmers Association; Case No. 6698/95 of the Israeli Supreme Court, sitting as the High Court of Justice.

Irene Grootboom and Others versus Oostenberg Municipality, Cape Metropolitan Council, the Premier of the Province of the Western Cape, National Housing Board, and Government of the Republic of South Africa, Constitutional Court of South Africa Case No: 6826/99 (1999).

Loizidou versus Turkey (Article 50 and Merits), European Court of Human Rights Case 40/1993/435/514 (18 December 1996).

✓ Legal sources

Customary International Law

Universal Declaration of Human Rights (UDHR) (1948)

Article 8. [compensation] “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.”

Article 13. [freedom of movement] “Everyone has the right to freedom of movement and residence within the borders of each State. Everyone has the right to leave any country, including his own, and to return to his country.”

International Treaty Law

Rome Statute on the Establishment of the International Criminal Court (1998)

Article 75.1. [reparation] “The Court shall establish principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. On this basis, in its decision the Court may, either upon request or on its own motion in exceptional circumstances, determine the scope and extent of any damage, loss and injury to, or in respect of, victims and will state the principles on which it is acting.”

International Labour Organisation Convention No. 169 concerning Indigenous Peoples in Independent Countries (1989)

Article 16. [return, restitution] “Subject to the following paragraphs of this Article, the peoples concerned shall not be removed from the lands which they occupy. Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent. Where their consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned. Whenever possible, these peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist. When such return is not possible, as determined by agreement or, in the absence of such agreement, through appropriate procedures, these peoples shall be provided in all possible cases with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. Where the peoples concerned express a preference for compensation in money or in kind, they shall be so compensated under appropriate guarantees. Persons thus relocated shall be fully compensated for any resulting loss or injury.”

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)

Article 3.1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

International Covenant on Civil and Political Rights (1966)

Article 2.3(a) [compensation] “Each State Party to the present Covenant undertakes...To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity”

Convention on the Elimination of All Forms of Racial Discrimination (1965)

Article 5. [movement] "...States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of... (d) (i) The right to freedom of movement and residence within the border of the State; (ii) The right to leave any country, including one's own, and to return to one's country... (e) (iii) The right to housing..."

Article 6. [reparation] "States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination."

Convention relating to the Status of Stateless Persons (1954)

Article 10. "Where a stateless person has been forcibly displaced during the Second World War and removed to the territory of a Contracting State, and is resident there, the period of such enforced sojourn shall be considered to have been lawful residence within that territory."

Convention relating to the Status of Refugees (1951)

Article 101 & 2 "Where a refugee has been forcibly displaced during the Second World War and removed to the territory of a Contracting State, and is resident there, the period of such enforced sojourn shall be considered to have been lawful residence within that territory...Where a refugee has been forcibly displaced during the Second World War from the territory of a Contracting State and has, prior to the date of entry into force of this Convention, returned there for the purpose of taking up residence, the period of residence before and after such enforced displacement shall be regarded as one uninterrupted period for any purposes for which uninterrupted residence is required."

Article 33.1. [nonrefoulement] "No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."

Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War (1949)

Article 132. [return] "Each interned person shall be released by the Detaining Power as soon as the reasons which necessitated his internment no longer exist. The Parties to the conflict shall, moreover, endeavour during the course of hostilities, to conclude agreements for the release, the repatriation, the return to places of residence or the accommodation in a neutral country of certain classes of internees, in particular children, pregnant women and mothers with infants and young children, wounded and sick, and internees who have been detained for a long time."

Article 135. [return] "The Detaining Power shall bear the expense of returning released internees to the places where they were residing when interned, or, if it took them into custody while they were in transit or on the high seas, the cost of completing their journey or of their return to their point of departure."

Regional Treaty Law

European Charter of Fundamental Rights (2000)

Article 19. Protection in the event of removal, expulsion or extradition

1. "Collective expulsions are prohibited."

2. "No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment."

Article 45. Freedom of movement and of residence

1. "Every citizen of the Union has the right to move and reside freely within the territory of the Member States."

2. "Freedom of movement and residence may be granted, in accordance with the Treaty establishing the European Community, to nationals of third countries legally resident in the territory of a Member State."

African Charter on Human and Peoples' Rights (1981)

Article 12.1. "Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law. **2.** Every individual shall have the right to leave any country including his own, and to return to his country. This right may only be subject to restrictions, provided for by law for the protection of national security, law and order, public health or morality. **3.** Every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with the law of those countries and international conventions. **4.** A non-national legally admitted in a territory of a State Party to the present Charter, may only be expelled from it by virtue of a decision taken in accordance with the law. **5.** The mass expulsion of non-nationals shall be prohibited. Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups."

American Convention on Human Rights (1969)

Article 22. Freedom of Movement and Residence:

1. Every person lawfully in the territory of a State Party has the right to move about in it, and to reside in it subject to the provisions of the law.

2. Every person has the right to leave any country freely, including his own. **3.** The exercise of the foregoing rights may be restricted only pursuant to a law to the extent necessary in a democratic society to prevent crime or to protect national security, public safety, public order, public morals, public health, or the rights or freedoms of others. **4.** The exercise of the rights recognized in paragraph 1 may also be restricted by law in designated zones for reasons of public interest. **5.** No one can be expelled from the territory of the state of which he is a national or be deprived of the right to enter it. **6.** An alien lawfully in the territory of a State Party to this Convention may be expelled from it only pursuant to a decision reached in accordance with law. **7.** Every person has the right to seek and be granted asylum in a foreign territory, in accordance with the legislation of the state and international conventions, in the event he is being pursued for political offenses or related common crimes. **8.** In no case may an alien be deported or returned to a country, regardless of whether or not it is his country of origin, if in that country his right to life or personal freedom is in danger of being violated because of his race, nationality, religion, social status, or political opinions.

9. The collective expulsion of aliens is prohibited.

European Social Charter (1961)

Part I. "The Contracting Parties accept as the aim of their policy, to be pursued by all appropriate means, both national and international in character, the attainment of conditions in which the following rights and principles may be effectively realised:

14. Everyone has the right to benefit from social welfare services. 15. Disabled persons have the right to vocational training, rehabilitation and resettlement, whatever the origin and nature of their disability.”

Declaratory Instruments and Jurisprudence

Commission on Human Rights resolutions 2003/34 and 2004/34, “The right to restitution, compensation and rehabilitation for victims of grave violations of human rights and fundamental freedoms”

(Paragraph common to both resolutions)

1. “*Calls upon* the international community to give due attention to the right to a remedy and, in particular, in appropriate cases, to receive restitution, compensation and rehabilitation, for victims of grave violations of international human rights law and humanitarian international law...”

The Draft Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law (2003 revised)

15. “Adequate, effective and prompt reparation shall be intended to promote justice by redressing violations of international human rights or humanitarian law. Reparation should be proportional to the gravity of the violations and the harm suffered.”

16. “In accordance with its domestic laws and international legal obligations, a State shall provide reparation to victims for its acts or omissions constituting violations of international human rights and humanitarian law.”

17. “In cases where the violation is not attributable to the State, the party responsible for the violation should provide reparation to the victim or to the State if the State has already provided reparation to the victim.”

18. “In the event that the party responsible for the violation is unable or unwilling to meet these obligations, the State should endeavor to provide reparation to victims who have sustained bodily injury or impairment of physical or mental health as a result of these violations and to the families, in particular, dependants of persons who have died or become physically or mentally incapacitated as a result of the violation. To that end, States should endeavor to establish national funds for reparation to victims and seek other sources of funds wherever necessary to supplement these.”

19. “A State shall enforce its domestic judgments for reparation against private individuals or entities responsible for the violations. States shall endeavor to enforce valid foreign judgments for reparation against private individuals or entities responsible for the violations.”

20. “In cases where the State or Government under whose authority the violation occurred is no longer in existence, the State or Government successor in title should provide reparation to the victims.”

21. [forms of reparations] “In accordance with their domestic law and international obligations, and taking account of individual circumstances, States should provide victims of violations of international human rights and humanitarian law the following forms of reparation: restitution, compensation, rehabilitation, and satisfaction and guarantees of nonrepetition.”

“Restitution should, whenever possible, restore the victim to the original situation before the violations of international human rights or humanitarian law occurred. Restitution includes: restoration of liberty, legal rights, social status, family life and citizenship; return to one's place of residence; and restoration of employment and return of property.”

Declaration of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (2001) (return, resettlement)

54. [return] “We underline the urgency of addressing the root causes of displacement and of finding durable solutions for refugees and displaced persons, in particular voluntary return in safety and dignity to the countries of origin, as well as resettlement in third countries and local integration, when and where appropriate and feasible;”

65. “We recognize the right of refugees to return voluntarily to their homes and properties in dignity and safety, and urge all States to facilitate such return;”

Commission on Human Rights resolution 2000/41, “The right to restitution, compensation and rehabilitation for victims of grave violations of human rights and fundamental freedoms”

“*Reaffirming* that pursuant to internationally proclaimed human rights principles, victims of grave violations of human rights should receive, in appropriate cases, restitution, compensation and rehabilitation”

Sub-Commission on the Promotion and Protection of Human Rights, 1998/26, “Housing and property restitution in the context of the return of refugees and internally displaced persons”

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

**Guiding Principles on Internal Displacement E/CN.4/1998/53/Add.2 (1998)
...Section I - General Principles**

“**Principle 1.1.** Internally displaced persons shall enjoy, in full equality, the same rights and freedoms under international and domestic law as do other persons in their country. They shall not be discriminated against in the enjoyment of any rights and freedoms on the ground that they are internally displaced. **2.** These Principles are without prejudice to individual criminal responsibility under international law, in particular relating to genocide, crimes against humanity and war crimes.

Principle 2.1. These Principles shall be observed by all authorities, groups and persons irrespective of their legal status and applied without any adverse distinction. The observance of these Principles shall not affect the legal status of any authorities, groups or persons involved. **2.** These Principles shall not be interpreted as restricting, modifying or impairing the provisions of any international human rights or international humanitarian law instrument or rights granted to persons under domestic law. In particular, these Principles are without prejudice to the right to seek and enjoy asylum in other countries.

Principle 3.1. National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction. **2.** Internally displaced persons have the right to request and to receive protection and humanitarian assistance from these authorities. They shall not be persecuted or punished for making such a request.

Principle 4.1. These Principles shall be applied without discrimination of any kind, such as race, colour, sex, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, birth, or on any other similar criteria. **2.** Certain internally displaced persons, such as children, especially unaccompanied minors, expectant mothers, mothers with young children, female heads of household,

persons with disabilities and elderly persons, shall be entitled to protection and assistance required by their condition and to treatment which takes into account their special needs.”

Section II - Principles relating to Protection from Displacement

“**Principle 5.** All authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons.

Principle 6.1. Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence. **2.** The prohibition of arbitrary displacement includes displacement:

(a) When it is based on policies of apartheid, "ethnic cleansing" or similar practices aimed at/or resulting in altering the ethnic, religious or racial composition of the affected population;

(b) In situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand;

(c) In cases of large-scale development projects, which are not justified by compelling and overriding public interests;

(d) In cases of disasters, unless the safety and health of those affected requires their evacuation; and

(e) When it is used as a collective punishment.

3. Displacement shall last no longer than required by the circumstances.

Principle 7.1. Prior to any decision requiring the displacement of persons, the authorities concerned shall ensure that all feasible alternatives are explored in order to avoid displacement altogether. Where no alternatives exist, all measures shall be taken to minimize displacement and its adverse effects. **2.** The authorities undertaking such displacement shall ensure, to the greatest practicable extent, that proper accommodation is provided to the displaced persons, that such displacements are effected in satisfactory conditions of safety, nutrition, health and hygiene, and that members of the same family are not separated. **3.** If displacement occurs in situations other than during the emergency stages of armed conflicts and disasters, the following guarantees shall be complied with:

(a) A specific decision shall be taken by a State authority empowered by law to order such measures;

(b) Adequate measures shall be taken to guarantee to those to be displaced full information on the reasons and procedures for their displacement and, where applicable, on compensation and relocation;

(c) The free and informed consent of those to be displaced shall be sought;

(d) The authorities concerned shall endeavour to involve those affected, particularly women, in the planning and management of their relocation;

(e) Law enforcement measures, where required, shall be carried out by competent legal authorities; and

(f) The right to an effective remedy, including the review of such decisions by appropriate judicial authorities, shall be respected.

Principle 8. Displacement shall not be carried out in a manner that violates the rights to life, dignity, liberty and security of those affected.

Principle 9. States are under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands.”

Section III - Principles relating to Protection during Displacement

“**Principle 10.1.** Every human being has the inherent right to life which shall be protected by law. No one shall be arbitrarily deprived of his or her life. Internally displaced persons shall be protected in particular against:

(a) Genocide;

(b) Murder;

(c) Summary or arbitrary executions; and

(d) Enforced disappearances, including abduction or unacknowledged detention, threatening or resulting in death.

Threats and incitement to commit any of the foregoing acts shall be prohibited. **2.** Attacks or other acts of violence against internally displaced persons who do not or no longer participate in hostilities are prohibited in all circumstances. Internally displaced persons shall be protected, in particular, against:

(a) Direct or indiscriminate attacks or other acts of violence, including the creation of areas wherein attacks on civilians are permitted;

(b) Starvation as a method of combat;

(c) Their use to shield military objectives from attack or to shield, favour or impede military operations;

(d) Attacks against their camps or settlements; and

(e) The use of antipersonnel landmines.

Principle 11.1. Every human being has the right to dignity and physical, mental and moral integrity. **2.** Internally displaced persons, whether or not their liberty has been restricted, shall be protected in particular against:

(a) Rape, mutilation, torture, cruel, inhuman or degrading treatment or punishment, and other outrages upon personal dignity, such as acts of gender-specific violence, forced prostitution and any form of indecent assault;

(b) Slavery or any contemporary form of slavery, such as sale into marriage, sexual exploitation, or forced labour of children; and

(c) Acts of violence intended to spread terror among internally displaced persons.

Threats and incitement to commit any of the foregoing acts shall be prohibited.

Principle 12.1. Every human being has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. **2.** To give effect to this right for internally displaced persons, they shall not be interned in or confined to a camp. If in exceptional circumstances such internment or confinement is absolutely necessary, it shall not last longer than required by the circumstances. **3.** Internally displaced persons shall be protected from discriminatory arrest and detention as a result of their displacement. **4.** In no case shall internally displaced persons be taken hostage.

Principle 13.1. In no circumstances shall displaced children be recruited nor be required or permitted to take part in hostilities. **2.** Internally displaced persons shall be protected against discriminatory practices of recruitment into any armed forces or groups as a result of their displacement. In particular any cruel, inhuman or degrading practices that compel compliance or punish non-compliance with recruitment are prohibited in all circumstances.

Principle 14.1. Every internally displaced person has the right to liberty of movement and freedom to choose his or her residence. **2.** In particular, internally displaced persons have the right to move freely in and out of camps or other settlements.

Principle 15. Internally displaced persons have:

(a) The right to seek safety in another part of the country;

(b) The right to leave their country;

(c) The right to seek asylum in another country; and

(d) The right to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk.

Principle 16.1. All internally displaced persons have the right to know the fate and whereabouts of missing relatives. **2.** The authorities concerned shall endeavour to establish the fate and whereabouts of internally displaced persons reported missing, and cooperate with relevant international organizations engaged in this task. They shall inform the next of kin on the progress of the investigation and notify them of any result. **3.** The authorities concerned shall endeavour to collect and identify the mortal remains of those deceased, prevent their despoliation or mutilation, and facilitate the return of those remains to the next

of kin or dispose of them respectfully. **4.** Grave sites of internally displaced persons should be protected and respected in all circumstances. Internally displaced persons should have the right of access to the grave sites of their deceased relatives.

Principle 17.1. Every human being has the right to respect of his or her family life. **2.** To give effect to this right for internally displaced persons, family members who wish to remain together shall be allowed to do so. **3.** Families which are separated by displacement should be reunited as quickly as possible. All appropriate steps shall be taken to expedite the reunion of such families, particularly when children are involved. The responsible authorities shall facilitate inquiries made by family members and encourage and cooperate with the work of humanitarian organizations engaged in the task of family reunification. **4.** Members of internally displaced families whose personal liberty has been restricted by internment or confinement in camps shall have the right to remain together.

Principle 18.1. All internally displaced persons have the right to an adequate standard of living. **2.** At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to:

- (a) Essential food and potable water;
- (b) Basic shelter and housing;
- (c) Appropriate clothing; and
- (d) Essential medical services and sanitation.

3. Special efforts should be made to ensure the full participation of women in the planning and distribution of these basic supplies.

Principle 19.1. All wounded and sick internally displaced persons as well as those with disabilities shall receive to the fullest extent practicable and with the least possible delay, the medical care and attention they require, without distinction on any grounds other than medical ones. When necessary, internally displaced persons shall have access to psychological and social services. **2.** Special attention should be paid to the health needs of women, including access to female health care providers and services, such as reproductive health care, as well as appropriate counselling for victims of sexual and other abuses. **3.** Special attention should also be given to the prevention of contagious and infectious diseases, including AIDS, among internally displaced persons.

Principle 20.1. Every human being has the right to recognition everywhere as a person before the law. **2.** To give effect to this right for internally displaced persons, the authorities concerned shall issue to them all documents necessary for the enjoyment and exercise of their legal rights, such as passports, personal identification documents, birth certificates and marriage certificates. In particular, the authorities shall facilitate the issuance of new documents or the replacement of documents lost in the course of displacement, without imposing unreasonable conditions, such as requiring the return to one's area of habitual residence in order to obtain these or other required documents. **3.** Women and men shall have equal rights to obtain such necessary documents and shall have the right to have such documentation issued in their own names.

Principle 21.1. No one shall be arbitrarily deprived of property and possessions. **2.** The property and possessions of internally displaced persons shall in all circumstances be protected, in particular, against the following acts:

- (a) Pillage;
- (b) Direct or indiscriminate attacks or other acts of violence;
- (c) Being used to shield military operations or objectives;
- (d) Being made the object of reprisal; and
- (e) Being destroyed or appropriated as a form of collective punishment.

3. Property and possessions left behind by internally displaced persons should be protected against destruction and arbitrary and illegal appropriation, occupation or use.

Principle 22.1. Internally displaced persons, whether or not they are living in camps, shall not be discriminated against as a result of their displacement in the enjoyment of the following rights:

- (a) The rights to freedom of thought, conscience, religion or belief, opinion and expression;
- (b) The right to seek freely opportunities for employment and to participate in economic activities;
- (c) The right to associate freely and participate equally in community affairs;
- (d) The right to vote and to participate in governmental and public affairs, including the right to have access to the means necessary to exercise this right; and
- (e) The right to communicate in a language they understand.

Principle 23.1. Every human being has the right to education. **2.** To give effect to this right for internally displaced persons, the authorities concerned shall ensure that such persons, in particular displaced children, receive education which shall be free and compulsory at the primary level. Education should respect their cultural identity, language and religion. **3.** Special efforts should be made to ensure the full and equal participation of women and girls in educational programmes. **4.** Education and training facilities shall be made available to internally displaced persons, in particular adolescents and women, whether or not living in camps, as soon as conditions permit.”

Section IV - Principles relating to Humanitarian Assistance

“**Principle 24.1.** All humanitarian assistance shall be carried out in accordance with the principles of humanity and impartiality and without discrimination. **2.** Humanitarian assistance to internally displaced persons shall not be diverted, in particular for political or military reasons.

Principle 25.1. The primary duty and responsibility for providing humanitarian assistance to internally displaced persons lies with national authorities. **2.** International humanitarian organizations and other appropriate actors have the right to offer their services in support of the internally displaced. Such an offer shall not be regarded as an unfriendly act or an interference in a State's internal affairs and shall be considered in good faith. Consent thereto shall not be arbitrarily withheld, particularly when authorities concerned are unable or unwilling to provide the required humanitarian assistance. **3.** All authorities concerned shall grant and facilitate the free passage of humanitarian assistance and grant persons engaged in the provision of such assistance rapid and unimpeded access to the internally displaced.

Principle 26. Persons engaged in humanitarian assistance, their transport and supplies shall be respected and protected. They shall not be the object of attack or other acts of violence.

Principle 27.1. International humanitarian organizations and other appropriate actors when providing assistance should give due regard to the protection needs and human rights of internally displaced persons and take appropriate measures in this regard. In so doing, these organizations and actors should respect relevant international standards and codes of conduct. **2.** The preceding paragraph is without prejudice to the protection responsibilities of international organizations mandated for this purpose, whose services may be offered or requested by States. “

Section V - Principles relating to Return, Resettlement and Reintegration

“**Principle 28.1.** Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country. Such authorities shall endeavour to facilitate the reintegration of returned or resettled internally displaced persons. **2.** Special efforts should be made to ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration.

Principle 29.1. Internally displaced persons who have returned to their homes or places of habitual residence or who have resettled in another part of the country shall not be discriminated against as a result of their having been displaced. They shall have the right to

participate fully and equally in public affairs at all levels and have equal access to public services. 2. Competent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement. When recovery of such property and possessions is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation.

Principle 30. All authorities concerned shall grant and facilitate for international humanitarian organizations and other appropriate actors, in the exercise of their respective mandates, rapid and unimpeded access to internally displaced persons to assist in their return or resettlement and reintegration.

Committee on Economic, Social and Cultural Rights (CESCR) General Comment No. 7, "The right to adequate housing: forced evictions" (1997)

13. [compensation] "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'."

16. [resettlement] "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. [compensation] "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'."

18. [resettlement] "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, paragraph 10)."

Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of Human Rights and Humanitarian Law (E/CN.4/SUB.2/1996/17)

VII. [reparation] "In accordance with international law, States have the duty to adopt special measures, where necessary, to permit expeditious and fully effective reparations. Reparation shall render justice by removing or redressing the consequences of the wrongful acts and by preventing and deterring violations. Reparations shall be proportionate to the gravity of the violations and the resulting damage and shall include restitution, compensation, rehabilitation, satisfaction and guarantees of nonrepetition."

12–15. [forms of reparation] "Reparations may take any one or more of the forms mentioned below, which are not exhaustive, viz:

12. "Restitution shall be provided to re-establish the situation that existed prior to the violations of human rights and humanitarian law. Restitution requires, *inter alia*, restoration of liberty, family life, citizenship, return to one's place of residence, employment of property."

13. "Compensation shall be provided for any economically assessable damage resulting from violations of human rights and humanitarian law, such as:

- (a) Physical or mental harm, including pain, suffering and emotional distress;
- (b) Lost opportunities including education;
- (c) Material damages and loss of earnings, including loss of earning potential;
- (d) Harm to reputation or dignity;
- (e) Costs required for legal or expert assistance."

14. "Rehabilitation shall be provided and will include medical and psychological care as well as legal and social services."

15. "Satisfaction and guarantees of non-repetition shall be provided, including, as necessary:

- (a) Cessation of continuing violations;
- (b) Verification of the facts and full and public disclosure of the truth;
- (c) An official declaration or a judicial decision restoring the dignity, reputation and legal rights of the victim and/or of persons connected with the victim;
- (d) Apology, including public acknowledgement of the facts and acceptance of responsibility;
- (e) Judicial or administrative sanctions against persons responsible for the violations;
- (f) Commemorations and paying tribute to the victims;
- (g) Inclusion in human rights training and in history textbooks of an accurate account of the violations committed in the field of human rights and humanitarian law;
- (h) Preventing the recurrence of violations..."

Sub-Commission on the Promotion and Protection of Human Rights resolution 1994/39, "Forced evictions"

"Recommends that all Governments provide immediate restitution, compensation and/or appropriate and sufficient alternative accommodation or land, consistent with their wishes or needs, to persons and communities that have been forcibly evicted, following mutually satisfactory negotiations with the affected persons or groups;"

United Nations Security Council resolution S/RES/827 (1993)

[Adopting the Statute of the International Tribunal on the Republic of the Former Yugoslavia]

Article 7. [compensation] "Decides also that the work of the International Tribunal shall be carried out without prejudice to the right of the victims to seek, through appropriate means, compensation for damages incurred as a result of violations of international humanitarian law"

Committee on Economic, Social and Cultural Rights (CESCR) General Comment No. 4, "the right to adequate housing" (1991)

17. [compensation] "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: legal

appeals aimed at preventing planned evictions or demolitions through the issuance of court-ordered injunctions; legal procedures seeking compensation following an illegal eviction; 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; allegations of any form of discrimination in the allocation and availability of access to housing; and 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.”

Committee on Economic, Social and Cultural Rights (CESCR) General Comment No. 2, “International technical assistance measures” (1990)

Article III.6. “International agencies should scrupulously avoid involvement in projects which involve, among other things, large-scale evictions or displacement of persons without the provision of all appropriate protection and compensation.”

Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985)

Article 4. “Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.”

Article 11. [restitution] “Where public officials or other agents acting in an official or quasi-official capacity have violated national criminal laws, the victims should receive restitution from the State whose officials or agents were responsible for the harm inflicted. In cases where the Government under whose authority the victimizing act or omission occurred is no longer in existence, the State or Government successor in title should provide restitution to the victims.”

Commission on Human Rights resolution 1993/77, “Forced evictions”

4. [restitution, compensation] “Recommends that all Governments provide immediate restitution, compensation and/or appropriate and sufficient alternative accommodation or land, consistent with their wishes and needs, to persons and communities that have been forcibly evicted, following mutually satisfactory negotiations with the affected persons or groups.”

Commission on Human Rights resolution 1997/7, “Forced evictions”

24. “All persons subjected to any forced eviction not in full accordance with the present guidelines should have a right to compensation for any losses of land or personal, real or other property or goods, including rights or interests in property not recognized in national legislation, incurred in connection with a forced eviction. Compensation should include land and access to common property resources and should not be restricted to cash payments.”

Vancouver Declaration Human Settlements (1976)

15. [return] “The highest priority should be placed on the rehabilitation of expelled and homeless people who have been displaced by natural or man-made catastrophes, and especially by the act of foreign aggression. In the latter case, all countries have the duty to fully co-operate in order to guarantee that the parties involved allow the return of displaced persons to their homes and to give them the right to possess and enjoy their properties and belongings without interference.”

Declaration on Social Progress and Development (1969)

Article 26. [restitution, compensation]: “Compensation for damages, be they social or economic in nature- including restitution and reparations-caused as a result of aggression and of illegal occupation of territory by the aggressor.”

United Nations General Assembly resolution “Palestine—Progress Report of the United Nations Mediator” (A/RES/194 [III]) (1948)

Article 11. [return, compensation] “Resolves that the refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible.”

American Declaration of the Rights and Duties of Man (1948)

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

✓ **Popular sources**

WCaR NGO Forum Declaration (2001)

240. Restitution encompassing the unconditional return of land, heritage icons and artifacts; the provision of land to those forced to leave their homelands and forcibly resettled in foreign lands; cancellation of debt of countries victimized by these crimes against humanity including African countries and impoverished countries in the Americas...”

The European Charter for Human Rights in the City (2000)

Article XVI. Right to a Home 3. *The municipal authorities guarantee the right of nomads to stay in the city under conditions which are compatible with human dignity.*

11.3. Over-riding principles

Principles found in the initial Articles common to all the major international human rights treaties affirm standards of justice arising from the major legal systems of the world. These include principles of immediate application, such as the inalienable rights to self-determination; non-discrimination, in general; gender equality; and the rule of law, including access to justice and domestic application of the human rights contained in each treaty, particularly by adopting legislative measures.

In the case of economic, social and cultural rights, the International Covenant on Economic, Social and Cultural Rights (ICESCR) is the principle source of these rights in treaty form. The Covenant also clarifies that the State party’s treaty obligation entails ensuring the “progressive realisation” of the rights “to the maximum of its available resources” (Article 2.1), including the human right to adequate housing (Article 11). Therefore, a process of realising the rights should not regress, but should ensure “the continuous improvement of living conditions” (Article 11).

The ICESCR’s Article 2.1 also requires States to undertake steps, individually and through international assistance and cooperation, especially economic and technical, progressively to achieve the full realization of the covenanted rights by all appropriate means. Thus, States

party to the Covenant bear an obligation to apply these principles extraterritorially and in their international relations. Therefore, “international cooperation” forms an important practical aspect of ESC rights application and, therefore, one of the principles over-riding States’ duties to implement human rights.

Comprehensive monitoring of the human right to adequate housing requires assessing each entitlement (element) in light of the rights and corresponding obligations arising from these over-riding legal principles:

- **Self-determination**
- **Nondiscrimination**
- **Gender equality**
- **Rule of law**
- **Progressive realization (nonregressivity/nonretrogression)**
- **International cooperation**

The normative approach provided in the international human rights system prevails upon the monitor to pose a number of relevant questions related to implementation not only of the specific content of the particular right, but also these over-riding principles common to the principal human rights treaties and applicable to all rights. This section will guide the monitor in applying these six over-riding principles in the respect, defense, promotion and fulfilment of the human right to adequate housing and land.

✓ **Self-determination**

General description

The principle of equal rights and self-determination of peoples is considered to have been a general principle of international law arising from common State practice already at the founding of the League of Nations. However, self-determination was first codified in the Charter of the United Nations in 1945, which sets forth the purposes of the United Nations as:

2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace...¹¹⁰¹

The Charter’s Article 55 stipulates further:

With a view to the creation of conditions of stability and well-being, which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

- a. higher standards of living, full employment, and conditions of economic and social progress and development;¹¹⁰²
- b. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and
- c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

¹¹⁰¹ Charter of the United Nations, 26 June 1945, Article 1(2).

¹¹⁰² Ibid., Chapter IX, “International Economic and Social Co-operation,” Article 55.

Every State has the duty, therefore, through unilateral, bilateral and multilateral action to promote universal respect for, and observance of human rights and fundamental freedoms in accordance with the Charter. Its Article 2.2 clarifies the universal duty of State membership such that:

All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with the present Charter.

The principle of self-determination has been progressively reaffirmed and legally defined throughout the UN system since its founding.¹¹⁰³ The material significance of self-determination is further elaborated in the Covenants on human rights adopted in 1966.¹¹⁰⁴ The common Article 1(2) of both the ICCPR and ICESCR sets forth that:

All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

How concerned persons/communities exercise an effective role in determining the terms by which they realize the human right to adequate housing is also a subject of the inalienable right of self-determination. Self-determination is the right of peoples, not of States. It is the State, however, that is the legal personality obliged to ensure the protection, defense, promotion and fulfillment of self-determination as a duty under international public law, as well as the essential legitimizing factor of the State itself.¹¹⁰⁵

The concept of, and right to self-determination manifest in a spectrum of types and expressions of effective local control over developments and relations within a community and territory may involve either external or internal self-determination; that is, national independence as in the formal distinction of a self-determination unit with its own internationally recognized borders, a self-determination unit within the internationally recognized borders of a unitary State, or a community's¹¹⁰⁶ effective control over developments and relations affecting it as an independent State.¹¹⁰⁷

¹¹⁰³ For example, see Declaration on the Granting of Independence to Colonial Countries and Peoples (1960), preamble and Article 7; "Permanent sovereignty over natural resources," General Assembly resolution 1803 (XVII) (1962), preamble and paras. 1–2, 5–7; International Convention on the Elimination of All Forms of Racism and Racial Discrimination (1965), Articles 1 and 5; Declaration on Social Progress and Development (1969), Articles 2, 3 and Part II; Declaration on Principles of International Law (1970), preamble and, esp., "The principle of equal rights and self-determination of peoples"; ECOSOC Declaration on Race and Racial Prejudice (1978), Articles 1, 3, 5 and 9 Declaration on the Right to Development (1986) preamble and Article 1, 6 and 8.

¹¹⁰⁴ International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI), 16 December 1966 (entered into force 3 January 1976 in accordance with Article 27); Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI), 16 December 1966 (entered into force 23 March 1966 1976 in accordance with Article 49).

¹¹⁰⁵ Consistent with the principle of the Universal Declaration of Human Rights, Article 21, which states that "the will of the people shall be the basis of the authority of government."

¹¹⁰⁶ While a standard legal definition of nation and people remains a subject of debate, the International Court of Justice has offered criteria for a community, having distinct rights as "a group of persons living in a given country or locality, having a race, religion, language and traditions of their own and united by the identity of race, religion, language and traditions in a sentiment of solidarity, with a view to preserving their traditions, maintaining their form of worship, insuring the instruction and upbringing of their children in accordance with the spirit and traditions of their race and rendering mutual assistance to each other," Permanent Court of International Justice, The Greco-Bulgarian "Communities" Advisory Opinion No. 17, 13 July 1939 (Leyden: Sijthoff, 1930), 21.

¹¹⁰⁷ For a comprehensive consideration of the human right of self-determination and its applications, see Hurst Hannum. *Autonomy, Sovereignty, and Self-Determination: The Accommodation of Conflicting Rights* (Philadelphia: University of Pennsylvania Press, 1996).

In its General Comment No. 12 on “the right of self-determination of peoples” (1984), The UN Human Rights Committee (HRC) gave its guidance on the corresponding obligations of States, with the following:

1. In accordance with the purposes and principles of the Charter of the United Nations, Article 1 of the International Covenant on Civil and Political Rights recognizes that all peoples have the right of self-determination. The right of self-determination is of particular importance because its realization is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights. It is for that reason that States set forth the right of self-determination in a provision of positive law in both Covenants and placed this provision as Article 1 apart from and before all of the other rights in the two Covenants.

2. Article 1 [of ICCPR] enshrines an inalienable right of all peoples as described in its paragraphs 1 and 2. By virtue of that right they freely "determine their political status and freely pursue their economic, social and cultural development". The Article imposes on all States parties corresponding obligations. This right and the corresponding obligations concerning its implementation are interrelated with other provisions of the Covenant and rules of international law.

3. Although the reporting obligations of all States parties include Article 1, only some reports give detailed explanations regarding each of its paragraphs. The Committee has noted that many of them completely ignore Article 1, provide inadequate information in regard to it or confine themselves to a reference to election laws. The Committee considers it highly desirable that States parties' reports should contain information on each paragraph of Article 1.

4. With regard to paragraph 1 of Article 1, States parties should describe the constitutional and political processes which in practice allow the exercise of this right.

5. Paragraph 2 affirms a particular aspect of the economic content of the right of self-determination, namely the right of peoples, for their own ends, freely to "dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence." This right entails corresponding duties for all States and the international community. States should indicate any factors or difficulties which prevent the free disposal of their natural wealth and resources contrary to the provisions of this paragraph and to what extent that affects the enjoyment of other rights set forth in the Covenant.

6. Paragraph 3, in the Committee's opinion, is particularly important in that it imposes specific obligations on States parties, not only in relation to their own peoples but *vis-à-vis* all peoples which have not been able to exercise or have been deprived of the possibility of exercising their right to self-determination. The general nature of this paragraph is confirmed by its drafting history. It stipulates that "The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations". The obligations exist irrespective of whether a people entitled to self-determination depends on a State party to the Covenant or not. It follows that all States parties to the Covenant should take positive action to facilitate realization

of and respect for the right of peoples to self-determination. Such positive action must be consistent with the States' obligations under the Charter of the United Nations and under international law: in particular, States must refrain from interfering in the internal affairs of other States and thereby adversely affecting the exercise of the right to self-determination. The reports should contain information on the performance of these obligations and the measures taken to that end.

7. In connection with Article 1 of the Covenant, the Committee refers to other international instruments concerning the right of all peoples to self-determination, in particular the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, adopted by the General Assembly on 24 October 1970 (General Assembly resolution 2625 (XXV)).

8. The Committee considers that history has proved that the realization of and respect for the right of self-determination of peoples contributes to the establishment of friendly relations and cooperation between States and to strengthening international peace and understanding.

Self-determination applied to communities

The over-riding principle of self-determination in this "Toolkit" is inspired by classic (customary and treaty) law criteria, as well as popular claims to the same. In both senses, the claim is legally fixed in the common Article 1 of the human rights treaties. Using the ICESCR as a basic and integrated instrument, the "ToolKit" especially applies this over-riding principle to Article 11, which guarantees the human right to housing.

In making the case for ultimate "self-determination" at the community level, this "Toolkit" draws on a number of popular instruments (mostly written and collectively endorsed statements, but also those rooted in oral traditions) asserting the "right" of communities to determine their own destiny. "Community" also enjoys a legal definition (see below).

Self-determination becomes as vital as any other need that grounds other human rights, including those other over-riding principles of rule of law, nondiscrimination, gender equality and international cooperation consistent with all human rights. In their collective dimension, these all become community "needs" and, consequently, "rights" insofar as their absence leads to erosion and violation of a bundle of individual, stand-alone rights and can lead to the deprivation or demise of a community as such.

It should be noted that States and others have recognized the real problem of "ethnocide" and "cultural genocide" resulting from assimilation policies so as to compel the rewriting of the International Labour Organisation (ILO) Convention No. 107 on Indigenous and Tribal Populations in Independent Countries (1956), eventually to adopt the Indigenous and Tribal Peoples Convention No. 169 (1989). Relevant to the practice of self-determination is the question of land tenure, which ILO Convention No. 169 treats in Articles 13–19, while at the same time disclaiming that the term "people" in the Convention does not convey implications as a term of international law (i.e., conferring the right of self-determination).

However, it is the human consequence of the deprivation, rather than the legal "peoplehood," that makes self-determination vital for any putative victims. Therefore, collective self-determination becomes the right of communities as necessary, even if they are not (or not yet) internationally recognized as a "people" or "nation," the category To avoid the horrendous consequences of demise and deprivation, and to ensure survival of

communities as a "right"—especially marginal and otherwise vulnerable ones such as those facing ethnic cleansing and/or elimination through military, administrative, globalization, forced eviction or development measures—local self-determination is vital, no matter what assimilationist governments individually or jointly say. In human rights, it is the human who has the first and final subject of respect, protection, promotion and fulfillment.

That having been said, and recognizing that self-determination can be either internal or external, the international public law term of art "internal self-determination unit" applies in the case of group or community, and is subject to case-by-case interpretation. This could refer to the rightful place of a minority or an indigenous people. It could conceivably apply also to a community of urban poor, particularly if their survival and/or well-being is threatened and their self-determination then becomes a need/right and requisite to the realization of other rights (life, adequate housing, culture, health, etc.).

In any case, the claimant of self-determination, whether an external or internal type, must meet the challenge and legal test of asserting that the claim at any level does not conflict with—or at least is balanced with—the rights of others. That may mean, of course, ensuring that self-determination claims do not negate general ecological values, others' self-determination rights, the rights of women to gender equality, security of person, regional peace and security, etc.

What are the criteria for *bona fide* claimants to local self-determination in the terms of international law as developed? The criteria presented by Martínez-Cobo (*Study of Discrimination against Indigenous Peoples*, UN document E/CN.4/Sub.2/1986/7/Add.4) has grounded much of the self-determination thinking about indigenous peoplehood and the rights arising. Based on his criteria for indigenous "people," the characteristics constituting a community with the right to claim external or internal self-determination could also be that the community (1) predate the influx of "others," (2) possess distinct cultural attributes, (3) occupy an identifiable territory and (4) identify itself as a people/community having the right to self-determination.

Legally defining the subjects of self-determination

Definitions of "people" or "nation," the legal self-determination rights holders, are generally unpopular with States and their sitting governments, unless the definition applies to an existing "nation-state." Of course, very few States can claim adherence to this definition, that is, to contain a single native people or nation (except, perhaps, Portugal, excluding immigrants). The General Assembly has assumed the task of defining self-determination (particularly in resolution 1514(XV), 14 December 1960). That has been construed typically as applying to cases of decolonization (Angola, Algeria, Namibia, Mozambique, Palestine, Puerto Rico, etc.). In its Advisory Opinion on Namibia, the International Court of Justice recognized Namibians as a "people" and "nation" in light of the value of, and for the purpose of decolonization. Despite this legal reference, the actual definition of "people" and "nation" remains under debate for political and practical reasons.

In addition to the guidance on "people," including indigenous peoples, as explicit self-determination rights holders, we have an international law definition of what constitutes a "community." The "community" definition does not deviate significantly from the four-part construct that Martínez-Cobo offered (above). It comes to us from the first International Court in a case sorting out criteria for transferring the ethnically Greek and Turkish communities between the Republic of Turkey and Greece after the First World War:

A group of persons living in a given country or locality having a race, religion, language and tradition of their own and united in the identity of race, religion, language and tradition in a sentiment of solidarity, with a view to preserving traditions, maintaining their form of worship, insuring the instruction and upbringing of their children in accordance with the spirit and traditions of their race and rendering mutual assistance to each other.¹¹⁰⁸

Leaving aside the probability that the purpose of the Court's opinion (population transfer) would be legally impermissible today,¹¹⁰⁹ the legal definition of "community" it provided is actually less ambiguous than that of "people" or "nation." The "people" definition remains elusive largely because some States find it a political Pandora's box that could challenge their jurisdiction and/or effective control over territory. Until now, some governments instead persist in proffering the legally vacuous term "indigenous populations," so that the legally more-significant term "people/s" would wane into disuse, as would also the corresponding rightful and self-preserving claims of its subjects to self-determination. However, if one is looking for a way to apply self-determination to "communities," one has this definition of the ICJ's predecessor as a reference.

Significant also is the fact that the Court's definitive Advisory Opinion was intended for a narrow and specific purpose. That was not to recognize an external self-determination right, but to rationalize a population transfer scheme that today would be considered a clear violation of international public law. That is not only because of the absence of consent and the obvious human suffering population transfer causes, but also because it deviates from the most basic concept of contemporary statecraft and democratic governance, which is that the State administer—including by way of implementing the right to self-determination—for *all* of its citizens. Population transfers and external self-determination claims, therefore, serve as a seismograph of a government's failure at effective statecraft.

This dissertation on self-determination has admittedly merged concepts and definitions of communities with peoples/nations, as the Permanent Court of International Justice effectively has done. Nonetheless, the values that sustain them are akin, and so should the safeguards that promise to prevent the worst of consequences arising from human rights violations against any identifiable group. In summary, self-determination has a local and community-based expression and basis as a right. For the purposes of advancing human rights through the "Toolkit," both "communities" as well as "nations/peoples" hold the right and responsibility to determine their own habitat, the essence of a people and/or community's survival and sustainability with dignity in its dwelling place.

Applied to freedom of movement, resettlement, *nonrefoulement*, return & restitution

Applied to resettlement and freedom of movement, *nonrefoulement* and return, the overriding principle of self-determination traditionally means that every people has the inalienable right to determine the terms of its resettlement and freedom of movement in its administrative and territorial unit(s). Thus, resettlement and freedom of movement should include a variety of expressions, including the right to seek safe refuge, in the case of natural and human-made disaster, and to determine acceptable terms of resettlement. It also means that the affected people or community has the right to consultation and consent to resettlement terms, and that coercive or forced resettlement and population transfer are forbidden under human rights and humanitarian law norms. Especially, those refugees or

¹¹⁰⁸ Permanent Court of International Justice, The Greco-Bulgarian "Communities," Advisory Opinion No. 17, 31 July 1930 (Leyden: Sijthoff, 1930), p. 21.

¹¹⁰⁹ See report of the Special Rapporteurs Aun al-Khasawneh and Ribot Hatano, "The human rights dimensions of population transfer, including the implantation of settlers and settlements," E/CN.4/Sub.2/1993/17.

internally displaced persons retain the right to return to their original homes and lands with full and fair compensation and restitution for damage and loss, include the use of their properties by others. In cases of resettlement, States should “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.”

✓ Nondiscrimination

General description

Like self-determination, an inalienable human right common to the major legal systems throughout the world, a fundamental requisite of justice is the absence of discrimination on any arbitrary basis. Discrimination typically results in deprivation of human needs and rights.

Given its centrality, the principle of nondiscrimination, consequently, is an over-riding human rights principle embodied in the first Articles of each major human rights treaty. Nondiscrimination, and its corresponding State obligation to ensure nondiscrimination, are enshrined in the preamble of all international declarations and resolutions concerned with human rights matters, governance and the relations between and among States, nations and peoples.

Common to Article 2 in both the Covenants, nondiscrimination stands out as an over-riding principle with *immediate* application to all the rights contained in those instruments.¹¹¹⁰ The Covenants prohibit arbitrary preferential or punitive treatment and oblige States parties to undertake steps to ensure that rights be exercised without distinction or discrimination “of any kind [as to] race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”¹¹¹¹

The International Convention on the Elimination of All Forms of Racial Discrimination (1965) defines discrimination as:

any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.¹¹¹²

Article 5 of that Convention actually offers the historic first codification of the human right to housing, with particular reference to the over-riding principle of nondiscrimination. It reads:

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

In the Convention and its negotiation history, an important distinction emerges: While it is the obligation of States’ parties and their governments to combat both “racism” and “racial

¹¹¹⁰ For further guidance on the legal obligations to immediate implementation of the nondiscrimination principle applied to housing rights, see the report of the Special Rapporteur on Adequate Housing E/CN.4/2002/59.

¹¹¹¹ ICESCR, Article 2.2; ICCPR, Article 2.1.

¹¹¹² Article 1, International Convention on the Elimination of All Forms of Racial Discrimination, adopted by General Assembly resolution 2106 (XX) of 21 December 1965, entered into force, 4 January 1969.

discrimination,” the former is a state of mind that should be eradicated through measures including education and other efforts to bring about a cultural and social transformation toward antidiscrimination. The latter, “racial discrimination” is the actual activation of prejudice which, in its manifestation, is a material violation of the rights of others. Any official action or omission of practicing or condoning racial discrimination is a violation of an *immediate* obligation of the State, not subject to “progressive realization.”

This distinction between (1) theoretical racism and (2) racial discrimination in practice has historic roots. It is found also in moral systems, as reflected in the Holy Qur’an, which recognizes the existence of prejudice, but, nevertheless, entreats against putting that into practice:

O you who believe, be upright for God, bearers of witness with justice; and let not hatred of a people incite you not to act equitably. Be just, [for] that is nearer to the observance of duty [the nearest thing to piety].¹¹¹³

This moral distinction was found relevant nearly one millennium later, during the French Revolution. Then, the revolutionary slogan and moral call to the Human Rights of Man and Citizen was “*liberté, égalité, fraternité*.” While all three qualities were found desirable and necessary to build a new, democratic society, only liberty and equality could actually be legislated. Fraternity (or sorority) could be developed and encouraged by the State and civil society much more likely than it could be enforced. Nonetheless, a range of practical measures can be undertaken to nondiscrimination in actual practice.

Inherent in the principle of nondiscrimination is the understanding that programs formally providing advantages to persons and groups historically subject to discrimination are not considered to constitute unlawful discrimination. On the contrary, international public law calls upon States to provide additional assistance to those persons and groups subject to past and/or present discrimination, as in corrective/positive discrimination or affirmative action programs that redress foregoing patterns of deprivation.¹¹¹⁴

Applied to freedom of movement, resettlement, *nonrefoulement*, return & restitution

Applied to resettlement and freedom of movement, *nonrefoulement* and return, the nondiscrimination principle ensures that individuals and groups are not deprived of opportunities for resettlement and freedom of movement, *nonrefoulement* protection and return, including legal enforcement, protection and remedy, nor denied this entitlement on the basis of race, color, creed, gender, sex, sexual orientation, political opinion, social or economic status, language, physical ability/disability, property, form of legitimate work, descent, or any other origin or arbitrary criterion. Likewise, no State possesses the legal authority to practice or condone *de jure* or *de facto* discrimination that leads to the loss or denial of the congruent rights to resettlement and freedom of movement, *nonrefoulement* and return to any member of any group, particularly to the unfair advantage of another. This applies to the practice of nepotism and other forms of corruption involving discrimination that allow disproportionate benefits to family members or political partisans, as well as preferences given to groups such that engender or perpetuate conflict. State protection from discrimination in all its forms is an immediate obligation.¹¹¹⁵

¹¹¹³ Chapter 5: The Food [al-Ma’da], Section 2: “Duty of Uprightness,” verse 8. Maulana Muhammad Ali, transl. The Holy Qur’an (Lahore: Ahmadiyya Anjuman Isha’at Islam, 1963), p. 243.

¹¹¹⁴ See Marjorie Cohn, “Affirmative Action and the Equality Principle in Human Rights Treaties: United States’ Violation of Its International Obligations,” Virginia Journal of International Law, Vol. 43 (2002), 249–74.

¹¹¹⁵ For further guidance on the legal obligations to immediate implementation of the nondiscrimination principle applied to housing rights, see the report of the Special Rapporteur on Adequate Housing E/CN.4/2002/59.

International public law calls States to provide special assistance to persons and groups who have been subject to past and/or present discrimination, as in affirmative action programs that redress foregoing patterns of deprivation.¹¹¹⁶

✓ Gender equality

General description

Despite the universal acceptance of the principle of gender equality in international law, many women are denied equal treatment and discriminated against in their housing on the basis of sex or gender. Approximately one-third of the world's women may be homeless, living in inadequate housing and own less than one percent of the world's property.¹¹¹⁷ The intersectionality of poverty or other factors (i.e., class, indigenous, refugee, migration, caste, sexual orientation, ethnic minority, age, disability, widowhood, citizenship or nationality status, etc.) further marginalize women. In the context of the increased feminization of poverty, decreased access to public services, and destruction of natural environments, all of which are accelerating with the process of globalization, women are increasingly placed in situations where they do not have adequate housing.

The denial of adequate housing for women is a violation of women's human rights. It can also result in the violation of women's other human rights such as rights to life, livelihood, adequate food, employment and political participation (e.g., voting rights). In particular, the lack of adequate housing also can make women more vulnerable to various forms of violence against women (e.g., domestic violence, trafficking, sexual and gender-based violence against migrant workers etc.).

The right to nondiscrimination in gender relations, as an over-riding principle in human rights implementation, is generally stated in UDHR, Article 2 (nondiscrimination) and throughout the Declaration in its language of human rights for "everyone" and "all are equal before the law." More specifically, gender equality has emerged as a binding, over-riding principle in the two Covenants' common Article 3:

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all...rights set forth in the present Covenant.

This principle is further elaborated in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).¹¹¹⁸ Article 13 obliges States parties to take all appropriate measures to eliminate discrimination against women in areas of economic and social life, and to ensure women's equal right to bank loans, mortgages, and other forms of social credit. In Article 14, paragraph 2, CEDAW specifically addresses women's equal rights in human settlements as the right of women in rural areas to enjoy adequate standard of living conditions, particularly, in relation to housing sanitation, electricity and water supply, transportation, education, communications and access to credit. This extends explicitly to women's "equal treatment in land and agrarian reform as well as in land resettlement schemes." Article 15 also addresses women's equal right to conclude contracts and administer property; while Article 16, paragraph 1 (c) guarantees women's equal rights and responsibilities during marriage and its dissolution, including equal rights for both spouses in

¹¹¹⁶ See Marjorie Cohn, "Affirmative Action and the Equality Principle in Human Rights Treaties: United States' Violation of Its International Obligations," *Virginia Journal of International Law*, Vol. 43 (2002), 249–74.

¹¹¹⁷ COHRE Fact Sheet on Women's Right to Housing, Land and Property.

¹¹¹⁸ Adopted and opened for signature, ratification and accession by General Assembly resolution 34/180, 18 December 1979; entered into force, 3 September 1981, in accordance with Article 27(1).

respect of ownership, acquisition, management, administration, enjoyment and disposition of property.

This legal norm is carried forward in the Beijing Platform for Action (BPFA), which calls on Governments to remove all obstacles for women in obtaining affordable housing and access to land.¹¹¹⁹ This remains standard in the subsequent multilateral agreements formulated in the Istanbul Declaration and the Habitat Agenda (1996)¹¹²⁰ and the World Summit on Sustainable Development (WSSD) Plan of Implementation (2002).¹¹²¹

The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (1997), which were developed for understanding and determining violations of economic, social and cultural rights, affirmed that, in order to eliminate discrimination against women's rights recognized in the Covenant, the State party should face the need and legal obligation to eliminate discrimination against women that arises out of social, cultural and other structural advantages.¹¹²²

Typically, for women the home is the single most important place in the world. Beyond shelter, it is a place for the vast majority of woman to generate income, care for children, and seek respite from violence and patriarchy in the community at large. For many still, it is the only place where women can participate fully in decisions and social activities.

Applied to freedom of movement, resettlement, *nonrefoulement*, return & restitution

Poverty and loss, simultaneous with the burden of providing for the household, are increasingly feminized, and displacement and resettlement exacerbate this form of deprivation. Women are particularly vulnerable and victimized in situations of migration, refuge and resettlement where they do not have adequate housing.

The intersectionality of gender discrimination with other status (i.e., class, indigenous, refugee, migration, caste, sexual orientation, ethnic minority, age, disability, widowhood, citizenship or nationality status, etc.) further marginalize women as tenure holders in their home. Traditional practices denying equality for women (including rights to inheritance and other economic/social/cultural rights) are common among populations typically subject to resettlement, migration or transfer. Such practices are inconsistent with the present framework and likely would violate both the gender-equality provisions of the Covenant, as well as provisions of the Vienna Convention on the Law of Treaties (1969).¹¹²³ States, therefore, have the obligation to ensure that women's rights and concerns are provided for as a priority, including by ensuring opportunities for full participation, consultation and decision making at every stage of the process of resettlement, movement, refuge and return.

✓ Rule of law

¹¹¹⁹ Para 58(m).

¹¹²⁰ Para 40 (b), 78 (e) and (g).

¹¹²¹ Para 67 (b).

¹¹²² Related sources of gender equality for women in human settlements can be found in CEDAW Articles 1, 2(f), 3 and 5 (a); UDHR, Articles 2, 16, 17 and 25; UDHR, Articles 5 (d) (v) and (vi), 5 (e) (iii); ICERD, Article 2, para 1, Articles 3, 9, 16, 17, Article 23, para 4, ICCPR, Article 26; ICESCR, Article 2, para 2, Article 3, and Article 11, para 1; and CRC, Article 1, 16, para 1 and Article 27.

¹¹²³ The Vienna Convention sets forth, in Article 27, that "[A] party may not invoke the provisions of its internal law as justification to perform a treaty," and the customary law principle, arising from Article 8 of the Universal Declaration of Human Rights, states that "everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him [her] by the constitution or by law."

General description

In the over-riding principles pertaining to previously discussed forms of discrimination, human rights are, by their nature, equal, inalienable and universal. By this is meant that the criteria for applying the standards and norms are to be inconsistent in their application. One way to ensure that is through the formal and institutionalized rule of law.

As enshrined in UDHR, Article 6, “Everyone has the right to recognition everywhere as a person before the law.” This right is codified in the ICCPR (Article 16), and is supported by regional instruments affirming the same.¹¹²⁴ The equal inalienable and universal right to a fair trial, including the presumption of innocence, is enshrined in ICCPR,¹¹²⁵ as well as the regional instruments.¹¹²⁶

The law-abiding State and its officers must not withhold or impede remedies, apply the law inconsistently or arbitrarily, or exercise any form of discrimination that affects the human right to adequate housing. Inhabitants who have lost or undergone damage to their housing unjustly or illegally have the right to unobstructed access to legal remedy, including compensation for victims, which the State bears the corresponding obligation to respect, defend, promote and fulfill.

States are required to maintain the rule of law in order to ensure a consistent, predictable and accessible resolution of disputes with remedy and compensation for the victims. This covers the right of equal access to public services, such as law enforcement, public defense and judicial services. The conduct of law enforcement officers, prosecutors and judges can determine whether or not the rule of law is respected or violated. Therefore, there is a tremendous need for the State to train, discipline and rehabilitate legal enforcers and practitioners. In the case of police services, the use of force is required to follow strictly the principle of presumed innocence and the criteria of necessity and proportionality in case where State force is used.¹¹²⁷ Where local statutory law may be silent on housing rights safeguards, lawyers and judges bear an extra professional duty to apply the human rights norms to the extent possible.

The principles of remedy and reparation have been firmly established in instruments declaratory of the human right to access to justice. Culminating the development of international law derived from the major legal systems in the world, the revised Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law (2003) outline the right and corresponding State obligations as follows:

VII. Victim’s Right to Remedy

Remedies for violations of international human rights and humanitarian law include the victim’s right to:

- (a) Access justice;
- (b) Reparation for harm suffered; and

¹¹²⁴ African Convention on Human and Peoples’ Rights, Article 5; Inter-American Convention on Human Rights, Article 3.

¹¹²⁵ Article 10 reads: “Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his[her] rights and obligations and of any criminal charge before him[her].” [Bracketed text added.] Article 14.2 sets forth that “Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to the law.”

¹¹²⁶ African Charter, Article 7; Inter-American Convention, Article 8; European Convention on Human Rights, Article 6.

¹¹²⁷ Code of Conduct for Law Enforcement Officials, adopted by General Assembly resolution 34/169, 17 December 1979, Article 3; Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted at the Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August–7 September 1990, preamble and Articles 1–11.

(c) Access the factual information concerning the violations.

VIII. Victims' Right to Access Justice

A victim's right of access to justice includes all available judicial, administrative and other public proceedings, mechanisms and modalities that exist under domestic laws, as well as under international law. Obligations arising under international law to secure the individual or collective right to access justice and fair and impartial proceedings should be made available under domestic laws. To that end, States should:

Make known, through public and private mechanisms, all available remedies for violations of international human rights and humanitarian law;

Take measures to minimize the inconvenience to victims, protect their privacy as appropriate, and ensure their safety from intimidation and retaliation, as well as that of their families and witnesses, before, during, and after judicial, administrative, or other proceedings that affect the interests of victims;

Facilitate assistance to victims seeking access to justice.

Make available all appropriate diplomatic and legal means to ensure that victims can exercise their rights to a remedy and reparation for violations of international human rights or humanitarian law.

In addition to individual access to justice, adequate provisions should also be made to allow groups of victims to present collective claims for reparation and to receive reparation collectively.

The right to an adequate, effective and prompt remedy against a violation of international human rights or humanitarian law includes all available international processes in which an individual may have legal standing and should be without prejudice to any other domestic remedies.¹¹²⁸

The restitution of housing and property is one form of restitutive/restorative justice sought in the rule of law applied to housing rights violation victims. Efforts continue to develop these methods and disparate efforts, not least in the development of draft guidelines on restitution for refugees.¹¹²⁹

Applied to freedom of movement, resettlement, *nonrefoulement*, return & restitution

In the case of a dispute over the congruent rights to resettlement and freedom of movement, *nonrefoulement* and return, the State bears an obligation to ensure that the rule of law is applied in a context of equality, inalienability and universality of rights, particularly with regard to the human right to adequate housing. In the case where the State (e.g., courts or police) assume a role in such a dispute, the State bears the responsibility to abide by its human rights obligations and refrain from violations of the right to housing, including the congruent rights to resettlement and freedom of movement, *nonrefoulement* and return, such as unlawful forced eviction, omission to prosecute public and private violators. In any case, the rule of law requires States and governments to refrain from violence or other punitive measures inconsistent with the principles of (1) presumption of innocence until proven guilty and, in the use of force, (2) necessity and (3) proportionality.

¹¹²⁸ As revised in accordance with UN Commission on Human Rights resolution E/CN.4/2003/34 (2003).

¹¹²⁹ Progress report of the Special Rapporteur, Paulo Sérgio Pinheiro, "Housing and property restitution in the context of the return of refugees and internally displaced persons," E/CN.4/Sub.2/2004/22, 2 June 2004.

The law-abiding State, its agents and offices must not withhold rights to the congruent rights to resettlement and freedom of movement, *nonrefoulement* and return, nor exercise any form of arbitrary discrimination in the process. Inhabitants who have lost their congruent rights to resettlement and freedom of movement, *nonrefoulement* and return are entitled to unobstructed access to legal remedy, including compensation for victims, for which the responsible State bears the corresponding obligation.

✓ Nonretrogression/progressive realization

General description

ICESCR's Article 2 identifies the State party's obligation to ensure the "progressive realisation" of ESC rights. That is widely interpreted to mean that the State party breaches this provision if it tolerates or causes "regressivity" in the enjoyment of the right. The relevant jurisprudence has established that, even in the case of scarce resources, the State must exert good-faith efforts, including through international cooperation, to advance—and not derogate—the enjoyment of ESC rights, including adequate housing and its constituent entitlements.

The treaty bodies have clarified further that neither political processes, domestic legislation, scarcity of resources, or agreements with other parties can be invoked to justify nonimplementation of human rights treaty obligations.¹¹³⁰ For example, the binding nature of a treaty obligation is further clarified in the Vienna Convention on the Law of Treaties (1969), clarifying in its Articles 27 and 46, that invoking an internal law is not admissible as a justification for nonimplementation of a treaty obligation.¹¹³¹ To harmonize treaty obligations with local implementation, human rights obligations arising from the treaties and case law should guide policy formulation and decision-making processes in law-abiding States. Therefore, a process of realising the rights should not regress, but should ensure "the continuous improvement of living conditions" (Article 11).

This over-riding principle of "nonregressivity" has been reaffirmed in the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights (1986) and Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (1997),¹¹³² as well as numerous cases of international jurisprudence through the monitoring functions of CESCR.

The many examples of globalization-era economic reforms demonstrate how the withdrawal of the State from its obligations to fulfill economic/social/cultural rights can lead to deprivation. The State nonetheless bears a covenanted obligation to ensure that economic policies do not make tenure more precarious and insecure, whether arising from domestic political change or pressures of an external actor, such as an international financial institution. In order to ensure "progressive realization," therefore, it is vital to ensure that the

¹¹³⁰ Letter of CESCR Chairperson Mme. Virginia Bonoan-Dandan to S.E. M. Yaakov Levy, Permanent Representative, Permanent Mission of Israel to the United Nations Office and Specialized Agencies at Geneva, 11 May 2001, annex to Letter by the Chairperson of the Committee on Economic, Social and Cultural Rights to the President of ECOSOC (11 May 2001).

¹¹³¹ Article 27 (Internal law and observance of treaties): "A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to Article 46." Article 46 (Provisions of internal law regarding competence to conclude treaties) states that: 1. A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance. 2. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith."

¹¹³² Text available at <http://ip.aaas.org/escrdocs.nsf/>.

human right to adequate housing forms a part of the overall human rights framework for development policy, especially guiding international cooperation arrangements. This civilizing process requires improved coordination among the relevant government bodies, such as ministries of Justice, Finance and Foreign Affairs. This is not only out of domestic duty toward citizens for States to ensure that development partnerships effect “progressive realization,” but also an extraterritorial obligation of the State party under ICESCR, Article 2.

The CESCR has commented also on the “core obligations” of States to implement the human right to adequate housing. It noted that, regardless of the state of development of any country, certain steps must be taken immediately, in addition to the over-riding principles of human rights law. These include abstaining from measures that would impinge upon the right, as well as to engage positively in practices to facilitate the people’s processes of groups seeking to improve their living conditions, in accordance with the specific elements outlined above.¹¹³³

Applied to freedom of movement, resettlement, *nonrefoulement*, return & restitution

The State’s offices and agents, as well as its guiding policies and legislation should ensure that resettlement and freedom of movement, *nonrefoulement* and return arrangements become more effective at safeguarding the entitlements to the human right to adequate housing and land. This means that new laws or policies, as well as trends in official behavior and practice should improve in the direction of greater justice for all and protection for those vulnerable persons or victims in cases of resettlement, movement, refuge and return. It also means that those same parties should develop greater capacity for, and actually delivery of relief to those who have lost their home or shelter under such circumstances.

✓ International Cooperation

General description

States parties to both Covenants bear an obligation to implement human rights within a context of “international economic cooperation.”¹¹³⁴ The ICESCR’s Article 2.1 requires States party to undertake steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

In the spirit of the numerous multilateral agreements on human rights and development, “progressive realization of ESC rights,” as a borderless objective, logically engages “international cooperation” duties for States to conduct themselves accordingly through their relations with other States, nations and peoples:

In fraternity and solidarity
Domestically and extraterritorially
Individually, jointly and/or collectively.

¹¹³³ “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.” General Comment No. 4, para. 10.

¹¹³⁴ Common Article 1.2.

The preamble of the United Nations Charter specifies the purposes of the world organization insofar as "we the peoples of the United Nations" are determined "to promote social progress and better standards of life in larger freedom." Article 1, para. 3 of the Charter sets out one of the UN's purposes as "to achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion."

Linking international cooperation and self-determination as essential to the peaceful order of the United Nations, the Charter's Article 55 reads:

With a view to the creation of conditions of stability and well-being[,] which are necessary for peace and friendly relations among nations based on respect for the principles of equal rights and self-determination of peoples, the United Nations shall promote universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

The Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations considers as essential:

the progressive development and codification of the following principles:... (d) the duty of States to cooperate with one another in accordance with the Charter;...(g) the principle that States shall fulfill in good faith the obligations assumed by them in accordance with the Charter, so as to secure their more-effective application within the international community would promote the realization of the purposes of the United Nations;...¹¹³⁵

The UN States members share a duty to cooperate with one another, irrespective of their differences, to maintain international peace and security and promote international economic stability and progress, the general welfare of nations and international cooperation free from discrimination. To this noble end, the Declaration embodied by UN members commitments such that:

(c) States shall conduct their international relations in the economic, social, cultural, technical and trade fields in accordance with the principles of sovereign equality and nonintervention;

(d) States Members of the United Nations have the duty to take joint and separate action in cooperation with the United Nations in accordance with the relevant provisions of the Charter.

States should cooperate in the economic, social and cultural fields as well as in the field of science and technology and to the promotion of international cultural and educational progress. States should cooperate in the promotion of economic growth throughout the world, especially that of the developing countries.¹¹³⁶

¹¹³⁵ Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly in its resolution 2625 (XXV) of 24 October 1970 Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly in its resolution 2625 (XXV) of 24 October 1970

¹¹³⁶ Ibid.

In addition to its Article 2, ICESCR also sets out to identify the UN systems itself as a vehicle for international cooperation to uphold the Covenant. The Covenant empowers ECOSOC to raise the Covenant-monitoring reports as a guide for UN technical assistance.¹¹³⁷

Other instruments of international public law are dedicated to specifying norms for international cooperation agreements between and among States. Consistent with human rights norms and other *jus cogens* principles of law, the Vienna Convention, Article 53, provides clarity:

A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

States parties adhering to the international law principles of international cooperation are required to behave extraterritorially consistent with the progressive realization of economic/social/cultural rights. For our purposes, this extends especially to the human right to adequate housing and land.

As a donor country, a State must ensure that the projects and programs it supports do not erode any of the entitlements contained in their right to adequate housing for inhabitants in beneficiary countries. That includes avoiding any action that leads to forced evictions, confiscation or demolition of housing. In the case of development assistance resulting in dislocation of inhabitants, all aspects of the undertaking are to be the subject of consultation with the affected persons, and the efforts should enhance legal security of tenure as a result within the covenanted human rights framework.

As a recipient country, structural adjustment, deregulated foreign investment, privatization and related measures typified by today's bilateral and multilateral arrangements assistance agreements and programs must be compatible with the human rights obligations of the affected State. Measures that deny or reduce tenure security would be illegal and unaccepted as a condition of the assistance. States parties to the human rights instruments have a self-preserving opportunity and responsibility to uphold their prior treaty obligations as a form of (moral, legal and practical) resistance to negotiation pressures or conditionalities that may derogate the terms of legal security of tenure for inhabitants.

As all human rights implementation ultimately is a local matter, regional instruments can be a source a greater specificity in determining of State obligations and practical measures needed to uphold economic, social and cultural rights. For example, the African Charter on Human and Peoples' Rights (1981) provides a broad agreement on the term of international cooperation in its Article 21: 1, which establishes that:

All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it. 2. In case of spoliation, the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation. 3. The free disposal of wealth and natural resources shall be

¹¹³⁷ Article 22 reads: "The Economic and Social Council may bring to the attention of other organs of the United Nations, their subsidiary organs and specialized agencies concerned with furnishing technical assistance any matters arising out of the reports referred to in this part of the present Covenant which [sic] may assist such bodies in deciding, each within its field of competence, on the advisability of international measures likely to contribute to the effective progressive implementation of the present Covenant."

exercised without prejudice to *the obligation of promoting international economic cooperation based on mutual respect, equitable exchange and the principles of international law*. 4. State Parties to the present Charter shall individually and collectively exercise the right to free disposal of their wealth and natural resources with a view to strengthening African Unity and solidarity. 5. *State Parties to the present Charter shall undertake to eliminate all forms of foreign exploitation particularly that practised by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources.* [Emphasis added.]

States Parties are required to review multilateral agreements on investment, trade-related intellectual property arrangements, poverty-reduction strategy papers (PRSPs), bilateral and multilateral relations in the World Trade Organization context, World Bank lending and assistance terms, and the International Monetary Fund programs operating in, or otherwise affecting the State, in order to ensure consistency with covenanted obligations and avoid either retrogressivity or violations of its citizens' ESC rights. The State party is obliged to apply the Covenant *a priori* to ensure that any such conditionality would be subject to the ESC rights safeguards for its own inhabitants, and for those of another State party.

Privatization programs may lead to deprivation of the housing rights entitlement to tenure security. In the event of workers living in administrative housing who become laid off as part of a privatization or State-enterprise sell-off arrangement may lose their tenure altogether. Even in cases where local legislation is silent, international treaty obligations remain for the State party to defend the workers' human right to adequate housing by legal and enforceable protection for their secure tenure and all other housing rights entitlements.

As an extreme example of international cooperation conducted in explicit violation of ESC rights applying to adequate housing and secure tenure would be a scenario wherein a State engaged in, or condoning third parties to engage in acts or omissions that would contribute to population transfer or any of its related international crimes, such as mass deportations, ethnic cleansing, destruction of civilian or private property, implantation of settlers and settler colonies, or other forms of demographic manipulation of an internal or external self-determination unit. Duty prohibits States party from allowing public or private resources to accrue to settler colonies in an occupied territory, for example, or engage in any other acts or omissions that would facilitate another State party's violations of the Covenant or Convention in this way. There are numerous examples today in countries where these forms of violation continues unaddressed with the accomplice and collaboration of other States. Impunity still characterizes the conduct of many of these crimes, as the perpetrators have not yet been prosecuted at any level, including at the International Criminal Court.

A State's participation in international economic sanctions or blockades that lead to violations of the ESC rights of persons other than the State Party's own residents, citizens and nationals may lead to conditions that undermine housing rights. CESCR has provided guidance to States parties of the Covenant on ESCRs affected by sanctions regimes and subject to protection measures to avoid regressivity and violation.¹¹³⁸

Direct provision, or participation in multilateral programs of development and financial assistance actually may lead to violations of rights embodied in the Covenant (e.g., stagnation, deterioration or denial of work, education, health or housing rights, forced eviction, etc.) and constitute a breach of treaty obligations. Specifically, ICESCR and its enshrined rights should guide and govern a State's policies and conduct in any multilateral

¹¹³⁸ See CESCR General Comment No. 8, "the relationship between economic sanctions and respect for ESC rights."

institution that imposes economic conditionalities on other States or their agents that bring about a negative consequences effect inhabitants housing rights conditions. The legacy of development banks' support for forced evictions of all possible scales and levels of deprivation has become notorious, and States that promote, finance or engage directly or indirectly in making decisions or executing these policies may be in breach of their human rights treaty obligations.

Applied to freedom of movement, resettlement, *nonrefoulement*, return & restitution

International cooperation is particularly relevant and necessary in the case of resettlement, movement, *nonrefoulement* and return where cross-border movement is a factor. International security and development cooperation should ensure that coercive movements of any scale do not occur. Bilateral and multilateral efforts should enhance administrative capacity, governance, service provision, technology transfer and financial support for preventive and remedial actions to respect, defend, promote and fulfill the congruent resettlement and freedom of movement, *nonrefoulement* and return. Any cross-border cooperation and investment in human settlements and/or in other sector should not affect negatively the rights of resettlement, freedom of movement, *nonrefoulement* and return.

✓ Other principles of application

The principles discussed above are those explicitly stated in the major international human rights treaties. At the same time, we can consider additional principles and concepts that also guide the application of the human right to adequate housing. These arise from the international jurisprudence of individual State party reviews by the treaty-monitoring bodies, as well as from their General Comments and General Recommendations. They also come to us from popular claims of people's movements, from the political resolutions of the multilateral organizations, from expert opinions found in the legal literature, and from the evolving experience at implementing human rights. Three such principles of application for us to consider are known as the "indivisibility of rights," "minimum core obligations" and "universality."

Indivisibility

The concept of all human rights as indivisible is as practical as it is theoretical. It arises from the realization that, when we unpack the contents of a right, we encounter aspects of the other rights as well.

Take, for example, the "habitability" entitlement contained in the human right to adequate housing. The deterioration of the structural features of the home leaving the inhabitants exposed to the elements, or pollution in the immediate vicinity of the housing surely effect the enjoyment of the human right to "a standard of living adequate for the health and well-being of himself and of his family," as recognized in Article 25 of the 1948 Universal Declaration of Human Rights (UDHR), and codified as the "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health" in Article 12 of the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR).

Likewise, homelessness is a status synonymous with the denial of voting rights in most States, where registration and voting require a *domicile fixe*. Thus, the human right to adequate housing is linked with everyone's "right to take part in the government of his [sic] country, directly or through freely chosen representatives," as promised in UDHR (Article

21), and codified in the Covenant on Civil and Political Rights (ICCPR), in 1966, as everyone's "right to take part in public life, directly or through freely chosen representatives" (Article 25). Incorporating the experience of HIC members and others around the globe, it has become clear that our monitoring methodology calls our attention also to the "congruent" human right to participation and self-expression among the constituent entitlements of the human right to adequate housing.

Sorting, categorizing and distinguishing subjects of any kind can be a useful exercise that makes manageable order out of complexity and facilitates understanding. Human rights are no exception. However, in practice, we find that human rights are interdependent, and categorical separation can become artificial and actually impede understanding. One example is in the division of human rights found in the UDHR into the two, separate Covenants. The reason for adopting two basic Covenants, instead of one, is largely attributed to the divergent Cold War ideologies that dominated the General Assembly when it adopted the Covenants in 1966. Ideology is also the reason that one of the largest and wealthiest industrialized States has failed to ratify the ICESCR until today, and ideology also prevailed to exclude a "human right to own property" from that Covenant, although that right is included in the UDHR (Article 17). Despite the false impression left by the Covenants dividing human rights into two instruments camps, the ICCPR's nonetheless recognizes, in its preamble, that:

... in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights.

Without appreciating the over-riding principle of indivisibility, other distortions can arise. With civil and political rights traditionally gaining from more attention and specificity than economic/social/cultural rights (consistent with some Western Bloc preferences), some authors have proposed that we consider "generations" of rights.^{1139[1]} Presenting distinct rights in such a priority order perpetuates the historic neglect of economic/social/cultural rights and promotes a logic that may culminate in violations. Nominating civil and political rights in a hierarchical order as "first generation" rights classifies economic/social/cultural rights as secondary: the "second generation" of rights. Group rights, as distinct from individual rights, environmental rights and, in certain cases, self-determination thus become degraded as "third generation." This view is kept alive by a simple misunderstanding of

^{1139[1]} French jurist Karel Vasak is attributed with first proposing the division of human rights into three generations, while at the International Institute of Human Rights (Strasbourg), in 1979. His division adapted the French Revolution's slogan of Liberté, Égalité, Fraternité as ordinal categories. The three generations are subsequently reflected in some of the rubrics of the European Charter of Fundamental Rights.

First-generation human rights deal essentially with liberty. In Vasak's view, these are seen as fundamentally civil and political in nature and serve to protect the individual from excesses of the State. First-generation rights include, *inter alia*, freedom of speech, the right to a fair trial, and freedom of religion, as enshrined in Articles 3–21 of UDHR and ICCPR.

Second-generation human rights would be those related to equality, and are supposedly the social, economic, and cultural rights. This theory sees these essentially as positive rights; that is, actions that the State is required to provide to the people under its jurisdiction, as opposed to actions from which the State should refrain—e.g., forced eviction—in order to realize rights.

Third-generation human rights correspond with fraternity, or involving "solidarity." They include group and collective rights, such as self-determination, economic and social development, sovereignty over natural resources, and the right to participate in the common heritage of mankind. Treated as third generation, the generational theory of rights presumes that these rights are not yet binding and dubiously judicial.

In an alternative explanation for the three-generational approach rests on the political divisions of the Cold War, where the West promoted allegedly first-generation (civil and political) rights, and the East promoted second-generation (economic, social and cultural) rights. The Third World (i.e., third priority in the putative hierarchy) promoted (third-generation), solidarity rights, as in the decolonization struggles of the 1970s, including decolonization processes delayed until today.

“progressive” realization, required in ICESCR, such that slow realization of economic/social/cultural rights is acceptable and that all aspects of economic/social/cultural rights, as such, are subject to gradual implementation. The indivisibility of human rights belies such gradualist or generational notions. Therefore, this toolkit cannot accommodate the divisive, generational approach to human rights not for ideological reasons, but for the fact that theories neatly segregating rights are not sustained in practice.

It is with this recognition of the indivisibility of rights that CESCR commented:

...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....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.^{1140[2]}

Core obligations

Alone, the very general reference to the human rights in treaty texts does not provide the specific guidance needed for States parties around the world to know their precise obligations. ICESCR’s English-language version requires States to “take steps.” The French texts calls on States “to act” (*s’engage à agir*) and, in Spanish, the Covenant requires States “to adopt measures” (*a adoptar medidas*), but offers little about what those steps/actions/measures should be, except to say that these should be “appropriate,” “progressive” (nonregressive/ nonretrogressive), nondiscriminatory (nondiscrimination), involve international cooperation and include legislative measures (rule of law). Therefore, the treaty-monitoring bodies bear the task of issuing General Comments and General Recommendations to supply the needed specificity, based on international public law and the implementation experience of all States parties.

In its General Comment No. 3: “The nature of States parties’ obligations,”^{1141[3]} CESCR addressed the principle of “minimum core obligations”:

...a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party. Thus, for example, a State party in which any significant number of individuals is deprived of ...basic shelter and housing...is, *prima facie*, failing to discharge its obligations under the Covenant. If the Covenant were to be read in such a way as not to establish such a minimum core obligation, it would be largely deprived of its *raison d’être*.^{1142[4]}

The General Comment, like the Covenant, takes into consideration material limits of States. However, the Covenant’s Article 2 (1) obligates each State party to take the necessary steps “to the maximum of its available resources,” and the treaty body has determined that the nature of treaty obligations are such that a State bears a heavy burden of proof to

^{1140[2]} General Comment No. 4: “the right to adequate housing” (1991), para. 9.

^{1141[3]} Adopted by the CESCR in its fifth session (1990), E/1991/23.

^{1142[4]} *Ibid.*, para. 10.

demonstrate that “every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations.”^{1143[5]}

The “minimum core obligations” also include those appropriate steps to respect, defend, promote and fulfill the human right to adequate housing, like other economic/social/cultural rights, as a matter of immediate application. Among the appropriate measures, in addition to harmonizing domestic legislation with the covenanted rights, is to provide judicial remedies to victims within the national legal system. That would be among the most effective measures to ensure compliance with obligations to implement certain aspects of economic/social/cultural rights *immediately*, such as by ensuring nondiscrimination. The Committee has determined that it is “difficult to sustain” any suggestion that these immediate obligations are inherently non-self-executing. This legal authority is consistent also with the terms of the Vienna Convention on the Law of Treaties (1969), which provides that “A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.”^{1144[6]} The treaty bodies have clarified further that neither political processes, domestic legislation, scarcity of resources, nor agreements with other parties could be invoked to justify nonimplementation of human rights treaty obligations.^{1145[7]}

Nondiscrimination is perhaps the most obvious and urgent of the immediate principles in implementing the human right to adequate housing. CESCR has provided specific guidance such that, among other things, “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.”^{1146[8]}

The measures needed for States parties to comply with obligations of immediate application include negative obligations. That is, many of the measures to realize the human right to adequate housing would require little more than the State and its agents to refrain from certain harmful practices, such as arbitrary house demolitions and forced eviction, or a meaningful commitment to enabling “self-help” or “social production of habitat” by affected groups. Such changes in State behavior would not require significant expenditure of public resources.

Universality

The principle of human rights’ “universality” is simply expressed in the UDHR’s recognition that “All human beings are born free and equal in dignity and rights” (Article 1). Everyone,

^{1143[5]} Ibid.

^{1144[6]} Vienna Convention on the Law of Treaties, signed at Vienna, 23 May 1969; entered into force, 27 January 1980, Article 27: “Internal law and observance of treaties.” The Article also goes on to state that “this rule is without prejudice to Article 46.” Article 46: “Provisions of internal law regarding competence to conclude treaties” states that “1. A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance. 2. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith.”

^{1145[7]} Letter of CESCR Chairperson Mme. Virginia Bonoan-Dandan to S.E. M. Yaakov Levy, Permanent Representative, Permanent Mission of Israel to the United Nations Office and Specialized Agencies at Geneva, 11 May 2001, annex to Letter by the Chairperson of the Committee on Economic, Social and Cultural Rights to the President of ECOSOC (11 May 2001).

^{1146[8]} General Comment No. 3: “The nature of States parties’ obligations,”^{1146[8]} CESCR addressed the principle of “minimum core obligations,” adopted by the CESCR in its fifth session (1990), E/1991/23, para. 11.

^{1146[9]} The Vienna Convention sets forth, in Article 27, that “[A] party may not invoke the provisions of its internal law as justification to perform a treaty,” and the customary law principle, arising from Article 8 of the Universal Declaration of Human Rights, states that “everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him [her] by the constitution or by law.”

without exception, is entitled to human rights by virtue of belonging to the human family. From a moral point of view, the universality of human rights is an essential principle if the human civilization is to advance for the better. In international law, the text of ICESCR also speaks consistently of right of “everyone,” which obliges States not to discriminate in adherence to minimum core obligations. In the field of housing, in particular, States are not permitted to interpret its minimum core obligations to apply selectively, that is, only to citizens, or only certain citizens, but also to ensure the human right to adequate housing is realized also for “everyone,” including residents, immigrants and migrant workers, etc. The only conditionality permitted in law is that the subjects of human rights qualify as members of the human family.

Before the Universal Declaration, the social movements, revolutions, antislavery struggles and intellectual contributions of the past have served as vehicles for the promotion of human rights that eventually have been incorporated into local and international law and practice. However, many of these famous accomplishments were limited in their substance or application, geographically or socially, or were subject to reversal. Social science and philosophy have contributed greatly to the recognition of human rights, but have not carried the force of law. The recognition of the universality of human rights overcomes the shortcomings left by these otherwise-significant accomplishments:

Limits in scope of application:

- The rights and ethics delivered through the world's moral systems, especially those found in the religions, also are limited in scope by the fact that they apply to adherents to a particular faith group, not applying universally;
- The Magna Carta of 1215 imposed limits on royal impunity that equate as new rights for citizens, especially property-owning citizens. However, this historical achievement had only local application in the geographical realm of the English king.

Exclusion of social sectors and substantive rights:

- The “American Revolution,” in the English colonies that eventually became the original United States of America, realized the right to self-determination as a legal right and *raison d'état*. However, the right to self-determination, as inalienable as it is, applied in the American Revolution case as a right limited only to the white colonizers who identified themselves as a distinct people. The remaining indigenous peoples—whom the settlers mostly largely and replaced—have yet to achieve their self-determination to this day;
- The French Revolution, for all its achievements, realized rights for individuals. French farmers and workers sought recognition of their group rights in the context of the revolution; however, its leadership rejected those expansive notions of rights and insisted on *liberté, égalité and fraternité* with an individual focus;
- The results of the Bolshevik Revolution institutionalized recognition of group rights for workers, etc.; however, rejected a right to property ownership. However ethically grounded the rationale for that omission, the denial of property rights also has emerged as a common tool for depriving persons, communities and entire peoples of their means of subsistence, thereby demonstrating, by its violations, the importance of that neglected human right.

Retgression:

- The antislavery movement in Haiti at the end of the 18th Century resulted in a democratic regime and Constitution under the leadership of former slave and eventual General Toussaint Louverture. However, the same France that produced the world-changing Revolution only 12 years before saw the French General Napoleon I crush the new democracy in 1801 for reasons of imperial interest, reversing the accomplishments of Haitian antislavery democracy, with consequences extending to this day.

Despite their shortcomings, these episodes in the gradual achievement of rights through local struggle all have contributed to the accumulation of human rights recognition as universally applicable. Human rights law today embodies that cumulative recognition into an international and universal code that seeks to leave no human group, geographical region or human need without mutual protection in the multilateral legal regime.

Universality of human rights now means that it is impermissible to neglect certain rights as if they were intended selectively for certain cultures, as if and people of other cultures deserve an inferior standard. Universality also means that no State or government is exempt from its obligations, either for reasons of specificity of local law, as the Vienna Convention has addressed, or to uphold traditional practices that violate rights or their over-riding principles of application.

Interpreting rights consistent with one's own culture (as in the cultural adequacy of housing) means applying locally specific options and idiomatic expressions consistent with the human rights framework. However, practices that preserve or condone unequal rights to secure tenure, inheritance or other entitlements of the human right to adequate housing are not consistent with the present framework and likely to violate both the gender-equality provisions of the Covenant, as well as essential provisions of the Vienna Convention on the Law of Treaties (1969).^{1147[9]}

While local experience of application and struggle continue to provide specificity on how to realize human rights, reveal a variety of possible strategies and define emerging rights (such as the rights to water, land and energy), cultural specificity does not mean allowance for the derogation of rights to something short of the over-riding principles and entitlements reflected in this toolkit. As affirmed by moral arguments and legal authority, adequate housing is the right of everyone, everywhere.

Conclusion

The over-riding principles featured in the monitoring steps of this toolkit are those explicitly mentioned in the major human rights treaties. The "Other principles of application" are implied in the human rights instruments or recognized in international jurisprudence, but are not less important to keep in mind.

The HLRN toolkit attempts to go further than merely encouraging the monitor to keep these additional principles in mind, however. The toolkit's design actually incorporates all of these three principles, but without culling them out as additional steps in the monitoring process.

The indivisibility of rights is already present in the 12 entitlements; whereas, the first eight derive directly from the CESCR's General Comment No. 4 specifically on the right to housing. The "Congruent rights" derive from rights whose sources and concepts arise from

the ICCPR, Refugee Convention and other instruments. Therefore, the housing rights entitlements themselves embody the indivisibility concept in a practical form.

The core minimum obligations applying in the case of the human right to adequate housing also are consistent with those entitlements outlined in the General Comment No. 4, which are embedded in this methodology (human right to adequate housing entitlements A–H). Naturally, the local specificity as to the nature and level of effort required to realize the human right to adequate housing is precisely your contribution through your monitoring effort, your critical process and by posing your solutions to problems in the field.

The universality of the human right to adequate housing is also inherent to this toolkit, by design. That is manifest in the wide range of international and regional instruments guaranteeing the right and incorporated into the Step 2 presentation of both the Sources in international law and Popular sources.

The good news is that, with these principles integrated in the design of the toolkit, you are able to apply them as a matter of course. Therefore, it would be unnecessary and redundant to create corresponding, additional tasks. By applying the methodology in this Housing and Land Rights Monitoring Toolkit, you will be putting all of these inter-related and interdependent principles into living practice.



11.4. Guarantees

Guarantees of the Human Right to Adequate Housing

We will now determine the existing assets guaranteeing the entitlements of the human right to adequate housing in your country situation. We can begin by making our assessment at the general and international level, then proceeding to the more instrumental and local level. The “guarantees” do not mean only legal provisions, but also institutional, policy and other assets that function to ensure, or at least contribute to implementation of the various contents of our human right to adequate housing.

Therefore, one should assess first the State’s current obligations by its ratification of international (and then regional) treaties recognizing the human right to adequate housing, its over-riding principles and its specific entitlements. Then this method would have us determine any similar guarantees in the national constitution (or equivalent). At the more-specific level of legislation, the inquiry should have us identify which statutes, regulations and even municipal ordinances actually guarantee the right or any entitlement within the right. Presumably, public policies, programs, institutions and budgets in place should form the practical implementation counterparts to complement these legal criteria and the respect, defense, promotion and fulfillment of the human right at the most-localized operational level.

Inquiry Begins Here

Following this logic, our line of inquiry on “guarantees” poses a number of questions for the monitor to provide the answer. Now your role will become more active. Accordingly, we will follow the method of assessing the guarantees in your country situation for implementation of the human right to adequate housing from general to specific, thus, focusing on:

- Ratifications and multilateral commitments:** Obligations arising from multilateral (international and regional) ratification of relevant treaties;
- Constitutional provisions** relevant to the human right to adequate housing and land;
- National legal system:** Legislation and other local law;
- Institutions:** both binding and bonding institutions, whether as a formal structure, or a more-customary, social character;
- Policies:** having nationwide application;
- Programs:** long-term, policy-based and systematic efforts;
- Projects:** having more temporary and localized application; and
- Budgets** of public institutions.

In that order, our line of inquiry will explore these guarantees for each of the twelve entitlements of the human right to adequate housing and land. You will likely find that you may already have the answers to many of these questions from the previous sections on “Sources” and “Over-riding Principles.” For instance, you have already learned about, and identified many multilateral treaty instruments guaranteeing the human right to adequate housing. Now, you will be able to fill in the rest of the guarantees to complete the picture of how these norms translate into legal and functional assurances locally for this and every entitlement of our human right that you choose to monitor and assess.

This method ensures that the monitor take into consideration also the guarantees of the over-riding human rights principles (as explained above in “Over-riding principles applied to legal security of tenure and freedom from dispossession” in Step 3 of this toolkit). These principles, found in the first Articles of all the major human rights treaties, are to be generally and universally applied in order to ensure a context for the realization of all rights, not least the human right to adequate housing and land. Since these principles over-ride, or sit on top of the human rights framework applied to housing and land, they appear first in the list of questions in our line of inquiry. These questions include a list of legal instruments and commitments by States to guarantee these over-riding principles. (Please note that these are illustrative lists; they are not exclusive lists. You may know of other such guarantees, and you may find that some listed do not apply to your country situation.)

In the same way that we proceed from the general to the specific, the inquiry about the guarantees of the over-riding principles is followed by the more precise, practical guarantees that ensure the human right to adequate housing and land is made real in practice. Therefore, the systematic questions here include a test of (1) the present (general and contextual) guarantees for applying the over-riding principles of international human rights law in the case of the entitlement legal security of tenure and freedom from dispossession (i.e., self-determination, nondiscrimination, gender equality, rule of law, nonregressivity/nonretrogression and international cooperation), as well as (2) the (functional and specific) local guarantees of legal security of tenure and freedom from dispossession deriving from the guaranties listed above.

✓ **Guarantees of the over-riding principles**

Self-determination

Which international treaties has the State ratified, acceded to or succeeded to that guarantee that the principle of self-determination be applied, including in the housing context?

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)

- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention on the Elimination of All Forms of Racial Discrimination (1965)
- Convention on the Rights of the Child (1989)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- ILO No. 107 concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (1957)
- ILO Convention No. 169 concerning Indigenous Peoples in Independent Countries (1989)
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee that the principle of self-determination be applied, including in the housing context?

- Declaration on the Right to Development (1986)
- Declaration on Social Progress and Development (1969)
- Habitat II Agenda (1996)
- Istanbul Declaration (1996)
- Social Summit Declaration and Programme of Action (1995)
- Universal Declaration of Human Rights (1948)
- United Nations Commission on Human Rights resolutions
- UN General Assembly resolutions [various]
- Vienna Declaration and Programme of Action (1993)
- Durban Declaration and Programme of Action [of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] (2002)
- Johannesburg Declaration of the World Summit on Sustainable Development and Plan of Implementation (2001)

Which regional treaties has the State ratified, acceded to or succeeded to that guarantee that the principle of self-determination be applied, including in the housing context?

- African Charter on Human and Peoples Rights (1981)
- American Convention on Human Rights (1969)
- American Declaration of Human Rights (1948)
- Arab Charter on Human Rights (1994)
- (European) Convention for Protection of Human Rights and Fundamental Freedoms (1950)
- European Social Charter (1961)

Has the State participated in the adoption of multilateral agreements in the form of regional conferences, summits, or congresses, etc., or voted in favor of resolutions in regional organizations that guarantee that the principle of self-determination be applied, including in the housing context?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]

- al-Manama Declaration (2000)
- Rabat Declaration (1995)

Nondiscrimination

Which international treaties has the State ratified, acceded to or succeeded to that guarantee that the over-riding principle and human right to freedom from discrimination be applied, including also in the housing context?

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention on the Elimination of All Forms of Racial Discrimination (1965)
- Convention on the Rights of the Child (1989)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- International Labour Organisation Convention No. 107 concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (1957)
- International Labour Organisation Convention No. 117 *on Social Policy (Basic Aims and Standards)* (1962)
- ILO Convention No. 169 concerning Indigenous Peoples in Independent Countries (1989)
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)
- Refugee Convention (1951)
- Convention relating to the Status of Stateless Persons (1954)
- Convention on the Reduction of Statelessness (1961)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee that the over-riding principle and human right to freedom from discrimination be applied, including also in the housing context?

- Declaration on Asylum (1967)
- Declaration on the Right to Development (1986)
- Declaration on Social Progress and Development (1969)
- Declaration on the Elimination of Violence against Women (1993)
- Habitat II Agenda (1996)
- Declaration on Cities and Other Human Settlements in the New Millennium [Habitat II+5 UNGAR S-25/2] (2001)
- UN Guidelines on Internally Displaced Persons (1998) [vote in favor of adoption in UNHRCR E/CN.4/1998/53/Add.2, dated 11 February 1998]
- International Labour Organisation Recommendation No. 162 concerning Older Workers (1980)
- Istanbul Declaration (1996)
- Rio Declaration and Agenda 21 (1992)
- Social Summit Declaration and Programme of Action (1995)
- Universal Declaration of Human Rights (1948)
- UN General Assembly resolutions [various]
- United Nations Commission on Human Rights resolutions [various]
- Vancouver Declaration Human Settlements (1976)
- Vienna Declaration and Programme of Action (1993)

- Durban Declaration and Programme of Action [of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] (2002)
- Johannesburg Declaration of the World Summit on Sustainable Development Plan of Implementation (2001)

Which regional treaties has the State ratified, acceded to or succeeded to that guarantee that the over-riding principle and human right to freedom from discrimination be applied, including also in the housing context?

- African Charter on Human and Peoples Rights (1981)
- American Convention on Human Rights (1969)
- Arab Charter on Human Rights (1994)
- (European) Convention for Protection of Human Rights and Fundamental Freedoms (1950)
- European Social Charter (1961)

Has the State participated in the adoption of multilateral agreements in the form of regional-level conferences, summits, or congresses, etc., or voted in favor of resolutions in regional organizations that guarantee application of the over-riding principle and human right to freedom from discrimination, including also in the housing context?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (2000)
- Rabat Declaration (1995)

Gender equality

Which international treaties has the State ratified, acceded to or succeeded to that guarantee the application of the over-riding principle of gender equality be applied, including also in the housing context?

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention on the Rights of the Child (1989)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- International Labour Organisation Convention No. 117 *on Social Policy (Basic Aims and Standards)* (1962)
- International Labour Organisation Convention No. 131 Concerning Minimum Wage Fixing, with Special Reference to Developing Countries (1970)
- International Labour Organisation Convention Recommendation No. 115 concerning Workers' Housing (1961)
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee the application of the over-riding principle of gender equality be applied, including also in the housing context?

- Declaration on Asylum (1967)
- Declaration on the Right to Development (1986)
- Declaration on Social Progress and Development (1969)
- Habitat II Agenda (1996)
- Declaration on Cities and Other Human Settlements in the New Millennium [Habitat II+5 UNGAR S-25/2] (2001)
- International Labour Organisation Recommendation No. 162 concerning Older Workers (1980)
- Istanbul Declaration (1996)
- Rio Declaration and Agenda 21 (1992)
- Social Summit Declaration and Programme of Action (1995)
- Universal Declaration of Human Rights (1948)
- United Nations Commission on Human Rights resolutions
- Vienna Declaration and Programme of Action (1993)
- Durban Declaration and Programme of Action [of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] (2002)
- Johannesburg Declaration of the World Summit on Sustainable Development and Plan of Implementation (2001)

Which regional treaties has the State ratified, acceded to or succeeded to that guarantee the application of the over-riding principle of gender equality be applied, including also in the housing context?

- African Charter on Human and Peoples Rights (1981)
- American Convention on Human Rights (1969)
- American Declaration of Human Rights (1948)
- Arab Charter on Human Rights (1994)
- (European) Convention for Protection of Human Rights and Fundamental Freedoms (1950)
- European Social Charter (1961)

Has the State participated in the adoption of multilateral agreements in the form of regional conferences, summits, or congresses, etc., or voted in favor of resolutions in regional organizations that guarantee the application of the over-riding principle of gender equality be applied, including also in the housing context?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (2000)
- Rabat Declaration (1995)

Rule of law

Which international treaties has the State ratified, acceded to or succeeded to that guarantee the State's application of the over-riding principle of the rule of law, which also extends to the housing sphere?

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention on the Elimination of All Forms of Racial Discrimination (1965)
- Convention on the Rights of the Child (1989)
- Rome Statute on the Establishment of the International Criminal Court (1998)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- International Labour Organisation Convention No. 107 concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (1957)
- International Labour Organisation Convention No. 117 on *Social Policy (Basic Aims and Standards)* (1962)
- International Labour Organisation Convention No. 131 Concerning Minimum Wage Fixing, with Special Reference to Developing Countries (1970)
- ILO Convention No. 169 concerning Indigenous Peoples in Independent Countries (1989)
- International Labour Organisation Convention Recommendation No. 115 concerning Workers' Housing (1961)
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)
- Refugee Convention (1951)
- Convention relating to the Status of Stateless Persons (1954)
- Convention on the Reduction of Statelessness (1961)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee the State's application of the over-riding principle of the rule of law, which also extends to the housing sphere?

- Declaration on Asylum (1967)
- Declaration on the Right to Development (1986)
- Declaration on Social Progress and Development (1969)
- Habitat II Agenda (1996)
- Declaration on Cities and Other Human Settlements in the New Millennium [Habitat II+5 UNGAR S-25/2] (2001)
- International Labour Organisation Recommendation No. 162 concerning Older Workers (1980)
- Istanbul Declaration (1996)
- Rio Declaration and Agenda 21 (1992)
- Social Summit Declaration and Programme of Action (1995)
- Universal Declaration of Human Rights (1948)
- United Nations Commission on Human Rights resolutions
- Vancouver Declaration Human Settlements (1976)
- Vienna Declaration and Programme of Action (1993)
- Durban Declaration and Programme of Action [of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] (2002)
- Johannesburg Declaration of the World Summit on Sustainable Development and Plan of Implementation (2001)

Which regional treaties has the State ratified, acceded to or succeeded to that guarantee the State's application of the over-riding principle of the rule of law, which also extends to the housing sphere?

- African Charter on Human and Peoples Rights (1981)
- American Convention on Human Rights (1969)
- American Declaration of Human Rights (1948)
- Arab Charter on Human Rights (1994)
- (European) Convention for Protection of Human Rights and Fundamental Freedoms (1950)
- European Social Charter (1961)

Has the State participated in the adoption of multilateral agreements in the form of regional conferences, summits, or congresses, etc., or voted in favor of resolutions in regional organizations that guarantee the State's application of the over-riding principle of the rule of law, which also extends to the housing sphere?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (2000)
- Rabat Declaration (1995)

Nonregressivity/nonretrogression

Which international treaties has the State ratified, acceded to or succeeded to that guarantee the State's implementation of the principle of nonregressivity/nonretrogression in the respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human right to adequate housing and land?

- Convention on the Elimination of All Forms of Racial Discrimination (1965)
- Convention on the Rights of the Child (1989)
- International Covenant on Economic, Social and Cultural Rights (1966)
- International Labour Organisation Convention No. 117 *on Social Policy (Basic Aims and Standards)* (1962)
- International Labour Organisation Convention Recommendation No. 115 concerning Workers' Housing (1961)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee the State's implementation of the principle of nonregressivity/nonretrogression in the respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human right to adequate housing and land?

- Declaration on the Right to Development (1986)
- Declaration on Social Progress and Development (1969)
- Habitat II Agenda (1996)

- Declaration on Cities and Other Human Settlements in the New Millennium [Habitat II+5 UNGAR S-25/2] (2001)
- Istanbul Declaration (1996)
- Rio Declaration and Agenda 21 (1992)
- Social Summit Declaration and Programme of Action (1995)
- Universal Declaration of Human Rights (1948)
- United Nations Commission on Human Rights resolutions
- Vancouver Declaration Human Settlements (1976)
- Vienna Declaration and Programme of Action (1993)
- Durban Declaration and Programme of Action [of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] (2002)
- Johannesburg Declaration of the World Summit on Sustainable Development and Plan of Implementation (2001)

Which regional treaties has the State ratified, acceded to or succeeded to that guarantee the State's implementation of the principle of nonregressivity/nonretrogression in the respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human right to adequate housing and land?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (200)
- Rabat Declaration (1995)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee the State's implementation of the principle of nonregressivity/nonretrogression in the respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human right to adequate housing and land?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (2000)
- Rabat Declaration (1995)

International Cooperation

Which international treaties has the State ratified, acceded to or succeeded to that guarantee the State's implementation of the principle of international cooperation to ensure respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human rights to adequate housing and land?

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention on the Elimination of All Forms of Racial Discrimination (1965)
- Convention on the Rights of the Child (1989)
- Rome Statute on the Establishment of the International Criminal Court (1998)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- International Labour Organisation Convention No. 107 concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (1957)
- International Labour Organisation Convention No. 117 *on Social Policy (Basic Aims and Standards)* (1962)
- International Labour Organisation Convention No. 131 Concerning Minimum Wage Fixing, with Special Reference to Developing Countries (1970)
- ILO Convention No. 169 concerning Indigenous Peoples in Independent Countries (1989)
- International Labour Organisation Convention Recommendation No. 115 concerning Workers' Housing (1961)
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)
- Refugee Convention (1951)
- Convention relating to the Status of Stateless Persons (1954)
- Convention on the Reduction of Statelessness (1961)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee the State's implementation of the principle of international cooperation to ensure respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human rights to adequate housing and land?

- Agenda 21 (1992)
- Declaration on Environment and Development (1992)
- Declaration on Asylum (1967)
- Declaration on the Right to Development (1986)
- Declaration on Social Progress and Development (1969)
- Habitat II Agenda (1996)
- Declaration on Cities and Other Human Settlements in the New Millennium [Habitat II+5 UNGAR S-25/2] (2001)
- International Labour Organisation Recommendation No. 162 concerning Older Workers (1980)
- Istanbul Declaration (1996)
- Rio Declaration and Agenda 21 (1992)
- Social Summit Declaration and Programme of Action (1995)
- Universal Declaration of Human Rights (1948)
- United Nations Commission on Human Rights resolutions
- Vancouver Declaration Human Settlements (1976)
- Vienna Declaration and Programme of Action (1993)
- Durban Declaration and Programme of Action [of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] (2002)
- Johannesburg Declaration of the World Summit on Sustainable Development and Plan of Implementation (2001)

Which regional treaties has the State ratified, acceded to or succeeded to that guarantee the State's implementation of the principle of international cooperation to ensure respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human rights to adequate housing and land?

- African Charter on Human and Peoples Rights (1981)
- American Convention on Human Rights (1969)
- American Declaration of Human Rights (1948)
- Arab Charter on Human Rights (1994)
- (European) Convention for Protection of Human Rights and Fundamental Freedoms (1950)
- European Social Charter (1961)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee the State's implementation of the principle of international cooperation to ensure respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human rights to adequate housing and land?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (2000)
- Rabat Declaration (1995)

What additional multilateral commitments has the State made to guarantee nondiscrimination in the respect, protection, promotion and fulfillment of the human right to adequate housing and, by extension, resettlement, movement, *nonrefoulement* and return?

Do not forget that the body of the binding international treaties that the State already has ratified contains binding human rights obligations that take precedence over nonbinding declarations of mere intent or political will. Monitoring these obligations is the covenanted task of the treaty parties [ratifying States], which has been delegated to neutral treaty-monitoring bodies that are supported in their task by government and civil-society monitors. Keep in mind also that some multilateral declarations and many agreements with international financial and development institutions may contain standards less protective of human rights and freedoms than those of a binding nature under human rights treaties. Those agreements may even impede the enjoyment of economic/social/cultural rights. Such agreements are to be evaluated subject to prior human rights treaty obligations—not vice versa.

✓ Local guarantees

Ratifications and international commitments

Which international treaties has the State ratified (acceded or succeeded to) that guarantee the human right to adequate housing, in particular resettlement, movement, *nonrefoulement* and return?

Constitutional provisions

- Does the State have a Constitution, or equivalent, guaranteeing the right to human right to housing and land, including resettlement, movement, *nonrefoulement* and return?
- Does the State have a Constitution, or equivalent, guaranteeing the right to local self-determination?
- Does the State have a Constitution, or equivalent, guaranteeing the right to freedom from discrimination?
- Does the State have a Constitution, or equivalent, guaranteeing gender equality?
- Does the State have a Constitution, or equivalent, guaranteeing the rule of law, including access to justice and democratic participation and representation?
- Does the State have a Constitution, or equivalent, guaranteeing the right to the continuous improvement of living conditions?
- Does the State have a Constitution, or equivalent, providing that international relations be conducted within the framework and objectives of human rights, including economic, social and cultural rights?

National legal system

- Is the right to adequate housing, including resettlement, movement, *nonrefoulement* and return recognized as a distinct right in the country's legal system?
- Is national and local legislation consistent with the human rights right to housing and land, including resettlement, movement, *nonrefoulement* and return?
- Is national and local legislation consistent with the principle of local self-determination?
- Is national and local legislation consistent with the right to freedom from discrimination? What statutes has the State/government legislated, and are in force, to ensure nondiscrimination in the respect, defense, promotion and implementation of the human right to adequate housing, in particular, resettlement, movement, *nonrefoulement* and return?
- Do the concerned persons or community have the sense that the terms of their entitlement to resettlement, movement, *nonrefoulement* and return are equal and consistent with others'?
- Does national and local law maintain the principle of gender equality, particular as it relates to housing, land and resettlement, movement, *nonrefoulement* and return?
- Do local and national laws and regulations uphold the rule of law, including access to justice and democratic participation and representation in matters related to housing, land and resettlement, movement, *nonrefoulement* and return?

- Does the State's legal system maintain the right to the continuous improvement of living conditions?
- Are the laws and regulations of the State consistent with the principle that international relations, including international entities operating locally, conduct themselves within the framework and objectives of human rights, including economic, social and cultural rights, in particular, the human right to adequate housing and land, including resettlement, movement, *nonrefoulement* and return?
- Does the performance of the law-enforcement services guarantee the practice and enforcement of the respect, defense, promotion and implementation of the human right to adequate housing, including resettlement, movement, *nonrefoulement* and return?
- Are judges and lawyers performing sufficiently and consistently to uphold the human right to adequate housing, including the entitlement of resettlement, movement, *nonrefoulement* and return? What are some examples?

Institutions

- Is there a sense in the community that the State and government institutions represent their aspirations to self-determination?
- What State and public institutions exist as a guarantee of nondiscrimination in the respect, defense, promotion and implementation of the human right to adequate housing, in particular, resettlement, movement, *nonrefoulement* and return?
- Do the concerned persons or community have the possibility to exercise an effective role in determining the terms and conditions of resettlement, movement, *nonrefoulement* and return?
- What State and public institutions exist as a guarantee of gender equality in the defense, promotion and implementation of the human right to adequate housing, in particular, resettlement, movement, *nonrefoulement* and return?
- What private and nongovernmental institutions exist as a guarantee of gender equality in the defense, promotion and implementation of the human right to adequate housing, in particular, resettlement, movement, *nonrefoulement* and return?
- What informal institutions (including social norms) function so as to help implement the human right to adequate housing and, in particular, resettlement, movement, *nonrefoulement* and return?¹¹⁴⁸
- What social institutions and consistent social practices exist as a guarantee of gender equality in the defense, promotion and implementation of the human right to adequate housing, in particular, resettlement, movement, *nonrefoulement* and return?

¹¹⁴⁸ The operative concept of institutions here encompasses both bonding and bridging institutions. "Institutions," in this sense, involve the rules of the game under which formal and informal activity is conducted, and include public institutions, private institutions, collective practices and norms, as well as changing norms (e.g., brought about through the youth, technology, economic or demographic shifts, and other emerging behaviours). According to Douglas C. North, 1993 Nobel economics laureate, institutions are "humanly devised constraints that shape human interaction."

- How have these institutions actually improved capacity to protect, or actual protection of resettlement, movement, *nonrefoulement* and return for those in need?

Policies

- What statewide policies are in place and implemented to guarantee of the human right to adequate housing and, in particular, resettlement, movement, *nonrefoulement* and return?

Keep in mind that the body of the binding international treaties that the State has ratified contain provisions that call for human rights to be implemented in the presence of the over-riding principles of self-determination, nondiscrimination, gender equality, the rule of law, international cooperation in the implementation of human rights, and progressive realization (nonregressivity/ nonretrogression) and the continuous improvement of living conditions.

- How have national policies enhanced local self-determination so as to ensure acceptable levels of resettlement, movement, *nonrefoulement* and return?
- How have national policies to ensure nondiscrimination positively affected resettlement, movement, *nonrefoulement* and return in the country?
- How have national gender policies led to improvements in the conditions of resettlement, movement, *nonrefoulement* and return in the housing sphere, especially for those in need?
- How have the State's policies on access to justice enhanced conditions of resettlement, movement, *nonrefoulement* and return, especially for those in need?
- How have national housing policies ensured the continuous improvement of living conditions, in particular the housing rights entitlement of resettlement, movement, *nonrefoulement* and return, especially for those in need?
- In what ways have national housing policies ensured that international relations and international entities operating within the country respect, defend, promote and fulfil the human right to housing, in particular the entitlement of resettlement, movement, *nonrefoulement* and return for those in need?
- To what extent have external parties positively influenced your country's official policies or practices in guaranteeing the entitlement to resettlement, movement, *nonrefoulement* and return?

Programs

- What progressive steps has the State made on a national scale in the past period (year[s], or since your last assessment) to improve housing rights, especially the entitlement of resettlement, movement, *nonrefoulement* and return? (These may include: law reforms, improved infrastructure, more effective implementation methods, population registry programs, programs to consider ratification of international covenants, and evaluations of housing rights implementation, etc.)

Keep in mind that the body of binding international treaties that the State has ratified contain provisions that call for human rights to be implemented in the presence of the over-riding principles of self-determination, nondiscrimination, gender equality, the rule of law, international cooperation in the implementation of human rights, and progressive realization (nonregressivity/ nonretrogression) and the continuous improvement of living conditions.

- What private-sector or NGO programs are in place and implemented to guarantee the human right to adequate housing and, in particular, resettlement, movement, *nonrefoulement* and return?
- How have these national programs enhanced local self-determination in a way that has improved the conditions of resettlement, movement, *nonrefoulement* and return?
- What national programs are completed, ongoing, or planned to ensure nondiscrimination positively affected resettlement, movement, *nonrefoulement* and return in the country?
- Are there any national gender programs completed, ongoing or planned with the purpose and effect of improving the conditions of resettlement, movement, *nonrefoulement* and return in the housing sphere, especially for those in need? Do they cover land rights and inheritance issues?
- What are have the State's recent, present or future programs to enhance access to justice that are intended to improve housing and living conditions, especially for those in need? How have those programs implemented to date succeeded in enhancing resettlement, movement, *nonrefoulement* and return of housing?
- How have national housing programs ensured the continuous improvement of living conditions, in particular the housing rights entitlement of resettlement, movement, *nonrefoulement* and return, especially for those in need?
- In what ways have national housing programs ensured that international relations and international entities operating within the country respect, defend, promote and fulfil the human right to housing, in particular the entitlement of resettlement, movement, *nonrefoulement* and return for those in need?
- Has the government in the concerned State cooperated with other State or non-State parties to find identify and adapt good practices locally to improve resettlement, movement, *nonrefoulement* and return for all those living there?

Projects

- What progressive actions has the State undertaken in the way of limited-scale or pilot projects in the past period (year[s], or since your last assessment) to improve housing rights, especially the entitlement of resettlement, movement, *nonrefoulement* and return?
- What private-sector or NGO projects are in place and implemented to guarantee the human right to adequate housing and, in particular, resettlement, movement, *nonrefoulement* and return?
- How have such local projects enhanced local self-determination in a way that has improved the conditions of resettlement, movement, *nonrefoulement* and return?

- ❑ What projects completed, ongoing, or planned to ensure nondiscrimination positively affected resettlement, movement, *nonrefoulement* and return in the country?
- ❑ Are there any gender-based projects completed, ongoing or planned with the purpose and effect of improving the conditions of resettlement, movement, *nonrefoulement* and return in the housing sphere, especially for those in need? Do they cover land rights and inheritance issues?
- ❑ What are have the State's recent, present or future projects to enhance access to justice that are intended to improve housing and living conditions, especially for those in need? How have those programs implemented to date succeeded in enhancing resettlement, movement, *nonrefoulement* and return of housing?
- ❑ How have these projects ensured the continuous improvement of living conditions, in particular the housing rights entitlement of resettlement, movement, *nonrefoulement* and return, especially for those in need?
- ❑ In what ways have public or private projects ensured that international relations and international entities operating within the country respect, defend, promote and fulfil the human right to housing, in particular the entitlement of resettlement, movement, *nonrefoulement* and return for those in need?
- ❑ Has the government in the concerned State cooperated with other State or non-State parties to find identify and adapt good practices locally through projects that actually improve resettlement, movement, *nonrefoulement* and return for all those living affected?
- ❑ Are there foreign State or foreign private interests operating projects affecting the housing and human settlements sector in the country and affecting the situation under review? Are their roles positively affecting the enjoyment of resettlement, movement, *nonrefoulement* and return?

Budgets

- ❑ What public budgets are in place to guarantee the human right to adequate housing and, in particular, resettlement, movement, *nonrefoulement* and return? How does the budget correspond to actual spending and implementation targets?
- ❑ Is the necessary public budget information available to conduct a multiyear assessment of the financial performance of policies, programs and projects affecting housing and living conditions of those vulnerable and needy inhabitants of the country?
- ❑ Does the public have access to the budgets of private companies and organizations operating in the housing sphere and having an effect on the housing rights entitlement of resettlement, movement, *nonrefoulement* and return?
- ❑ Does the reliable budget information support the public claims of those responsible for the budgets intended for improvement of living conditions of the needy, particularly in the housing rights entitlement of resettlement, movement, *nonrefoulement* and return?

- ❑ What international obligations and commitments affect the public budget with ramifications on the housing sector, including the entitlement of resettlement, movement, *nonrefoulement* and return?
- ❑ What national obligations and commitments affect the public budget with ramifications on the housing sector, including the entitlement of resettlement, movement, *nonrefoulement* and return?
- ❑ What financial policies affect the public budget with ramifications on the housing sector, including the entitlement of resettlement, movement, *nonrefoulement* and return?

11.5. Obstacles, impediments, barriers

At the present stage in the monitoring process, you have well identified the elements arising from the human right and legal concept of adequate housing. You have completed the necessary review of international minimum standards that codify the right, along with the corresponding obligations on the ratifying State. Your process has taken you through the moral arguments of social movements and others, who are the very source of human rights throughout history. Those sources fill legal gaps and provide specificity to local human rights priorities and application. In your context, you also have identified which of the binding instruments and other theoretical guarantees apply to the case at hand.

At this point, you are advancing beyond the theoretical dimensions of the human right to adequate housing, its constituent elements and its guarantees. As a housing-and-land-rights monitor, you will now enter the practical dimension and assess the most difficult challenge in the field of human rights: implementation. The following sample questions guide the monitor to prepare needed data and arguments by detailing the present obstacles, impediments, barriers, threats and constraints that have brought about, or threaten to bring about a violation or deprivation of the right and the element of resettlement, movement, nonrefoulement, return and restitution, which you are currently addressing.

When monitoring documenting any stage of this toolkit inquiry, or assessing the conditions affecting any right, it is essential to ensure the highest quality of information possible. It has been said often that information is power. In our case, this is especially true, but the degree of that power will depend largely on the following qualities of your information:

- Completeness
- Level of detail and specificity
- Date (freshness) of the information
- Integrity of the information (i.e., lack of contradictions)
- Effective (articulate, concise, understandable and correct) use of language
- Relevance: linkage to the question of housing and land rights implementation
- Credibility of source (reputation, effective presentation, link to issue and community)

In order to begin assessing the compatibility of the theoretical affirmations of the human right to housing and land with the local reality, you will determine now whether, and to what extent barriers, contradictions, obstacles, and impediments contribute to actual and/or potential violations of the congruent right to resettlement, movement, nonrefoulement, return and restitution. This process is aided with the following battery of questions:

- Are the conditions of resettlement or the implantation of settlers introducing living conditions or practices incompatible with those of the indigenous population? [See also the housing rights entitlement of "**Cultural adequacy of housing**" in this toolkit.]
- Do violations of the congruent right to resettlement, movement, return and restitutions, and the right to freedom from *nonrefoulement* affect the human right to security of person? [See the entitlement and congruent right to "**Security and privacy**" in the present toolkit.]

✓ **Obstacles to the over-riding principles**

Self-determination

- Are the people dissatisfied with the terms of their resettlement, movement, *nonrefoulement*, return and restitution?
- Do the conditions of resettlement or the implantation of settlers violate the inalienable right to self-determination of the indigenous population?
- Do the concerned persons or community lack the possibility to exercise an effective role in determining the terms of resettlement, movement, *nonrefoulement*, return and restitution?
- Does the community lack sufficient information or capacity sufficiently to enjoy the human right to adequate housing, in particular, the entitlement and congruent right to resettlement, movement, *nonrefoulement*, return and restitution? [See the "**Information, education, capacity and capacity building**" entitlement in this toolkit.]
- Is illiteracy an impediment to the community's access to sufficient information to enjoy the human right to adequate housing, in particular the congruent right to resettlement, movement, *nonrefoulement*, return and restitution? [See the "**Information, education, capacity and capacity building**" entitlement in this toolkit.]

Nondiscrimination

- To what extent is discrimination an issue in realizing the congruent right to resettlement, movement, *nonrefoulement*, return and restitution?
- Is there (does the affected community report) any type of discrimination practiced randomly, occasionally or on the social level, or institutionalized in some form, affecting resettlement, movement, *nonrefoulement*, return and restitution?
- What are the nature of the discrimination and its effects of the entitlement of resettlement, movement, *nonrefoulement*, return and restitution?

Gender equality

- Is there any gender-based discrimination applied in realizing the congruent right to resettlement, movement, *nonrefoulement*, return and restitution?

- Is the discrimination practiced randomly, occasionally or on the social level, or is it institutionalized in some form such that affects resettlement, movement, *nonrefoulement*, return and restitution?
- Does local law on inheritance, divorce or other specialization fail to provide equal rights to males and females of all ages? How?

Rule of law

- Is the affected population denied international legal protection as other “refugees” (e.g., in many cases of internally displaced persons and all Palestinian refugees)?
- Has the State failed to ratify any of the relevant international or regional treaties guaranteeing the human right to adequate housing?
- Has the State issued any reservations, declarations or understandings to international or regional treaties that possibly limit the affect of human right to adequate housing guarantees, particularly so as to affect the entitlement of resettlement, movement, *nonrefoulement*, return and restitution?
- Has the State government failed to conduct a legal evaluation of housing rights implementation?
- Has the State government failed to present timely reports to the relevant treaty-monitoring bodies covering the human right to adequate housing?
- Has the State and its government failed to implement in good faith the Concluding Observations of the various treaty bodies concerning implementation of the human right to adequate housing?
- Do the three branches of government (judiciary, legislative and executive) operate with autonomous authority?
- Do the three branches of government coordinate to uphold and enforce a single system of law?
- Does the State lack a Constitution, or equivalent, guaranteeing gender equality?
- Does the State lack a Constitution, or equivalent, guaranteeing the rule of law, including access to justice and democratic participation and representation?
- Does the State lack a Constitution, or equivalent, guaranteeing the right to the continuous improvement of living conditions?
- Does the State lack a Constitution, or equivalent, providing that international relations be conducted within the framework and objectives of human rights, including economic, social and cultural rights?
- Does the country’s legal system lack recognition of the human right to adequate housing, including resettlement, movement, *nonrefoulement*, return and restitution?

- Do legal or procedural shortcomings impede the admissibility of claims invoking international treaty obligations in the defense of human right to adequate housing, in particular, the entitlement and the congruent right to resettlement, movement, nonrefoulement, return and restitution?
- Has the State failed to ratify the Rome Statute on the International Criminal Court, limiting the options to seek justice and remedy for gross violations of the human right to adequate housing?
- Does the political system in the country lack coordination among branches of executive, legislative and judicial government?
- Does the State lack a Constitution, or equivalent, guaranteeing the rule of law, including access to justice and democratic participation and representation?
- Has the legislature failed to harmonize national laws with international human rights treaty obligations in the formulation of policies affecting the human right to adequate housing, in particular, with affect on the congruent right to resettlement, movement, nonrefoulement, return and restitution?
- Are there contradictions in the national law affecting resettlement, movement, *nonrefoulement*, return and restitution?
- Is there insufficient enforcement of laws and/or policies against arbitrary eviction enforced, including safeguards for vulnerable groups, such as: women, children, orphans, etc.?
- Do local authorities fail to recognize explicitly the application of the international human rights treaties that the State has signed and/or ratified and that guarantee the human right to adequate housing, including the entitlement of resettlement, movement, *nonrefoulement*, return and restitution?
- Is national and local legislation inconsistent with the human rights right to housing and land, including resettlement, movement, *nonrefoulement*, return and restitution?
- Is law enforcement inadequate to ensure enjoyment of the entitlement of resettlement, movement, *nonrefoulement*, return and restitution?
- Are law enforcement officers in need of training in, and information about the human right to adequate housing in order to uphold the entitlement of resettlement, movement, *nonrefoulement*, return and restitution?
- Do lawyers, prosecutors and/or judges lack awareness and training in the housing and land rights law in order to uphold and defend the entitlement of resettlement, movement, *nonrefoulement*, return and restitution?
- Has the national court system failed in any way to admit claims of housing and land rights victims, including those whose congruent right to resettlement, movement, *nonrefoulement*, return and restitution has been violated?
- Does the rule-of-law, regulations, or their enforcement fail to govern market forces effectively to ensure the respect, protection, promotion and fulfilment of the right to

adequate housing (e.g., governing monopolies, procedures for legal redress)? How does fact affect the enjoyment of the housing rights congruent right to resettlement, movement, *nonrefoulement*, return and restitution?

- Does local law restrict civil society associations from advocating rights or providing services that would advance the respect, defense, promotion and fulfillment of the human right to housing, including the congruent right to resettlement, movement, nonrefoulement, return and restitution?

Nonregressivity / nonretrogression

- Has the State failed to take steps to improve housing rights, especially affecting resettlement, movement, *nonrefoulement*, return and restitution, in the past period (year[s], or since your last assessment)?
- Have new laws degraded protection of human right to adequate housing in the recent period, particularly affecting resettlement, movement, *nonrefoulement*, return and restitution?
- Have new policies degraded protection or enjoyment of human right to adequate housing in the recent period, particularly affecting resettlement, movement, *nonrefoulement*, return and restitution?
- Have national programs led to a decline in the enjoyment of human right to adequate housing in the recent period, particularly affecting resettlement, movement, *nonrefoulement*, return and restitution?
- Have infrastructure or physical features of the built or natural environment led to a decline in the enjoyment of human right to adequate housing, particularly affecting resettlement, movement, *nonrefoulement*, return and restitution?
- Have nationwide programs failed to improve, or led to a decline in, the enjoyment of human right to adequate housing, in particular the terms of resettlement, movement, *nonrefoulement*, return and restitution?
- Have local projects supported by State or local authorities failed to improve, or led to a decline in, the enjoyment of human right to adequate housing, in particular the terms of resettlement, movement, *nonrefoulement*, return and restitution?
- Have public budget allocations failed to improve, or led to a decline in, the enjoyment of human right to adequate housing, in particular the terms of resettlement, movement, *nonrefoulement*, return and restitution?
- To what extent has the State government's efforts fallen short in the improvement the terms of resettlement, movement, *nonrefoulement*, return and restitution, especially of the poor, vulnerable and minorities?

International cooperation

- Are foreign State or non-State interests operating in the housing and human settlements sector in the country and affecting the entitlement of resettlement, movement,

nonrefoulement, return and restitution? Are their roles negatively affecting the enjoyment of resettlement, movement, *nonrefoulement*, return and restitution?

- To what extent have external parties (States, or international financial institutions) negatively influenced your country's official policies or practices in guaranteeing the right to resettlement, movement, *nonrefoulement*, return and restitution?
- Has the State neglected to take steps, "individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources" and capacities to ensure (especially poor and vulnerable) people's resettlement, movement, *nonrefoulement*, return and restitution?
- Do international refugee protection institutions deny the affected population legal protection as other "refugees" (e.g., in many cases of internally displaced persons and in the case of all Palestinian refugees)?
- Have officials of a State forced the return (*refoulement*) of refugees back to their country or origin where they face threats to their persons or property?



✓ Local obstacles

Institutions

- As far as human right to adequate housing and resettlement, movement, *nonrefoulement*, return and restitution are concerned, are there gaps or shortcomings in the State, government and other public institutions positioned to improve living conditions, including the housing-rights entitlement of resettlement, movement, *nonrefoulement*, return and restitution?
- Has there been a recent decrease in the quantity or quality of civil society institutions upon which the community now relies.
- Do the concerned private and nongovernmental institutions fail to guarantee gender equality in the defense, promotion and implementation of the human right to adequate housing, in particular, resettlement, movement, *nonrefoulement*, return and restitution?
- What informal institutions (including social norms) function so as to impede the enjoyment of the human right to adequate housing and, in particular, resettlement, movement, *nonrefoulement*, return and restitution?¹¹⁴⁹
- Do these institutions actually lack the will or capacity to protect legal resettlement, movement, *nonrefoulement*, return and restitution for those in need?

¹¹⁴⁹ The operative concept of institutions here encompasses both bonding and bridging institutions. "Institutions," in this sense, involve the rules of the game under which formal and informal activity is conducted, and include public institutions, private institutions, collective practices and norms, as well as changing norms (e.g., brought about through the youth, technology, economic or demographic shifts, and other emerging behaviours). According to Douglas C. North, 1993 Nobel economics laureate, institutions are "humanly devised constraints that shape human interaction."

- Do these institutions actually lack the will, knowledge or capacity to use the relevant treaty body Concluding Observations in work of monitoring and lobbying officials

Policies

- Do the relevant ministries omit to incorporate international human rights treaty obligations in the formulation of policies affecting the human right to adequate housing, in particular, with affect on the congruent right to resettlement, movement, *nonrefoulement*, return and restitution?
- What statewide policies are still needed to guarantee of the human right to adequate housing and, in particular, resettlement, movement, *nonrefoulement*, return and restitution?
- Have the relevant national policies neglected to ensure acceptable levels of self-determination in determining the terms and conditions of resettlement, movement, *nonrefoulement*, return and restitution? How and why?
- Have national policies failed to reach their targets (even despite announcements of official intent) positively to affect resettlement, movement, *nonrefoulement*, return and restitution? How and why?
- Have national gender policies led to improvements in the conditions of legal resettlement, movement, *nonrefoulement*, return and restitution in the housing sphere, especially for those in need? How and why?
- Have the State's policies on access to justice failed to improve conditions of legal resettlement, movement, *nonrefoulement*, return and restitution, especially for those in need?
- Have national housing policies failed to ensure the continuous improvement of living conditions, in particular, by stagnating or degrading the housing rights entitlement of resettlement, movement, *nonrefoulement*, return and restitution, especially for those in need? How and why?
- Do national housing policies lack consideration of, and/or reference to the international human rights instruments relevant to the human right to adequate housing and resettlement, movement, *nonrefoulement*, return and restitution, and to which the State is bound?
- To what extent have external parties negatively influenced your country's official policies or practices in guaranteeing the resettlement, movement, *nonrefoulement*, return and restitution?
- Have State housing-policy implementing institutions omitted to seek international cooperation in the human right framework by conditioning international entities operating within the country also to respect, defend, promote and fulfil the human right to housing, in particular the entitlement of resettlement, movement, *nonrefoulement*, return and restitution?

Programs

- What negative steps has the State taken on a national scale in the past period (year[s], or since your last assessment) to improve housing rights, especially the entitlement of resettlement, movement, *nonrefoulement*, return and restitution? These may include declining legal assistance laws, deteriorating infrastructure without repair, declining implementation efforts?
- What related private-sector or NGO programs have failed to enhance the enjoyment of the human right to adequate housing, in particular, resettlement, movement, *nonrefoulement*, return and restitution?
- Is there a lack of, and need for national gender programs completed, ongoing or planned with the purpose and effect of improving the conditions of legal resettlement, movement, *nonrefoulement*, return and restitution in the housing sphere, especially for those in need?
- Do existing programs omit to cover land and inheritance rights?
- Have the intergovernmental relations declined between your State and others leading to a decline on options for international cooperation in advancing the respect, defense, promotion and/or fulfilment of the human right to adequate housing, in particular resettlement, movement, *nonrefoulement*, return and restitution?
- Has the government in the concerned State declined to cooperate with other States, intergovernmental agencies, or foreign non-State parties to identify and adapt good practices locally to improve the congruent right to resettlement, movement, *nonrefoulement*, return and restitution?

Projects

- What relevant State actions or omissions have led to the failure of limited-scale or pilot projects in the past period (year[s], or since your last assessment) to improve housing rights, especially the entitlement of resettlement, movement, *nonrefoulement*, return and restitution?
- What private-sector or NGO projects have failed to seek, or fallen short of their intended goal to guarantee the human right to adequate housing and, in particular, resettlement, movement, *nonrefoulement*, return and restitution?
- Have such local projects undermined local self-determination with negative effect on the conditions of resettlement, movement, *nonrefoulement*, return and restitution? How and why?
- Are foreign State or foreign private interests operating projects negatively affecting the housing and human settlements sector in the country and affecting the entitlement of resettlement, movement, *nonrefoulement*, return and restitution? How and why?
- Have projects conducted by local or international entities in the country privatized the provision of housing or public services replaced the role and responsibility of the State and local authorities to fulfil the human right to adequate housing, in particular the entitlement of resettlement, movement, *nonrefoulement*, return and restitution for those in need?

Budgets

- Are there obstacles to obtaining adequate information about public expenditures in the housing sector, or in areas affecting the enjoyment of the human right to adequate housing, including resettlement, movement, *nonrefoulement*, return and restitution?
- Is there a lack of legal and actual protection of the right to information, including information and documentation on public budget expenditures in the housing sphere related to the entitlement of resettlement, movement, *nonrefoulement*, return and restitution?
- Are public budgets inadequate to guarantee the human right to adequate housing and, in particular, resettlement, movement, *nonrefoulement*, return and restitution?
- Is there underspending of the budget such that impedes the achievement of policy, program or project implementation targets, affecting resettlement, movement, *nonrefoulement*, return and restitution?
- Do public budget items and actual financial performance reflect a lack of sufficient priority given to implementing policies, programs and projects to improve housing and living conditions, affecting also resettlement, movement, *nonrefoulement*, return and restitution, of those vulnerable and needy inhabitants of the country?
- Does the public have access to the budgets and financial performance data of private companies and organizations operating in the housing sphere and having an effect on the housing rights entitlement of resettlement, movement, *nonrefoulement*, return and restitution?
- Does the reliable budget information contradict the public claims of officials and institutions responsible for the continuous improvement of living conditions of the needy, particularly in the housing rights entitlement of resettlement, movement, *nonrefoulement*, return and restitution?
- Do international obligations and commitments negatively affect the public budget with ramifications on the housing sector, including with negative affect on the entitlement of resettlement, movement, *nonrefoulement*, return and restitution?
- What national obligations and commitments affect the public budget with ramifications on the housing sector, including the entitlement of resettlement, movement, *nonrefoulement*, return and restitution?
- What financial policies constrain the public budget with negative consequences on the housing sector, including the entitlement of resettlement, movement, *nonrefoulement*, return and restitution?
- Is the achievement of resettlement, movement, *nonrefoulement*, return and restitution accompanied by an inordinate economic burden?



- ❑ Is the State failing to regulate effectively the terms and conditions of housing market, so as to avoid corruption, collusion, fraud, discrimination, nepotism and any arbitrary criteria? How is this affecting the entitlement of resettlement, movement, *nonrefoulement*, return and restitution?
- ❑ Is the State prohibiting or impeding individual and community initiatives toward obtaining resettlement, movement, *nonrefoulement*, return and restitution, individually as well as collectively?
- ❑ Are State authorities permitting other parties to interfere with community efforts toward obtaining resettlement, movement, *nonrefoulement*, return and restitution, individually as well as collectively?
- ❑ Are present government mechanisms and structures inefficient at assisting the needy population from gaining access to resettlement, movement, *nonrefoulement*, return and restitution?
- ❑ Does the State lack needed resources to ensure resettlement, movement, *nonrefoulement*, return and restitution, especially for the poor, vulnerable and needy?
- ❑ Does national political disharmony impede enjoyment of the human right to adequate housing and resettlement, movement, *nonrefoulement*, return and restitution?
- ❑ Is there armed conflict in the country impeding the private and/or public institutions from carrying out development and delivering services that safeguard and improve resettlement, movement, *nonrefoulement*, return and restitution conditions?
- ❑ Has a natural disaster inflicted parts of the country, creating conditions that negatively affect the human right to adequate housing, including the congruent right to resettlement, movement, *nonrefoulement*, return and restitution? Do these conditions impede relief or reconstruction assistance by public and private actors?

11.6. The victims and vulnerable persons: the actors

At this step in the housing and land rights monitoring process, you will have to provide relevant facts and figures concerning the people who already have been affected and those who remain vulnerable. You should also identify and describe precisely which part of the population is affected.

Those affected (victims or vulnerable) individuals and groups could be, for example, an indigenous community historically undergoing discriminatory treatment and land confiscation. It is essential to report the number of affected people, among them proportions of children, women and other groups having special needs, such as the elderly, who may be particularly affected.

In your inquiry into the identities of the victims and the vulnerable inhabitants, it is vital that you determine the place and time, as well as the characteristics of the affected persons in the case. The numbers and any demographic data of the composition of the affected population are critical to understanding the case and characterizing the type of violations. The violation or vulnerability may be multidimensional (or intersectional), involving more than one form of discrimination. Knowing the victims and vulnerable persons can help determine

which combinations of housing rights elements are simultaneously affected. In describing the population, knowing the particular vulnerabilities and special needs of the affected persons or community (whether arising from historical factors, gender, age or other demographics) complete the picture that you eventually will present to your intended audience.

✓ Distinguishing between the victims and vulnerable

It is also important for the monitor to distinguish between those victims, whom already have been violated, and those who are vulnerable to future violation or deprivation. Of course, this distinction will be strategically important later in the process, when the housing and land rights monitors and defenders choose an action in response to the violation. You will have to determine then if your intervention is to be remedial or preventive. In any case, an eye to those who remain vulnerable even after the principal violation, as well as after a particular solution to a case, will maintain the monitors focus—as necessary—on the further interventions needed toward the ultimate realization of the human right to adequate housing and land.

The following sample questions guide the monitor to prepare needed data and arguments, in the case of any present obstacles, but focusing on the human dimension in the case of a violation of the housing rights entitlement of resettlement, movement, *nonrefoulement*, return and restitution.

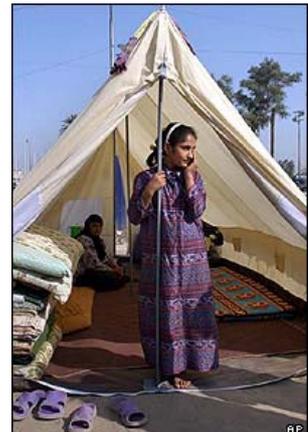
Victims

- Identify the type and form of violation of the congruent right to resettlement, movement, *nonrefoulement*, return and restitution:
 - Invasion
 - Refoulement*
 - Armed conflict
 - Forced eviction
 - Ethnic cleansing
 - Foreign occupation
 - Arbitrary demolition
 - Denial of equal inheritance rights
 - Colonization, including implantation of settlers
 - Confiscation of property by public officials and bodies
 - Confiscation by private actors (criminal gang, settlers, armed groups)

- Who has been affected by the violation of the entitlement of resettlement, movement, *nonrefoulement*, return and restitution?

- How many people have been affected in the same way in the last year (any time period)? Does it demonstrate a pattern?

- Identify and provide demographic details of the victims:
 - Numbers and proportions of refugees
 - Numbers and proportions of migrant workers
 - Numbers and proportions of minority persons
 - Numbers and proportions of males and females
 - Numbers and proportions of indigenous and/or tribal and semitribal people



- Numbers and proportions of elderly, disabled, medically challenged persons with special needs
 - Numbers and proportions of members of groups subject to (current and historic) discrimination
 - Numbers and proportions of impoverished inhabitants, including those subject to discrimination on the basis of their economic status or work (e.g., Dalits)
 - Numbers and proportions of any other relevant group identity of victims
- Where does the violation of this right mostly occur (i.e., rural, urban, slums)?
- When does this violation mostly occur? Day or night? Weekend? Certain times of the year? Why does the violator choose this timing?

Vulnerable individuals and groups

- Identify the type and form of vulnerability to future violation of the congruent right to resettlement, movement, *nonrefoulement*, return and restitution:
- Invasion
 - *Refoulement*
 - Armed conflict
 - Forced eviction
 - Ethnic cleansing
 - Foreign occupation
 - Arbitrary demolition
 - Denial of equal inheritance rights
 - Colonization, including implantation of settlers
 - Confiscation of property by public officials and bodies
 - Confiscation by private actors (criminal gang, settlers, armed groups)
- Who are the populations most likely to experience the violation of the right to resettlement, movement, *nonrefoulement*, return and restitution? Why are they vulnerable?
- Provide demographic details of the concerned vulnerable persons or groups:
- Numbers and proportions of refugees
 - Numbers and proportions of migrant workers
 - Numbers and proportions of minority persons
 - Numbers and proportions of males and females
 - Numbers and proportions of indigenous and/or tribal and semitribal people
 - Numbers and proportions of elderly, disabled, medically challenged persons with special needs
 - Numbers and proportions of members of groups subject to (current and historic) discrimination
 - Numbers and proportions of impoverished inhabitants, including those subject to discrimination on the basis of their economic status or work (e.g., Dalits)
 - Numbers and proportions of any other relevant group identity of vulnerable persons
- Explain the insecurity of their situation and give details about the naturally vulnerable populations (women, children, indigenous, slum dwellers, refugees, workers/migrant workers, farmers, etc.).

Focus on multidimensional / intersectional affects

Your case will be enhanced when your information includes emphasis on the particular types of victimization or vulnerability by focusing on the social groups typically subject to multidimensional, or intersectional types of deprivation. The monitor should identify such multiple forms of deprivation for each of the groups already identified in this section (above). This step allows you to identify the nature and causes of the particular affects on certain groups who may be made vulnerable already in addition to, or in advance of the specific housing land rights violation, or anticipated violation. The following sample questions will lead you to clarify this point.

Women

- Are women in the given community or case subject to deprivation of their congruent right to resettlement, movement, *nonrefoulement*, return and restitution?
- What are the reasons for this condition? Is it by some custom, religion or other ideological motivation?
- Does the practice of domestic or social violence against women somehow impede women's enjoyment of their congruent right to resettlement, movement, *nonrefoulement*, return and restitution?
- Are the formal or informal terms of inheritance already biased against women in a way that negatively affects the enjoyment of the congruent right to resettlement, movement, *nonrefoulement*, return and restitution?

Children

- Do housing conditions impede acceptable access to public goods and services as an element of the RAH, so as to obviate violence and abuse, including psychological & sexual abuse, within the home or community?
- Are housing conditions, in particular, the rights element of resettlement, movement, *nonrefoulement*, return and restitution, suitable for children to carry out their studies?
- Are housing conditions, including resettlement, movement, *nonrefoulement*, return and restitution, conducive to achieving the highest attainable standard of physical and mental health?

Racial, ethnic or other groups

- Who are the victims or vulnerable persons or community subject to discrimination that includes denial of resettlement, movement, *nonrefoulement*, return and restitution?
- Have the affected persons or groups (either the vulnerable or the victims) been denied their right to suitable housing, and particularly to resettlement, movement, *nonrefoulement*, return and restitution, because they belong to a specific minority, ethnic or indigenous group?
- How has historic discrimination, if any, affected the current situation?

✓ Victims' case documentation form

11.7. Losses/consequences

✓ Quantification methodology

Quantifying violations to the right to adequate housing: a tool for evaluating the effects of demolitions, confiscations and forced evictions

The purpose of this tool is to help determine the value of costs and losses that victims incur as a consequence of the violation their housing rights. Using this tool will aid in the various necessary stages of proper monitoring of specific violations of the right to housing, including:

1. Documentation and recording
2. Monitoring and reporting
3. Quantifying/evaluating
4. Identifying and solving problems
5. Follow-up assessments
6. Fact-finding missions
7. Public information and campaigns
8. Social mobilization
9. Media work
10. Compensation efforts
11. Legal defense and prosecution
12. Monitoring international obligations

The quantification methodology and “Loss Matrix” are designed to aid human rights workers responsible for each stage in the monitoring process, including interventions that are both preventive and remedial. These stages may involve the same individual human rights worker at each stage, or may involve a division of team labor. In either case, this tool also can serve as a vehicle for organizing tasks in a coordinated and complementary way, when more than one individual or organization is involved in the process. For instance, if different teams or organizations are specializing in respective geographical areas, applying this tool commonly aids the process to avoid duplication and the discrediting contradiction of facts.

Whether or not your monitoring objective is legal defense, policy analysis, compensation or public information, the quantification of the effects of the violation strengthen your argument and, consequently, help mobilize support for the movement to end, redress and compensate/obtain restitution for the violations. In particular, your findings will substantiate the assertion that many housing rights violations actually widen and deepen poverty, having a de-development effect on the community and country.

The material and otherwise-calculable costs resulting from the violation are determined for each unit (household) affected and then totaling them. Alternatively, in the case of multiple units affected, a representative sample should be obtained to determine the average values, which then are to be multiplied by actual numbers of units affected.

Other incalculable losses still have to be recorded and reported in narrative terms. Such narrative explanation and analysis will be useful as an accompaniment to this quantification table.

Both short-term and long-term values are to be assessed.(You can follow examples of traffic dispute jurisprudence, or the law pertaining to insurance or divorce cases in your country to come up with a methodology of determining personal injury and pain-and-suffering damages claims for compensation purposes.) Accurate and thorough quantification of costs and losses calls for both a great deal of cooperation between the monitor and the affected community, and a continuous relationship over time.In order to capture many of the values, sustained monitoring and calculation are required over time. It is, therefore, recommended that such monitoring effort be undertaken or coordinated by those who maintain a program and commitment to the affected community over the long term.

This tool seeks to quantify the costs of victims, as well as public, or social costs. For our purposes, the principal victim(s) would be those persons whose property and lives are directly affected by the act, be it a demolition, confiscation and/or eviction, etc.(This tool would be used for any and all categories of violation.) Ancillary or indirect victims would be those who undergo the cost or other harm as a result of an act intended or directed at others. The indirect victims' losses and damage should be included in the overall assessment of the violation's effects.

The middle column, entitled "Methodology," in the quantification table found at the "**Loss Matrix**" link contains commentary on the contents of the calculated costs/losses and provides guidance on how to calculate them. It is there where you will record in your applied version of the "Loss Matrix" the type of items or values totaled under the particular type of cost/loss. There, too, you could cite whether or not the values are losses/costs to the principal victims only, or include those of indirect victims, such as those enduring collateral damage from a house demolition. The "Methodology" description should be as complete but concise as possible, within a short line or two.

It is possible to modify "Loss Matrix" to the user's discretion. (However, we emphasize that any modifications be shared among the community of monitors to ensure compatibility of findings.) For example, certain direct and indirect victims' losses may need to be separately calculated for some reason. In that case, an additional column can be added. In any case, however, it is important to arrive at a global cost figure for the violations under review. The column at the far right under each category of cost should be totaled using the imbedded Excel formula.

Follow the links to access the details of the quantification methodology and "**Loss Matrix.**"

- Victim's material losses
- Victim's nonmaterial losses
- Other than victim's material losses (public costs)
- Other than victim's nonmaterial losses (including social costs)

Contents and methodology for determining each category of loss/costs

Victims' Material Losses

The Structure

The fair market value of the house, shelter or other structure(s). This is probably greater than the cost, as indicated in official records of the most recent tax assessment, for example. That price may be a guide, but is likely to be out of date with the value that would be obtained if the property were to be sold on the market. The market value would also likely be less than the "speculative value," which is considered to be that value (price) that a

speculator, investor or other interested party would anticipate after the demolition/eviction and after converting the structure—if partially retained—for eventual exchange or reassessment. The reference for determining the market value would be reliable real estate agents, banks, or other parties involved in the sale and exchange of such properties. The standard methodology would involve collecting three quotes/estimates and selecting the average, or taking the middle quote as the fair market value.

In the likely event that no such property market is actively issuing quotes on the value of the affected property. The remaining alternative method for determining market value would be the estimated cost of replacing the property at current market values.

Note that the victim incurring the loss in this case would be the owner(s) and or title holder(s), including those owning the property individually, or collectively, under formal title, or by traditional tenure systems.

Plot

The plot and the structure are considered separately in this methodology to accommodate systems where the two aspects of property value are determined separately, or by different methods. For example, a cooperative arrangement may provide for outright title to the structure, but a “share” of the land area under it. It also allows for disaggregating these values in the event of a dispute over one and not the other. In the event that the structure and the land are both held in title by the same owner and the values are customarily assessed in combination, the structure and plot values could be combined in the matrix.

The eviction and/or demolition may not involve the dispossession of land title or ownership of the plot on which the structure stands. In that case, the evaluator would proceed to the next categories and not enter a value for the plot. However, in some cases, such as in Israel, the land plot under a demolished structure may, perforce, be assumed by, or “revert to” the state as “state land” or “national land.” The evaluator must be familiar with the local laws and regulations to determine if that is the case in the event of an eviction or demolition. That may determine whether or not a value is entered in this category of the matrix or not.

In the case of a housing plot being confiscated by the state, determining the value of that plot may be difficult if, again, no market value can be determined for the affected area. In that case, the methodology would involve determining the cost at current market value of a comparable site in another location.

Contents

Each affected party should cooperate with the field workers to provide an inventory of the actual contents lost and damaged in the demolition. The value of those contents for this quantification purpose is the **replacement value** of the items, not the market value. The contents (furniture, clothing, foodstuffs, electronics, housewares items, etc.) would be subject to depreciation and the resale or fair-exchange values would not be sufficient to cover the cost of replacement. The replacement value represents the actual cost of repurchasing items comparable in quality to those lost or damaged by the demolition. (For heirlooms and other items sentimental value, a replacement cost should be included in this category; however, the nonmaterial loss or irreplaceability should be expressed in the “Victims’ Nonmaterial Losses” section of the matrix, with a narrative either included in the matrix or attached to it.

Collateral damage

This section of the matrix allows for inclusion of the material losses to the indirect victims in particular, including neighbors' and public property that are affected by the act. In cases of violent eviction or demolition, using bulldozer or explosives, for example, nearby property can be damaged in various degrees, or destroyed.

Infrastructure

This section refers to services and other infrastructure lost in the demolition/eviction/confiscation that would have to be replaced after the event. For example, electricity provided at the original site may have to be replaced by a generator or purchasing energy from an alternate source. Water, previously available from installed or nearby facilities may have to be replaced by purchasing water or hauling it from another source. The resulting added cost—including the relative cost of labor at the going rate of such work for hire, which is beyond the existing regular costs of obtaining same—is the value to be calculated here.

Business losses

If the demolition/eviction/confiscation results in the loss of a business, or a portion of business, that cost is to be included here. Those losses are the subject of subcategories to be detailed below.

Equipment/inventory

This includes the value of machinery and equipment, other installations, such as furnishings and built ins, as well as all stock and supplies. This should include also the property belonging to others lost or damaged in the event. For example, a laundry or repair service would hold clients' property to be processed and returned. The values of those items are also to be included in this figure.

Prospective income

The loss resulting from inability to deliver goods and services, and the anticipate profit from existing stores, orders, contracts, etc. that would be unfulfilled due to the event. The short-term and long-term affects are to be calculated by different methods. This category of loss follows the method developed locally for determining "goodwill" as an asset, which would include the projected income from a pattern of business developed through the lifetime of the enterprise. [Refer to insurance law methods.]

Mortgage, other debts and penalties

The demolition/eviction/confiscation removes the owner's relationship with the land and/or structure, contents, livestock, inventory and other matters of material value, such as materials and work performed for physical improvement to the property. However, the event does not relieve the owner from responsibility to repay for those values obtained on a credit basis. Those values, including any penalties and increased interest resulting from the event, are to be included here for both the short-term and long-term. If a situation prevails, as in many legal systems, that a debtor relinquishes claims (as in a natural disaster, for example),

then that cost should nonetheless be calculated and listed under the category of “Other than Victim’s Losses.”

Livestock

The value of livestock lost and the treatment of those injured by the event is calculated here. This would include also the labor costs for time spent in rounding up dispersed livestock at the rate of pay for such work for hire. The calculus for these values includes the loss of anticipated returns from normal sale of, and/or produce from the animals, including their normally anticipated progeny over the short-term and long-term. In the case of the animals’ value as beasts of burden, the returns on their labor are to be included in the figures provided under lost revenue, increased transportation costs, returns from crop loss, or other appropriate category.

Land

The landed property not associated with the affected structure itself is to be calculated on the basis of fair market value, as with the structure and its plot entered above. This could be land adjacent to the dwelling or other affected structure, or land confiscated separately. This land could be lost entirely through confiscation, or its value could be reduced as a result of the eviction or demolition. In the case of eviction, land title might not be lost outright, but the conditions created by the eviction may prevent the owner(s) from returning to or reclaiming their land. In that case, the land in question would be calculated as an outright loss.

Trees/crops

The value of a lost or damaged nonfruit-bearing, or otherwise unharvestable tree or other vegetation would be determined by the cost of purchasing and replanting a comparable replacement. The nonmaterial, aesthetic, or sentimental value of the tree or other vegetation would be included by narrative in the Victim’s Nonmaterial Losses item under Environment or Heritage, as appropriate. The value of harvestable trees and crops would include the value of the replacement itself for fruit-bearing trees and crops, as well as the (short-term and long-term) value of the harvest. The loss of timber would be calculated accordingly also, with the value being the anticipated return from the harvesting or sale of the tree itself.

The ecological loss of vegetation, depending on the nature of the event—if by demolition were by fire or other destructive means—also carries a value. Ecological damage is calculated on the basis of the restoration costs entailed. Collateral damage to wildlife and other natural assets, owing to the damage and the time required to restore it, may be of both a calculable and incalculable loss. Where possible, such calculable values should be included here. Otherwise, those losses are to be recorded in the narrative section of both the Victim’s and Nonvictim’s Nonmaterial Losses, for those losses would be of a more public nature.

Lost/decreased wages/income

The loss of a home, including subsequent short-term or long-term resettlement, may involve the loss of livelihood, whether that livelihood is linked to the dwelling and/or land lost. In any event, wages would inevitably be lost (to victim or her/his employer) for nonproductive time attending to the event and its aftermath. Resettlement can lead to loss of a job or jobs altogether, or necessitate securing alternative employment, especially if temporary or long-

term resettlement is far from the regular workplace. To calculate that value, one would subtract the short-term and long-term wages and other income of affected persons from the normal, anticipated wages and other income before the event. Since obtaining new employment and other income involves a loss of certain benefits, such as accumulated vacation leave, seniority and other benefits, the relative loss of those values should be included here if calculable. Job seniority may not be calculable value in monetary terms if it involves merely standing vis-à-vis colleagues. However, if that seniority arguably would have led to promotion with material effect in the short or long terms, that value is to be factored here as well.

Health care

The event itself or its aftermath may have negative health consequences. Social science has recorded the effects of eviction and resettlement upon the increased mortality and morbidity rates of the affected communities. While these notable consequences belong among the Victim's Nonmaterial Losses, the care for these consequences has clearly calculable values. The loss of life, limb and other health effects are the subject of the laws of states for the purposes of calculating victim compensation in insurance and other cases involving law suits. A sample of such methods taken from such statutes could form a composite methodology for calculating victims' health losses here.

The overcrowding, such as in interim or alternative housing arrangements, often leads to negative health consequences for those evicted, as well as for those providing the alternative shelter in their own quarters. The care and treatment of these health consequences (such as influenza, scabies, malnutrition, etc.) are an additional value added to these health care costs.

Interim housing

Eviction, confiscation and demolition victims often seek alternative housing with relatives or friends, either within the community or elsewhere. This housing has a value, which is to be calculated on the basis of fair rental rates for such shelter, whether rent is paid or not. It remains a cost and value that is subsidized in one form or another. It also can lead to an actual expanded definition of what constitutes the victim, for persons and groups offering assistance in various forms can be counted as second tier victims by virtue of the loss—voluntary or otherwise—incurred as a result of servicing the persons directly affected by the eviction, confiscation or demolition.

Bureaucratic and legal fees

While under threat of a violation, such as eviction, demolition and confiscation, the eventual victim would likely undergo costs related to both time spent and out-of-pocket costs in order to restrain or defend against the impending violation (if the threat is known in advance). Both the time and monetary costs incurred by both bureaucratic processes and legal advice and defense work should be quantified. Even if the legal advice given is free of charge to the affected person(s), those rendering the advice (NGO, CBO, other *pro bono* service) should put a value on that service for the purposes of this costing exercise. (The costs of bureaucratic efforts by public personnel is determined below under "Other than Victims' Nonmaterial Costs.")

Before the victim(s) can restore their proper housing, s/he conventionally undergoes a procedure and cost toward obtaining a license to rebuild or otherwise restore a dwelling. The costs incurred in this process, including fees, legal service, bribes and other out-of-pocket expenses should be included as a category in its own right.

Alternative/replacement housing

The cost of securing comparable housing on a permanent basis is represented here. (Temporary lodging costs are treated above under “Interim housing.”) The comparable housing is meant to include a dwelling with similar spatial dimensions, infrastructure, location and services as the home lost in the violation. This may involve calculation of the replaceable features of the original dwelling with some adjustments, depending on circumstances. For instance, a comparable dwelling space may be found near the source of livelihood, but may be in a differently priced market, and the adjusted figure would account for that. That dwelling may be comparable in most aspects, but lack services or infrastructure. In that case, the cost of obtaining the replacement services or infrastructure at the local rate would have to be added. Likewise, if the replacement housing is comparable to the original dwelling lost, but its location is less convenient for commuting to one’s source of livelihood or family and original community members, that additional transportation cost would be included in the “Transportation” item below.

Since this category of cost is of a more-or-less permanent nature, it should be cited in the “Long-term” cost column of the matrix. Typically, obtaining permanent replacement housing is a lengthy process; therefore, calculating this costs would be a subject for, and a further argument for follow up monitoring of violation cases.

Resettlement

The expenses of traveling and transport of goods to both interim and replacement housing sites form part of the resettlement cost. This, too, would likely involve the efforts and time on the part of several persons—with equivalent values—in order to locate and secure the short-term and long-term housing alternatives. All related costs should be calculated as much as possible.

Transportation costs

This category is the amount of difference between the amounts spent on transportation as a result of the eviction, demolition or confiscation and the amounts spent (if any) on transportation in the normal conduct of life at the original place of residence. Such values include expenses *and* time spent commuting to and from the source of livelihood, visiting family and community members, going to market, carrying out cultural and religious activities, visiting grave sites, conducting other official or private business, etc.

Victims’ nonmaterial losses

Health

In addition to the cost of medical treatment, the loss of health has a value seldom calculated in monetary terms. Methods for calculating the values of losses of life and limb can be found in local legal practice concerning divorce, traffic and insurance. This loss will have to be described in some detail in order to make your case.

Living space

A reduction in living space can have negative physical and emotional effects, as when an evicted family takes refuge with friends and relatives in small, temporary quarters. Consequences may include nervousness, loss of sleep or skin ailments. Be sure to describe this situation as part of the victim's experience.

Reconstruction licensing

Long waiting and frustration may result from the search for a license to rebuild after demolition, eviction or confiscation. This loss can be measured in time and stress, and should be included here.

Psychological harm

The victims may suffer mental stress and psychological harm, especially in the context of violence during eviction, or the trauma that accompanies homelessness after the violation. Children are particularly susceptible. Their story needs to be told. You may find criteria for quantifying the value of pain and suffering from the specialized practice of local law on traffic and insurance.

Disintegration of family

Displacement and other violations of adequate housing could lead to separation of family members and the deterioration of family relationships. With the psychological depression arising from housing and land loss, some victims may engage in antisocial behavior, such as violence or substance abuse that harms family relations.

Loss of community

Eviction, resettlement or land loss can fragment communities and reduce social capital built up over time. It can separate people from support systems (including child-care arrangements, domestic division of labor, etc.) upon which they depend for livelihood and social activities, while women bear an extra burden of maintaining an uprooted home.

Investment in infrastructure

Even—and especially—the most-impooverished communities have to invest in local infrastructure (e.g., electricity, water, transport, roads), particularly if the municipal institutions exclude them. Separation from these facilities by forced eviction, confiscation or demolition means a total loss of that investment, which may not be quantified, partly because they are the product of volunteer labor.

Investment in sanitation and waste-management systems

A community may provide its own waste-management solutions, however simple it may be, especially in the absence of public services. The vital functions of waste management may no longer be possible because of the separation, causing a loss of labor divisions or disposal

options and spell a deterioration in the quality of life, including entitlements to environmental health as a result of the violation.

Investment in security protection systems

Informal communities are typically forced to seek their own security arrangements, since civil police may fail to serve them, or deteriorating living conditions may coincide with increased social violence.

Investment in educational infrastructure

Local communities' arrangements for popular education may be curtailed with eviction, leading also to the disruption of formal education (e.g., lost school days). Each home also is a locus of educational infrastructure, especially where children carry out their homework.

Heritage

For heirlooms and other items of sentimental value, as for land-based identity and culture, a replacement cost should be included in this category. However, the incalculable nonmaterial dimension, or irreplaceability should be expressed in the "Victims' Nonmaterial Losses" section of the matrix, with a narrative either included in the matrix or attached to it.

Victims' nonmaterial costs

Environment/ecology

Various forms of housing rights violation can spell the loss of environmental safety, health and recreation. Displacement and eviction sever the relationship between the inhabitants and their habitat. It may also force them to live in precarious or unsafe environments as a consequence.

Standing/seniority

A home owner who loses her/his housing also loses the status that comes with the property and securely tenured lifestyle. The formerly real or perceived capacity of the victims to advise and support others dissipates with the violation of their right to adequate housing, especially through land loss.

Relocating long-standing communities to new areas makes them low-status newcomers in competition with new, indigenous neighbors. Environmental degradation or rezoning may affect the status of a community negatively, leading to intangible—but sometimes also quantifiable—losses.

Political marginalization

Homeless people in many States are denied the right to vote for lack of a fixed address. Resettlement renders inhabitants politically weak vis-à-vis new neighbors, especially without the benefit of local connections and established relationships.

Social marginalization

Losing one's home and place to live often means losing also the social integration once enjoyed in the former residence. Spatial marginalization to the outskirts of the city may be synonymous with exclusion from social services and infrastructure.

Further vulnerabilities

The loss of home, land and social capital (i.e., productive relations within the community) can leave the victim(s) without protection from the natural elements, and/or without livelihood and sources of income. The homeless woman becomes further vulnerable to threats against her personal security and integrity long after the housing-rights violation.

Other-than-victims' material costs (public costs)

Police

The law enforcement officials engaged in either committing or remedying a housing and land rights violation, for example, represent a cost to the public purse. You can calculate their number, multiplied by the hours/days engaged and by corresponding wages and benefits to derive an estimate of the public costs incurred.

Bulldozers

In some cases (e.g., in Israel), courts issue orders to targeted inhabitants and communities to demolish their own homes. If they do not comply, the State carries out the deed and charges the victim for the service. In other cases, the housing rights monitor would have to calculate the cost of using the equipment and the wages of the operator to determine the public expenditure in carrying out that part of the violation.

Legal practitioners

Lawyers, either arguing against or defending housing and land rights, as well as judges, prosecutors and court staff dedicate time and materials that are covered from public budgets. Their level of effort and cost per unit of time (hours or days) could form a method of calculating these public costs.

Army

Military personnel and equipment used in the violation (or defense against a violation) also represent a cost. Quantifying these costs may be a more-elusive exercise, but it may be useful to pose estimates for your public's consideration.

Other forces

The public bodies may subcontract tasks and functions to private parties; however, those expenditures related to the case at hand would factor among the nonvictim's material costs.

Bureaucratic and personnel costs

The inspection, administrative processing, clerical and other desk work in public institutions may be carried out in connection with your case and paid by the tax payer. Your educated estimate of these values forms part of the public cost scenario.

Other-than-victims' nonmaterial costs

Social costs

Housing rights violations can be a cause or consequence of social unrest in a country. Depressed living conditions within a community often coincide with increased social violence, and dislocation often generates new adversary relations among inhabitants competing over territory and property, either at the original site, or in resettlement. Squalid living conditions also could give rise to practices and pathogens that bear a social cost in the form of declining public health.

Civic order

Linked to adequate housing and other economic and social rights, civic order typically deteriorates commensurate with the deprivation of living conditions. Resistance to eviction and forced relocation, demolitions and dispossession by any party is the natural response to a breakdown in civic order, including that characterized by the State omitting to implement its obligation to respect, defend, promote and fulfill the human right to adequate housing and land.

Political legitimacy

Depending on the facts and scale of a particular situation, a housing and land rights violation could undermine the legitimacy of the political party, government or even State in whose name the violation is committed. Alternatively, resolving and remedying a violation could have the opposite effect of recovering the loss of official credibility and legitimacy.

✓ **Loss matrix**

✓ **Housing contents inventory**

11.8. Duty holders

The professional monitor of the human right to adequate housing should provide a list as complete as possible of the duty holders both legally and morally responsible. This legal duty holder (i.e., the State and its agents) may be operating in conjunction with others in either the violation or the potential solution. The audience of your eventual action, whether they are the general public, journalists, or a prosecutor or judge, will need a clear and complete picture of the legal personalities, those who are responsible for their acts of commission and/or acts of omission, and who does what to whom, from the beginning to the present.

As borne out in the foregoing sections on sources of law and guarantees, the concerned State is always the principal duty holder. The State is the legal personality that is treaty bound by the obligation to respect, protect, promote and fulfil human rights, but also to aid those who have been deprived of them. The State's duties are threefold:

- To avoid deprivation,

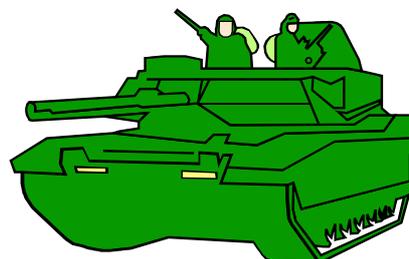
- To protect and defend those facing deprivation,
- To provide remedy in the forms of assistance and justice to those deprived.

You may find that the State, as duty holder, has committed acts that cause deprivation, or omitted to protect or remedy a deprivation through the obstacles identified above. One might also find that the duty holder is constrained by other actors or factors, such as natural disaster, or global economic recession.

Identifiable institutions and man-made forces, either internal or external, may be known to contribute to a violation. These may include actors such as the International Monetary Fund (IMF), the World Bank, a multinational corporation or national planners. You may find that these parties are either directly or indirectly responsible for the deprivation, or conditions leading up to it. So, too, are factors such as debt or traditional social practices. Especially when the role of the State is passive (i.e., by denial or failure to protect and ensure remedy to the victims), other actors may come to the fore. Private companies, including multinational corporations, for instance, regularly acquire assets and carry out projects that involve forced evictions and land confiscation. In some cases, the regional and international development banks have their well-articulated policies on compensation/relocation. However, these companies may be the right hand of State policies, or implementers of international public projects. That is why it can be crucial to record the relations between the different actors forming a whole chain of duty holders.

One must not overlook the possibility that duty holders, particularly as violators owing remedy and restitution to victims, might also be members of the community, or even family members of the victim(s). Where does the State duty lie in such a situation?

As the legal personality obliged to respect, defend, promote and fulfil the human right to adequate housing, the State's duty lies squarely in the execution of its human rights obligations to regulate behavior of legal persons within its jurisdiction (and areas where it exercises effective control) in order to uphold rights. The human rights treaties and other instruments provide the guidance on how States—and statecraft—should address human rights violations by third parties not only as matters of civil or criminal law, but also as means to ensure the legitimacy of the concerned government, or even State itself.



To have a full outline of questions for identifying the duty holders and the applicable legal obligations, you can use this "Toolkit" very effectively, since each element of the right to adequate housing that you have identified as relevant to your case has corresponding duty holders.

Primary duty holders: State authorities

- Has the State failed to take to prevent the violation of housing rights, especially resettlement, movement, *nonrefoulement*, return and restitution? What are those neglected steps?
- Has the State protected the impoverished and vulnerable inhabitants and aided the victims (e.g., by prosecution, return, compensation, etc.) in the violation of housing rights, especially resettlement, movement, *nonrefoulement*, return and restitution? Which are the particular bodies responsible for these preventive and remedial steps?

- ❑ Has the State taken sufficient measures to promote the entitlement of resettlement, movement, *nonrefoulement*, return and restitution (e.g., human rights education, campaigns, public-service announcements, awareness-raising publications, etc)? Which are the specific bodies responsible for those measures?
- ❑ What is the State's relationship with other duties holders regarding the assessed violations? Explain the nature of that relationship. Is it a contract, foreign aid package, nepotism, political patronage, etc.?

Secondary: Have other actors affected the denial of the rights to resettlement, movement, nonrefoulement, return and restitution?

- ❑ Are other local, non-State actors somehow engaged in the denial of resettlement, movement, *nonrefoulement*, return and restitution? Who are they and what is their role?
- ❑ What role do international financial institutions (IFIs) such as the World Bank, IMF, a regional development bank, or the World Trade Organisation have in determining the policies or conditions affecting resettlement, movement, *nonrefoulement*, return and restitution in the affected community/country?
- ❑ What role and influence do multinational corporations or international development agencies have in determining the policies or conditions of resettlement, movement, *nonrefoulement*, return and restitution in the affected community/country?
- ❑ How are these secondary duty holders responsible for the violation of the right to resettlement, movement, *nonrefoulement*, return and restitution? To what extent do they influence State policies, programs, and laws having an effect on the violation?
- ❑ Do the secondary duty holders have internal policies/codes of conduct regarding housing rights, especially affecting the congruent right to resettlement, movement, *nonrefoulement*, return and restitution? If so, are they publicly accessible?
- ❑ What are the relevant details of those policies or codes? How do they protect the human right to adequate housing and the entitlement of resettlement, movement, *nonrefoulement*, return and restitution?
- ❑ Are these conditions part of an implementation contract or other cooperative agreement with State bodies or other partners?
- ❑ Before implementation, do they study the impact the projects will have or consider the possible unintended consequences?
- ❑ If there are several secondary duty holders, what is their relationship to each other, and how do they share responsibility for the assessed violation of the congruent right to resettlement, movement, *nonrefoulement*, return and restitution? What is the relationship between each of them and the State?



- Do local authorities lack sufficient autonomy in housing and community development to apply locally relevant options to ensure the human right to adequate housing, especially resettlement, movement, *nonrefoulement*, return and restitution?
- Do local authorities use their autonomy to protect and influence the central authorities of the State in a positive way, or do they participate in the violation and denial of the State's obligations and national policies?

Assessment

- To what extent is the State responsible for the vulnerability or violation of the housing rights congruent right to resettlement, movement, *nonrefoulement*, return and restitution?
- To what extent are non-State actors responsible for the vulnerability or violation of the housing rights congruent right to resettlement, movement, *nonrefoulement*, return and restitution?

11.9. Actions

The following table of actions (comprised of both preparation and implementation tasks) arranges a variety of possible problem-solving options for you by categorizing them for organizational and selective decision-making purposes. It is not an exhaustive set of options, but merely part of an array of possibilities for you to undertake with the affected community, depending on the present strengths (assets), weaknesses (liabilities), opportunities and threats.

Before selecting your actions, you should conduct a strategic planning exercise. For guidance click [here](#).

Footnotes shown here refer to relevant manuals, training materials, expertise, trainers, recorded experiences and/or methodologies already available to guide your chosen action toward a desired goal/result/solution. Toolkit users are encouraged to consult the HIC-HLRN website regularly for updates and further reference (www.hlrn.org) on constantly evolving updates, including strategies and practices arising from experiences throughout the global HIC and HIC-HLRN community.

Action		Solution
Preparation	Implementation	
Alternative tenure options		
Gather information for community to consider	Develop "limited equity cooperatives" ¹¹⁵⁰	Legal secure tenure in adequate housing and

¹¹⁵⁰ The limited-equity cooperative is a form of housing tenure in which shareholder residents manage their buildings, within limits imposed by a charter, and have the right to get back what they have paid for their shares plus an allowance for improvements, if and when they decide to leave. See Duncan Kennedy, "The Limited Equity Coop as a Vehicle for Affordable Housing in a Race and Class Divided Society," 46 Howard Law Journal 85–125, 85 (Fall 2002).

tenure options	Inform and train community in pursuing land-tenure options ¹¹⁵¹	sustainable land
Community capacity building		
Conduct training for community on their human right to adequate housing ¹¹⁵²	Mobilize community in local and national human rights campaigns	Greater community participation in projects, programs and policy formulation with well-defined human rights orientations
Legal service organizations and centers provide legal advice and representation to disadvantaged individuals and communities ¹¹⁵³	Organize popular resistance to HRAH violations (demonstrations, petitions, sit-ins, street theater, etc.) ¹¹⁵⁴	Community blocks housing rights violations by State and non-State entities
<i>Pro bono</i> (volunteer) lawyers provide legal advice and representation to disadvantaged individuals and communities	Organize national campaign on RAH ¹¹⁵⁵	Coordinated community action and reaction to influence State authorities on housing policies
Build capacity of community-based and other civil society organizations to manage projects and campaigns ¹¹⁵⁶		CBOs and NGOs more capable to support the affected people in responding rapidly and effectively to crises/violations
Train communities (in HRAH, strategic planning, technical skills, etc.) ¹¹⁵⁷	Public agencies provide adequate technical, marketing and research assistance to disadvantaged community	Community better able to mount specific alternatives to official plans

¹¹⁵¹ Luanne Warnock, *Sharing the Cost of Land Tenure and Stewardship* (Davis CA: Sustainable Agriculture Research and Education Program, University of California, 1996).

¹¹⁵² See Circle of Rights (Washington: 2000); Jules N. Pretty, Irene Guijt, John Thompson and Ian Scoones, *Participatory Learning and Action, A Trainer's Guide* (London: International Institute for Environment and Development, 1995), available from Earthprint at www.earthprint.com; also materials of Peoples' Movement for Human Rights Education, <http://www.pdhre.org>.

¹¹⁵³ Gridley Hall and Burton Fretz, "Legal Services in the Third World," *Clearinghouse Review* (December 1990); Jose Diokno, *Developmental Legal Aid in Rural Asean: Problems and Prospects* (Washington: 1981); Richard J. Wilson and Jennifer Rasmussen, *Promoting Justice: A Practical Guide to Strategic Human Rights Lawyering* (Washington: Human Rights Law Group: 2001).

¹¹⁵⁴ Morjane Baba, *Guérilla Kit* (Paris: La Découverte, 2003); Mike Prokosh and Laura Raymond, *The Global Activist's Manual: Local Ways to Change the World* (New York: Nation Books, 2002).

¹¹⁵⁵ "Global Struggle and National Focus Note" (Geneva: HIC, 1996).

¹¹⁵⁶ Kaplan, Allan, *The Development of Capacity* (Geneva: UN Nongovernmental Liaison Service, 1999); Goggey, Shirley, *Rural Community Resource Centers: A Guide for Developing Countries* (London and Basingstoke: MacMillan, 1988).

¹¹⁵⁷ Barrameda, Teresita V. and Lea I. Espallardo, *Learning, Reflecting and Acting for a Human Rights Future: A Training Manual for the Education of the Human Right to Housing in Urban Communities* (Quezon City: Process, Inc. and New York: PDHRE, 2000).

	on an affirmative-action basis	
Raise public awareness toward social mobilization through public education ¹¹⁵⁸	Mobilize peaceful public protests to housing rights violations	Prevent forced evictions
Enhance monitoring-and-documentation skills and methods (e.g., archiving, statistics, multimedia, etc.) to build strong argumentation ¹¹⁵⁹	Urgent Action appeals (organize regional and/or international mobilization) ¹¹⁶⁰	Convince public of violations and need for resolution
	Public-information campaigns ¹¹⁶¹	
Design and implement alternative planning (community generated techniques in the people's initiative to design their own living environment) ¹¹⁶²		Participatory alternative housing projects adapted to the community's needs
Conduct an inventory (enumeration) of community human resources and social capital ¹¹⁶³	Organize and divide volunteer labor of affected communities; and to areas to develop alternative plans	Community housing and built environment upgraded on-site as alternative to relocation.
	Community representatives lobby officials and legislators to cooperate with/approve community-proposed alternatives	Obtain adequate relocation site with suitable location, environmental conditions and livelihood options
Community organizing		

¹¹⁵⁸ Writing for change: An interactive guide to effective writing, writing for science, writing for advocacy [CD and user's guide] (Oxford: fahamu and IDRC, 2000); International Human Rights Internship Program, Ripple in Still Water: Reflections by Activists on Local- and National- Level Work on Economic, Social and Cultural Rights (Washington: University of Minnesota Human Rights Resource Center, 1997), Chapter 6, online at <http://www1.umn.edu/humanrts/edumat/IHRIP/ripple/toc.html>; Allan McChesney, Promoting and Defending Economic, Social and Cultural Rights: A Handbook (Washington: AAAS and HURIDOCS, 2000) Chapter 7 online at: <http://shr.aaas.org/escr/handbook/>.

¹¹⁵⁹ For guidance and methodology in documenting housing rights cases, see HLRN, Urgent Action! HLRN Guide to Practical Solidarity for Defending the Human Right to Adequate Housing [Arabic, English, French and Spanish versions] (Cairo: HLRN, 2003); and HIC Housing and Land Rights Network website: www.hlrn.org.

¹¹⁶⁰ For guidance and methodology in building housing rights cases argumentation and mobilise solidarity, see HLRN, Urgent Action! HLRN Guide to Practical Solidarity for Defending the Human Right to Adequate Housing [Arabic, English, French and Spanish versions] (Cairo: HLRN, 2003); and HIC Housing and Land Rights Network website: www.hlrn.org.

¹¹⁶¹ Strategic Campaigning (London: Amnesty International, 2003).

¹¹⁶² Youth in Unity for Voluntary Action--YUVA and University of Tasmania, "Settlement Upgrading Manual) [Sakkardara alterantive plan] (October 2000); UNCHS, Human Settlements Development through Community Participation (Nairobi, UNCHS, 1991); Nick Waters, The Community Planning Handbook: How People Can Shape Their Cities, Towns and Villages in Any Part of the World (London: Earthscan, 2001).

¹¹⁶³ Ibid.

Consult with community representatives and conduct an inventory (enumeration) of community human resources and social capital	Establish a tenants union ¹¹⁶⁴	Community presents a common position in defense of its rights and interests
Identify and locate absentee landlord ¹¹⁶⁵		
Cooperate and negotiate ¹¹⁶⁶		
Learn/use conflict resolution techniques and, including alternative dispute resolution ¹¹⁶⁷	Decriminalize actions taken to obtain elements of HRAH	Administrative recognition of tenure and the human right to adequate housing of people without economic access
Mobilize inhabitants	Organize squatter actions and squatter-empowerment interventions ¹¹⁶⁸	
Cooperate with National Human Rights Institutions ¹¹⁶⁹	Propose and lobby for the implementation of National Plans of Action for Human Rights ¹¹⁷⁰	National housing shortage, upgrading needs and land conflicts addressed in a National Plan of Action with provision for law and policy reform

¹¹⁶⁴ Tenant organizing resources” on the National Alliance of HUD Tenants website: <http://www.saveourhomes.org/>. Practical steps for forming a tenants union can be found on http://www.radio4all.org/aia/pro_tenant.html.

¹¹⁶⁵ “Who is my landlord anyway?” (Seattle: The Tenants Union, 2004), go to <http://www.tenantsunion.org/research.html>.

¹¹⁶⁶ For a collection of popular experiences in government-nongovernment cooperation in the field of human settlements, see Habitat International Coalition, Building the City with the People: New Trends in Community Initiatives with Local Governments (Mexico City: Habitat International Coalition, 1997), contents also available on line at HIC General Secretariat website, at <http://www.hic-net.org/library.asp>.

¹¹⁶⁷ American Arbitration Association (AAA), Grievance Mediation Procedures (New York: AAA, 1992); AAA, Resolving Your Disputes (New York: AAA, 1993); American Bar Association, Alternative Dispute Resolution: An ADR Primer (Washington: Standing Committee on Dispute Resolution, 1989); Carpenter, Susan L. and W.J.D. Kennedy, Managing Public Disputes: A Practical Guide to Handling and Reaching Agreements (San Francisco: Jossey-Bass Publisher, 1988); Cochrane, Michael G. ed., Attorneys General and New Methods of Dispute Resolution (Washington: American Bar Association, 1990); Costantino, Cathy, A. and Merchant, Christina, S. Designing Conflict Management Systems (San Francisco: Josey-Bass Publisher, 1996); Edelman, Lester, Frank Carr, and James L. Creighton, The MiniTrial (Ft. Belvoir VA: U.S. Army Corps of Engineers Institute for Water Resources, 1989); Edelman, Lester, Frank Carr, Charles Lancaster, and James L. Creighton, Non-Binding Arbitration (Ft. Belvoir VA: U.S. Army Corps of Engineers Institute for Water Resources, 1990); Fine, Erika S. and Elizabeth S. Plapinger, eds. for the CPR legal Program, Containing Legal Costs: ADR Strategies for Corporation, Law Firms, and Government (Butterworth Legal Publishers, 1988); ; Folberg, Jay and Alison Taylor, Mediation: A Comprehensive Guide to Resolving Conflicts without Litigation (San Francisco: Jossey-Bass Publishers, 1984). For a bibliography and resources guide on alternative dispute resolution, see Office of Personnel Management website: <http://www.opm.gov/er/adrguide/Section7.asp>.

¹¹⁶⁸ Diana Mitlin and David Satterthwaite eds., Empowering Squatter Citizen: Local Government, Civil Society and Urban Poverty Reduction (London: International Institute for Environment and Development, 2004), available from Earthprint at www.earthprint.com.

¹¹⁶⁹ OHCHR, National Institutions for the Promotion and Protection of Human Rights [Human Rights Series No. 19] (Geneva: OHCHR, undated), at <http://www.unhcr.ch/html/menu6/2/fs19.htm>.

¹¹⁷⁰ Office of the High Commissioner for Human Rights, Handbook on National Human Rights Plans of Action [Professional Training Series No. 10] (Geneva and New York: OHCHR, 2002), at: <http://www.ohchr.org/english/about/publications/docs/nhrap.pdf>.

Negotiate with municipal authorities to include the community/civil society as a partner ¹¹⁷¹	Increase community participation in design, planning, implementation and maintenance of housing ¹¹⁷²	Maintained and upgraded social housing
Train in negotiation and mediation skills ¹¹⁷³	Negotiation toward reconciling evictions/removals and land grabbing ¹¹⁷⁴	Indigenous peoples regain historic land claims
Develop community/local government cooperation	Monitor transparency in decision-making processes	Obtain social housing (provided by government), based on need, with amortization based on minimum wage level (affordability)
	Design infrastructure projects	
	Reform public policy toward providing affordable housing	
	Propose and implement National Shelter Strategy ¹¹⁷⁵	
Design national (comprehensive) development plans		
Develop the cooperative sector	Promote cooperative sector initiatives to provide affordable housing	

¹¹⁷¹ Janelle Plummer, *Municipalities and Community Participation: A Sourcebook for Capacity Building* (London: Earthscan, 2001); Janelle Plummer, ed., *Focusing Partnership: A Sourcebook for Municipal Capacity Building in Public-Private Partnerships* (London: Earthscan, 2002); Diane Warburton, ed., *Community and Sustainable Development: Participation in the Future* (London: Earthscan, 200X).

¹¹⁷² UNCHS, *Human Settlements Development through Community Participation* (Nairobi, UNCHS, 1991).

¹¹⁷³ Scott Beattie, "Is Mediation a Real Alternative to Law? Pitfalls for Aboriginal Participants," *Australian Dispute Resolution Journal* 8 (1997) 57; Larissa Behrendt, *Aboriginal Dispute Resolution: A Step towards Self-Determination and Community Autonomy*. (Sydney: Federation Press, 1995).

¹¹⁷⁴ Michael Asch and Norman Zlotkin, "Affirming Aboriginal Title: A New Basis for Comprehensive Claims Negotiations," in Michael Asch, ed., *Aboriginal and Treaty Rights in Canada: Essays on Law, Equality, and Respect for Difference* (Vancouver: University of British Columbia Press, 1997).

¹¹⁷⁵ UNCHS, *Developing a National Shelter Strategy: Lessons from Four Countries* (Nairobi: UNCHS, 1990); OHCHR, *Handbook on National Human Rights Plans of Action* (Geneva: OHCHR, 2001)

Use/lobby/cooperate with the international human rights system (interventions with factual, legal and political mechanisms of the UN and regional human rights systems) ¹¹⁷⁶	Undertake negotiations at international/ multilateral level (whereby negotiators representing the State assert their prior obligations under international human rights treaty law against IFI [Word Bank, regional development bank, IMF, etc.] and WTO conditionalities leading to housing rights regressive / retrogressive violations) ¹¹⁷⁷	Obtain/ensure continuous regulation of housing market practices (e.g., to ensure tenure security, accessibility of housing, building materials, direct investment, etc.)
		End to practices of land confiscation through foreclosure, adverse possession and eminent domain without adequate, consensual alternatives
Develop / reform / enforce law ¹¹⁷⁸		
Initiate/reform legislation and regulatory processes in compliance with the human-right-to-adequate - housing framework	Undertake class action suits (with minimum of [e.g., at least 15] physical or legal persons undertaking a litigation action, generally in the name of a whole group of the population), or public-interest litigation (e.g., India) ¹¹⁷⁹	Law and policy enforced to respect, defend, promote and fulfill housing rights
		Law enforcement officers protect population from and implied protection
Collect sufficient data to determine material and nonmaterial losses to victims of housing and land rights violations		Violators prosecuted and punished
		Victims receive restitution and full compensation for violation and material and nonmaterial losses

¹¹⁷⁶ See "NGO participation in the activities of the Committee on Economic, Social and Cultural Rights," UN doc. E/C.12/2000/6, 7 July 2000, website: <http://www.hchr.un.ch>; and "Revised general guidelines regarding the form and contents of reports to be submitted by states parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights," UN doc. E/C.12/1991/1, 17 June 1991.

¹¹⁷⁷ INCHRITI, Trade, Investment, Finance and Human Rights: Essential Documents (Geneva: INCHRITI, 2001).

¹¹⁷⁸ Mario Rosário, "[Action "Tsimba Ga Ku Aka" to build together](#)" (1996); Janeth López, "[Asesoría en vivienda para el proceso de reinserción en Colombia](#)" (1996); K.A. Jayaratne, "[Collaborative Partnership to Improve the Low Income Neighbourhoods](#)," (1996); Michael Shapcott, "[Rupert Pilot Project. A self-Help and Community Rehabilitation Project in Canada](#)" (1996); Leopold Mutembei, "[Struggles of the urban poor to improve their living conditions](#)" (1996); Leonard Chileshe Mulenga, "[The case of Bauleni Upgrading](#)" (1995); Johan Silas, "[The Improvement of Low Cost Housing and Environment](#)" (1996); in Habitat International Coalition, Building the City with the People: New Trends in Community Initiatives with Local Governments (Mexico City: Habitat International Coalition, 1997), contents also available on line at HIC General Secretariat website, at <http://www.hic-net.org/library.asp>.

¹¹⁷⁹ "Public interest litigation" (PIL) is a form of litigation filed in a court of law, for the protection of "public interest." Most prominently used in the Indian context, it is not defined in any statute or act. It has been interpreted by judges to consider the intent of public at large. Although, the main and only focus of such litigation is public interest, PIL can be filed in cases involving, e.g., such issues as pollution, "terrorism," road safety, constructional hazards, violated human rights of the poor, the content or conduct of government policy, to compel municipal authorities to perform a public duty, etc. See, for example: Upendra Baxi, "Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India" [revised], in Upendra Baxi, ed., Law and Poverty: Critical Essays (Bombay: Tripathi 1988); Mario Gomez, In the Public Interest: Essays on Public Interest Litigation and Participatory Justice (Colombo: Legal Aid Centre, University of Colombo, 1993); Sampat Jain, Public Interest Legislation (New Delhi, Deep & Deep, 2002); Shri. V.S.Vadivel, "Public Interest Litigation (PIL) A Boon or Bane?" (Legal Services India, 2004),

<http://www.legalserviceindia.com/articles/pil.htm>; see also Help Line Law website: <http://www.helpinlaw.com/docs/main.php3?id=PIL11>.

Conduct national housing and land rights assessment ¹¹⁸⁰	Lobby parliament	Law promotes housing and land acquisition and retention in disadvantaged communities consistent with international commitments to promote just patterns of land distribution
	Raise test cases, constitutional challenges through court system	
	Develop laws on properties left without will and testate in order to narrow the class of heirs and prevent fractionation of the ownership	
	Nationwide constitutional review campaign	Constitutional reform ¹¹⁸¹
Institutional reform		
Establish and maintain an effective Land Trust to support communities subject to discrimination and dispossession		Land ownership expanded for disadvantaged communities on an affirmative-action basis
Monitor and survey practices of public and private lending institutions for discrimination practices and patterns	Lobby for disciplinary action and rehabilitation of institutions to end discriminatory practices	Institutions apply uniform criteria in housing and community development programs, policies and transactions
International human rights system interventions		
Prepare and present collective parallel report to human rights treaty bodies (or submit cases under individual complaints procedures under Optional Protocols)		UN treaty body Concluding Observations coincide with community's evaluation of housing rights conditions and proposals for solutions

¹¹⁸⁰ Apply this HIC-HLRN Housing and Land Rights Monitoring Toolkit on a national scale to all elements of the human right to adequate housing.

¹¹⁸¹ See, for example, "The history of constitutional reform in Kenya," World History Archives (2004), <http://www.hartford-hwp.com/archives/36/index-bbh.html>.

Raise cases and submit briefs before regional human rights courts and commissions ¹¹⁸²		State compelled to implement its treaty obligations to respect, defend, promote and fulfill the human right to adequate housing and land
Use Concluding Observations in public information and media campaigns, litigation		
Submit cases to UN Commission on Human Rights 1503 Procedure		States intervene to resolve impasse in housing rights violation case
Submit question/case to UNESCO complaints procedure		States intervene to resolve impasse in housing rights violation case
Legal defense		
Develop and deliver legal literacy and litigation strategy training ¹¹⁸³	Provide legal-aid services to defend individual and community housing and land rights	Judicial rulings include legal precedents for future litigation and law reform to ensure individual and group rights to adequate housing and land
Collect detailed data on violations, perpetrators, values of losses and other consequences ¹¹⁸⁴	Present admissible evidence in litigation on behalf of victims ¹¹⁸⁵	
		Crimes and perpetrators prosecuted and punished
		Judicial remedies, including legal precedents for future litigation and law reform to ensure gender equality
Develop gender-awareness and gender-justice training for communities, police,	Provide legal-aid services to defend equal rights to housing and land for	Victims receive restitution and full compensation for violation and material and nonmaterial

¹¹⁸² Litigating Economic, Social and Cultural Rights: Achievements, Challenges and Strategies (Geneva: COHRE, 2004), available at <http://www.cohre.org/library/Litigating%20ESCR%20Report.pdf>; Amicus Curiae in Grupo Interdisciplinario por los Derechos Humanos v. Colombia [submitted by COHRE to Inter-American Commission on Human Rights on case of housing destruction by paramilitary groups in Ituango and El Aro, Colombia], on line at <http://www.cohre.org/downloads/amicuscolombia1.doc>; Amicus Curiae in Justiça Global, et al. v. Government of Brazil, Inter-American Commission on Human Rights [submitted by COHRE on actual and threatened violations of housing rights, including forced evictions, with the planned Alcântara Spaceport expansion, in Brazil] available at <http://www.cohre.org/downloads/amicusbrazil1.doc>; Amicus Curiae in CELS & CEJIL v Argentina, Inter-American Commission on Human Rights [submitted by COHRE to Inter-American Commission on Human Rights on case local authorities conducting forced evictions in Barrio Ejército de los Andes, Provincia de Buenos Aires, Argentina], available at <http://www.cohre.org/downloads/amicusargentina1.doc>. See also COHRE Case Law Database on line at <http://www.cohre.org/tframe.htm>; Case law database for economic, social and cultural rights available on the ESCR-Net website at <http://www.escr-net.org/>; found in “Case Law” at http://www.escr-net.org/EngGeneral/Case_law.asp, or “Jurisprudencia” at http://www.escr-net.org/EspGeneral/Case_law.asp.

¹¹⁸³ Margaret Schuler and Sakuntala Kadirgamar-Rajasingham, Legal Literacy: A Tool for Women's Empowerment (Washington: Women, Law and Development, OEF International, 1992).

¹¹⁸⁴ See “Housing and Land Rights Violation Case Documentation Form” in this toolkit.

¹¹⁸⁵ Domestic Implementation of International Human Rights: Litigating Economic, Social and Cultural Rights, on Human Rights Internet website at http://www.hri.ca/forthecanada/vol1/guide-part_11.htm; Case Law Database for Economic, Social and Cultural Rights available on the ESCR-Net website at <http://www.escr-net.org/>; found in “Case Law” at http://www.escr-net.org/EngGeneral/Case_law.asp, or “Jurisprudencia” at http://www.escr-net.org/EspGeneral/Case_law.asp.

lawyers, prosecutors and judges ¹¹⁸⁶	women and gender-discrimination victims	losses ¹¹⁸⁷
Develop judicial procedures and expertise to provide for land-consolidation courts	Consolidate and reduce unstable “in-common” tenancy to maintain family and community land retention, especially to uphold land base for minority groups and indigenous peoples	Communities restore and retain their land base
Media cooperation and campaigns		
Conduct training for media professional in the human right to adequate, corresponding obligations, interviewing victims, quantifying victims’ losses and community follow-up ¹¹⁸⁸	Meet journalists and media professionals to follow-up on training and present new documentation and information on developments	Informed public supports community alternative-development and/or anti-eviction proposals
Provide media outlets with economic analyses of various possible alternatives (on-site upgrading v. relocation)		
Provide media outlets with alternative plans and community proposals for their development		
Policy reform		
Reverse and prosecute discriminatory practices toward disadvantages individuals and communities by both public and private lending institutions		Fairness-in-lending policy formulated and enforced for housing and land purchase, rehabilitation and sustainability
Expand public-private initiatives to stimulate investment and multipurpose development communities		Integrated development with low-cost housing on public and donated lands
Provide housing and relief		
Exchange expertise in temporary housing and	Organize emergency relief (immediate provision of	Eviction and displacement victims receive emergency

¹¹⁸⁶ Shelter Rights Initiative, Gender Specific Rights Litigation and Protection Strategies (Lagos: SRI, 1998); SRI, Manual on Judicial Protection of Economic, Social and Cultural Rights (Lagos: SRI, 2000).

¹¹⁸⁷ “Seminar on the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms,” Netherlands Quarterly on Human Rights Special Issue (1993); S. Nadasen, “Restitution, Reconstruction, Reconciliation and Restribution: Land Reform—Balancing the Interests of the Dispossessed, the Homeless and Development,” Stellenbosch Law Review (1997), 360–77. For a bibliography of global restitution and compensation experience, go to: <http://userpage.fu-berlin.de/~theissen/biblio/>.

¹¹⁸⁸ HIC-HLRN training module on “Housing and Land Rights for Media Professionals.”

relief provision	housing and/or housing resources at no cost to those denied: water, medical services, economic relief, housing resources and building materials, etc.)	(temporary) housing
Resource mobilization		
Conduct an inventory (accounting) of community (human and material) resources	Design, adapt and implement alternative-finance schemes; (e.g., small savings toward common projects) and self-financing for needy inhabitants (with freehold tenure options) ¹¹⁸⁹	Upgrading and generally improved living conditions on site, as alternative to relocation
	Establish and operate nonbank institutions as lenders and builder of adequate, low-income housing ¹¹⁹⁰	
	Organize self-help cooperation through rotating community credit (building & upgrading infrastructure, social production of housing ¹¹⁹¹)	

¹¹⁸⁹ Alternative Financing Models: Hybrids of Homeownership Mutual Housing (The Enterprise Foundation, 2003); "Capitalizing on Collaboratives: New Partners for Comm. Dev. Finance" (Washington: Center for Policy Alternatives, July 1996); Enrique Ortiz, FONHAPO: The Experience of the National Fund for Low Income Housing in Mexico (London: International Institute for Environment and Development, 1998), available from Earthprint at www.earthprint.com.

¹¹⁹⁰ Jeffrey Carmichael and Michael Pomerleano, The Development and Regulation of Non-Bank Financial Institutions (Washington: World Bank, 2002); Indonesia: Housing Finance for the Urban Poor (Manila: Asia Development Bank, 2001); Peer Smet, "Indian Housing Finance Alliances and the Urban Poor," Global Built Environment Review Vol. 2, No. 1, 58–66, <http://www.edgehill.ac.uk/gber/pdf/vol2/issue1/Eight.pdf>.

¹¹⁹¹ Joseph Schechla, ed., *Anatomies of a Social Movement* (Cairo: HIC-HLRN, 2004); Habitat International Coalition, *Building the City With the People. New Trends in Community Initiatives in Cooperation with Local Governments* (Mexico City: Habitat International Coalition, 1997); Prem Pangora, *Citizen's Initiatives for environmental improvements: The case of River Sabarmati, Ahmedabad, India* (Mexico City: Habitat International Coalition, 1997); Joël Audefroy, *Construyendo la Ciudad con la Gente. Nuevas tendencias en la colaboración entre las iniciativas comunitarias y los gobiernos locales* (Mexico City: Coalición Internacional para el Habitat, 1998); Gustavo Romero, La producción social del hábitat: reflexiones sobre su historia, concepciones y propuestas (2000), available on line at http://www.hic-net.org/online/Romero_PSH-intro.pdf; Eike Jacob, *Social Production of Habitat in Latin America* (2003); Habitat International Coalition-América Latina, "Social Production of Habitat. Conceptual framework" (2003); Enrique Ortiz, Social Production of Habitat: Marginal option or reality-transforming strategy? (2003), available on line at http://www.hic-net.org/online/Ortiz_SPH.pdf; Enrique Ortiz, *Vivitos y Coleando. 40 años trabajando por el hábitat popular en América Latina* (2002).

	<p>Immediate, diligent and effective increase in advice-and-lending services, on an affirmative-action basis within public lending institutions</p>	
	<p>Develop microcredit schemes (for upgrading and construction, but with social and legal components providing HRAH content)¹¹⁹²</p>	
<p>Analyze economic costs of the various possible alternatives (on-site upgrading v. relocation)</p>		
<p>Raise material support (raise funds) from private, public and intergovernmental donors), including microcredit¹¹⁹³</p>		
<p>Plan/undertake reconstruction,¹¹⁹⁴ upgrading and general improvement of living conditions (with multiple parties cooperating)</p>		
<p>Restoration and increase housing subsidy programs for low-income people, including by tax reform (e.g., reversal of tax cuts for the wealthiest tax payers)</p>		<p>Low-income people pay no more than 30% of monthly incomes for adequate housing</p>
<p>Conduct an inventory of community financial and material resources</p>	<p>Develop community savings schemes</p>	<p>Social production of habitat: Community/self-financed upgrading of housing and improvement of living conditions</p>

¹¹⁹² Nazrul Islam, [Grameen Bank Bangladesh. A credit institution for housing](#) (1996); Jaffer Murtaza, [The Tanzania-Bondeni Community Lands Trust](#) (1996).

¹¹⁹³ Nazrul Islam, [Grameen Bank Bangladesh. A credit institution for housing](#) (1996); Jaffer Murtaza, [The Tanzania-Bondeni Community Lands Trust](#) (1996).

¹¹⁹⁴ See York University Postwar Reconstruction and Development Unit, website: <http://www.york.ac.uk/depts/poli/prdu>.

Conduct public budget analysis from the housing rights perspective ¹¹⁹⁵	Develop participatory budgeting ¹¹⁹⁶ (ensuring that necessary programs and projects are budgeting according to housing rights obligations)	Public budgets comply with State's housing rights obligations to ensure "progressive realization" with "maximum of available resources"
Training other actors (outside community)		
Train civil servants in HRAH (including international treaty obligations upon the State and local authorities)	Reform urban/land planning criteria, procedures and objectives to harmonize with local community needs and criteria ¹¹⁹⁷	Physical planning integrates human rights obligations, language and priorities directed to needy and vulnerable communities
Train lawyers in HRAH, (including international treaty obligations upon the State, as well as litigation strategies) ¹¹⁹⁸	Legal argument, litigation and judicial decisions invoke international norms and treaty obligations	Legal recognition of traditional legal and tenure systems and provision of secure title ¹¹⁹⁹
		Legal recognition of tenure and the human right to adequate housing of people without economic access

¹¹⁹⁵ Ravikant Joshi, *A Case for Reform: how municipal budgets can change our cities* (Mumbai: YUVA Books, 2001); Maria Socorro I. Diokno, "A Rights-based Approach towards Budget Analysis" (Washington: International Human Rights Internship Program, 1999); Institute for Development Policy Analysis and Advocacy—IDPAA (Atiur Rahman et al.), *Alternative Budget Analysis: A Series of Studies on the National Budget for the Perspective of Poverty Eradication* [three volumes: Budget and the Poor, The Budget-making Process, People's Budget: An Alternative Exercise Using Participatory Tools] (Dhaka: University Press Ltd., 2002).

¹¹⁹⁶ Rebecca Abers, 1998, "From clientelism to cooperation: Local government, participatory policy, and civic organizing in Porto Alegre, Brazil"; *Politics and Society*. 26(4)c 511–37; Rebecca Abers, *Inventing Local Democracy: Grassroots Politics in Brazil* (Boulder: Lynne Rynner, 2000); Baierle, Sergio, 1998, "The Explosion of Citizenship: The Emergence of a New Ethical-Political Principal in Popular Movement in Porto Alegre, Brazil," in Sonia E. Alvarez, Evelina Dagnino and Arturo Escobar, *Cultures of Politics/Politics of Cultures: Revisioning Latin America Social Movements* (Boulder: Westview Press, 1998); Sousa Boaventura de Santos, "Participatory Budgeting in Porto Alegre: Toward a Redistributive Democracy." *Politics and Society* 26(4) (1998), 461-509; *Quem é o público do Orçamento Participativo: se perfil, porque participa, e o que pensa do processo* (Porto Alegre: Cidade de Porto Alegre, 1999); Luciano Fedozzi, *Orçamento Participativo: Reflexões sobre a experiência de Porto Alegre* (Porto Alegre: Tomo Editorial, 1998); Pedro Jacobi and Macro Antonio Carvalho Teixeira, "Orçamento Participativo: co-responsabilidade na gestão das cidades," *São Paulo em Perspectiva*, 10 (3) (1996) 119–28; Brain Wampler, "Orçamento Participativo: Os paradoxos da participação e governo no Recife," *Cadernos de Estudos Sociais*, 15(2) (1999), 343–73; Brian Wampler, *A Guide to Participatory Budgeting* (October 2000). Internet sources: Participatory budget: The Case of Porto Alegre (Brazil) at:

<http://www.goethe.de/br/poa/buerg/en/framebag.htm> (2004);

World Bank: http://www.worldbank.org/html/fpd/urban/urb_age/porto.htm,

<http://www.worldbank.org/wbiep/decentralization/Topics13.7.htm>, <http://www.worldbank.org/participation/>; Inter-American Development Bank: <http://www.iadb.org/exr/IDB/stories/2000/eng/JAN00E/c200c1.htm>,

<http://www.iadb.org/exr/idb/sidebars/2000/eng/c200c4.htm>; Conference Proceedings on Participatory Budgeting:

<http://www.idre.ca/lacro/docs/conferencias/stren.html>, <http://www.ssc.wisc.edu/~wright/deliberative.html>,

<http://www.pgualc.org>.

¹¹⁹⁷ UNCHS, *Developing a National Shelter Strategy: Lessons from Four Countries* (Nairobi: UNCHS, 1990); OHCHR, *Handbook on National Human Rights Plans of Action* (Geneva: OHCHR, revised draft May 2001).

¹¹⁹⁸ Shelter Rights Initiative, *Gender Specific Rights Litigation and Protection Strategies* (Lagos: SRI, 1998); SRI, *Manual on Judicial Protection of Economic, Social and Cultural Rights* (Lagos: SRI, 2000).

¹¹⁹⁹ Peter R. Grose, "An Indigenous Imperative: The Rationale for the Recognition of Aboriginal Dispute Resolution Mechanisms." *Mediation Quarterly* 12 (4) (summer 1995), 327–38.

		Judge issues restraining orders halting forced evictions and removals, land confiscation, property destruction and other housing and land rights
Train judges in HRAH (including international treaty obligations upon the State) ¹²⁰⁰		Judicial decision orders return, restitution and compensation for evictees, IDPs, refugees ¹²⁰¹
Train law enforcement officials in the human right to adequate housing (including international treaty obligations upon the State)	Quantify losses/costs of housing rights violations	Victims compensated for losses ¹²⁰²
Transitional justice (post conflict) ¹²⁰³		
Document details on violations, perpetrators, values of losses and other consequences ¹²⁰⁴	Present evidence to truth (and reconciliation} commission ¹²⁰⁵	Public aware of population transfer, mass dispossessions and other crimes committed during conflict

¹²⁰⁰ Shelter Rights Initiative, Manual on Housing Rights Protection Strategies for Lower Court Judges (Lagos: SRI, 2000).

¹²⁰¹ UNCHS, Housing and Property Rights in Kosovo (Pristina: UNCHS, March 2000).

¹²⁰² For elaboration of the principles of compensation to victims of human rights violations, see Theo Van Boven, "Basic Principles and Guidelines on the Right to Reparation for Victims of Gross Violations of Human Rights and Humanitarian Law, Appendix 8 ("The van Boven Principles"), Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, E/CN.4/Sub.2/1996/17; also E/CN.4/1997/104, annex and subsequently revised as "Basic principles and guidelines on the right to a remedy and reparation for victims of violations of international human rights and humanitarian law," by Cherif Bassiouni, independent expert, Commission on Human Rights (E/CN.4/2000/62, annex). John Dugard, "Is the Truth and Reconciliation Process Compatible with International Law? An Unanswered Question," South African Journal on Human Rights Vol. 13, 258–68. For quantification methodology, see HIC-HLRN Loss Matrix in this Housing and Land Rights Monitoring Toolkit, or go to www.hlrn.org; for implementation, see to UNCHS, Housing and Property Rights in Kosovo (Pristina: UNCHS, 2000).

¹²⁰³ For a general bibliography on transitional justice, go to <http://www.peacemakers.ca/bibliography/bib26reconciliation.html> or <http://userpage.fu-berlin.de/~theissen/biblio/> (on experiences of Germany and South Africa).

¹²⁰⁴ Use "Housing and Land Rights Violation Case Documentation Form" in this toolkit.

¹²⁰⁵ Kerry Able, and Jean Friesen, eds., Aboriginal Resource Use in Canada: Historical and Legal Aspects (Winnipeg: University of Manitoba Press, 1991); Alfred, Gerald R., and Franke Wilmer. "Indigenous Peoples, States and Conflict," in D. Carment and P. James, eds., Wars in the Midst of Peace: The International Politics of Ethnic Conflict (Pittsburg: University of Pittsburgh Press, 1997); Michael Coyle, "Claims Resolution: A Healing Process?" in J. Oakes, R. Riewe, K. Kinew and E. Maloney, eds., Sacred Lands: Aboriginal World Views, Claims and Conflicts (Calgary: Canadian Circumpolar Institute, 1998); Robert Rotberg and Dennis Thompson, eds., Truth v. Justice: The Morality of Truth Commissions (Princeton: Princeton University Press, 2000); Truth and Reconciliation Commission of South Africa Report, Vols. 1–5 (Cape Town: Juta, 1998); Theo van Boven, "Study Concerning the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms" [final report of Special Rapporteur] (Geneva: Commission on Human Rights, Subcommission on Prevention of Discrimination and Protection of Minorities) E/CN.4/Sub.2/1993/8. For an extensive bibliography of sources, go to: <http://userpage.fu-berlin.de/~theissen/biblio/>.

	Issue amnesty for past crimes and perpetrators of forced evictions/removals ¹²⁰⁶	Social reconciliation
	Present evidence to Truth and Justice Commission	Social reconciliation
		Crimes and perpetrators prosecuted and punished
	Present evidence to “mixed courts”	Return, restitution and compensation for evictees, IDPs, refugees ¹²⁰⁷

Of course, an illustrative list of potential interventions does not sufficiently convey the wealth of local governmental and nongovernmental experience available for review and exchange. Moreover, it is, as always, at the local level of implementation where human rights, including the human right to adequate housing, are transformed from moral suasion and legal theory to implementable reality. Therefore, both the practical, case-based perspective and the theoretical-and-comparative perspective become mutually dependent, mutually reinforcing and, hence, equally needed.

11.10. Evaluation & follow-up

Evaluation of any action you choose should be an ongoing function parallel to the events and development as they happen. This note offers some simple guidance on the specific evaluation tasks you will face. They are described in stages, with particular emphasis on the final stages and the vision for the future.

For our purposes, evaluation and follow-up imply two levels of assessment: (1) evaluation the action and (2) following the situation after the action concludes. The former is internal in nature and helps your organization, community or network become a learning institution by building on the lessons (successes, near-successes, failures and unanticipated results) of your efforts. The latter enables you, your organization, community or network to test the outcome to ascertain whether or not it has tangible benefits for those persons, communities, populations and peoples affected and targeted in your action. Ultimately, the follow-up process should lead you to the necessary conclusion as to what, if anything, to do next.

✓ Evaluating the action

¹²⁰⁶ John Dugard, *Dealing with Crimes of a Past Regime: Is Amnesty Still an Option?* [The Third Manfred Lachs Memorial Lecture] (1999); Carla Edelenbosch, “Human Rights Violations - A Duty to Prosecute?” *Leiden Journal of International Law* Vol. 7, No. 2 (1994), 5–22; Dianne F. Orentlicher, “Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime,” *The Yale Law Journal* Vol. 100, No. 8 (1991) 2537–615.

¹²⁰⁷ Uma Dhupelia Mesthrie, *The Truth and Reconciliation Commission and the Commission on Restitution of Land Rights: Some Comparative Thoughts* [“The TRC: Commissioning the Past” conference] (Johannesburg: University of the Witwatersrand, 1999); S. Nadasen, “Restitution, Reconstruction, Reconciliation and Redistribution: Land Reform: Balancing the Interests of the Dispossessed, the Homeless and Development,” *Stellenbosch Law Review* (1997) 360–77; David B. Southern, “Restitution or Compensation: The Land Question in East Germany,” *International and Comparative Law Quarterly* Vol. 42, No. 3 (1993), 690–97; David B. Southern, “Restitution or Compensation: The Open Property Question,” *German Politics* Vol. 2, No. 3, 436–49. For a bibliography of global restitution and compensation experience, go to: <http://userpage.fu-berlin.de/~theissen/biblio/>.

Evaluation your action includes three integrated but conceptually distinct processes: (1) monitoring progress, (2) formative evaluation and (3) measuring the development impact.

1. Monitoring implementation progress

Monitoring the implementation of your action is the most frequent—indeed constant—aspect of the learning process. This should involve periodic reports on production of outcomes, financial accounting and levels and nature of inputs (e.g., technical assistance, training, social production of habitat). The periodicity of the reporting could be quarterly, if the action is expected to proceed for a year or more. Alternatively, reporting could be more frequent, especially if it is a short-term action, or if it takes place in a fast-paced environment such as a threatened eviction or natural disaster situation, and particularly if extreme deprivation of human well-being is at stake.

The responsibility for monitoring is to be shared by a group of actors. Remembering that, like in the “Toolkit” guide for strategic planning, the more participation, the more-favorable the result (“more participation = more dignity”).

Reporting on the action, based on the monitoring of implementation progress, should be specifically assigned, most probably to the coordinator of the action or the chief executive officer of the principal body organizing the action. The audience of the reports should be both internal, for the benefit of those engaged, and external, depending on the obligations you have to supporters, members and/or funders. The assignment of duties, division of labor and timing of evaluation events should be completed also in the planning stage of your activity (see [“Strategic planning”](#) link above).

2. Formative Evaluation Indicators of Accomplishments

Midway in the process of your action, you should conduct an assessment of the *quality and adequacy* of the tasks undertaken by assessing the actual outcomes against the standard of expected results you already have set out for yourselves.

You should develop an evaluation plan and data collection instruments as part of the project implementation. That means, you should plan ahead to collect information that will verify your intended results, whether that be in the form of documents, press reports, opinion surveys, affidavits, water-quality test results, etc. The formative evaluation activities probably will require site visits, rapid assessment and low-cost data collection techniques such as focus groups, interviews, training evaluation forms, and simple targeted studies to identify key issues for action management.

3. Development-impact Assessment and Indicators

Development-impact assessments that you and your organization/community undertake less frequently, perhaps on an annual basis, will track changes in the outcomes, in order to determine the degree to which the larger environment of the human right to adequate housing is improving—or deteriorating, as the case may be.

Your action could—and should—produce an initial baseline report at the initial stage that coincides with your first inventory, site visits and/or assessment arising from your first use of this “Toolkit.” That report should record what you consider to be the key assumptions going into the activity, and will serve you in the subsequent stages of your action, especially at the

final stages, to test those assumptions and adjust strategies to incorporate the knowledge you have created.

For the purpose of your organization's integrity and the tactical responses you may require in the future, your action should be seen critically in the light of the purposes and goals you set out in your planning process (see "**Strategic planning**" link above). Some sample questions to include in your evaluation include the following:

- How does the action relate to your purpose statement of your organization/ community?
- How does the action relate to the goals(s) of your organization/community?
- Was the action planned or spontaneous?
- What was the expected result?
- Was that result achieved? If not, why?
- Were unintended results achieved?
- What were the lessons learned from this activity?
- How did this activity build/strengthen/develop your organization? What gains did you and others realize?
- How did your organization/community record and report the experience?
- How did your organization/community share and exchange the experience and lessons learned with others? Who? When? Where? What was the result?
- Has there been follow-up? Why? What? Who? When? Where?
- Click on "Following up the situation" for guidance on the last point.

✓ **Following up the situation**

Each successful or unsuccessful action needs to be tested further for at least two reasons: (1) in order to determine if the achievement is real or merely theoretical and (2) to determine what your next move is going to be.

The now famous *Irene Grootboom and Others v. Oostenberg Municipality*¹²⁰⁸ case before the South African Constitutional Court (1999) found in favor of the plaintiffs by applying the principles of international law on the human right to adequate housing and the legal strictures on the practice of forced eviction. The Court ordered the Western Cape Provincial Government and the Oostenberg Municipality to grant housing and utilities to the 390 adults and 510 children wrongfully evicted community at Wallacedene their right to return and remain and to benefit from public services corresponding to that right. Until today, that decision has not been fully implemented.

Likewise, the landmark case of *Qa'dan v. Katzir*,¹²⁰⁹ in Israel, resulted in the 2000 High Court ruling that Katzir (a settlement built on Palestinian land, directed and funded in large part by the Jewish Agency) acted unlawfully when discriminating on the basis of "nationality" by excluding a non-Jewish from obtaining housing there. Until this day, that decision has not been honored, the indigenous Adil and Iman Qa'dan family of Arab citizens of Israel do not have their home in Katzir, and the Jewish Agency continues to provide land and housing benefits only to those holding "Jewish nationality," and to the exclusion of others.

¹²⁰⁸ Irene Grootboom and Others versus Oostenberg Municipality, Cape Metropolitan Council, the Premier of the Province of the Western Cape, National Housing Board, and Government of the Republic of South Africa, Constitutional Court of South Africa Case No: 6826/99..

¹²⁰⁹ Qa'dan versus Israel Lands Administration (ILA), Ministry of Construction and Housing, Tal-Iron Local Municipal Council, Jewish Agency for the Land of Israel (JA), KATZIR: Cooperative Association for Community Settlement in Samaria Ltd., and the Farmers Association; Case No. 6698/95 of the Israeli Supreme Court, sitting as the High Court of Justice.

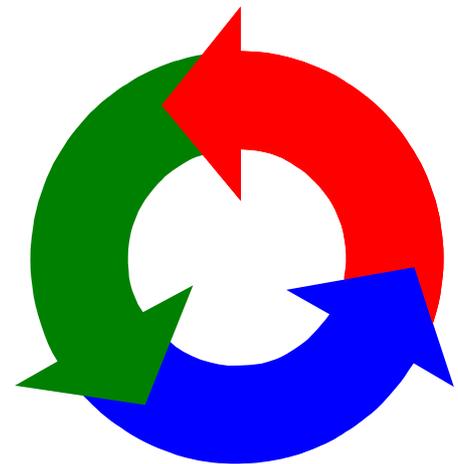
There are numerous examples of slum clearance and resettlement that result in the promised secure tenure of housing, but fail to comply with other elements of the human right in their implementation. [Note: HLRN and this “Toolkit” do not advocate slum clearance or resettlement.] Inhabitants in resettlement often lack access to public goods and services, suitable location, are denied compensation for losses and are subject to a process inconsistent with the over-riding principle of self-determination.¹²¹⁰

All such gaps and shortcomings in the outcome of any housing rights defense effort remain to be addressed, even though some advocates and service-providing NGOs may consider these developments to be victorious at some level. The true test remains, however, to determine the tangibility of the results within the framework of the human right to adequate housing, and over the long term.

With all of its emphasis on the law, this “Toolkit” is intended to assist in the realization of the human right to adequate housing as a complement to the theoretical elaboration of the right in law. Implementation is the ultimate objective of human rights, as well as this “Toolkit.” Therefore, the tools provided here should serve also as the final evaluation criteria to examine whether or not the composite dimensions of the human rights are implemented and present or not.

You should use the elements (entitlements) of the human right to adequate housing here as your guide; these are also the binding criteria for all State parties and their representatives to apply as well. If you and your organization/community determine that certain criteria have been breached or neglected, then, alas, further remedial action will be required.

The bad news, perhaps, is that there may yet be more work to be done. However, even if one has to go back to the drawing board, at least the needed tools are available to the cyclical task. So, now, you can just do it.



¹²¹⁰ See Housing and Land Rights Network, *Restructuring New Delhi’s Urban Habitat: Building an Apartheid City?* (HIC-HLRN: New Delhi, 2002).

12. Security (physical) and Privacy

12.1. Concept and meaning

Every man, woman, youth and child has the right to live and conduct her/his private life in a secure place and be protected from threats or acts that compromise their mental and/or physical well-being or integrity. The State must address the security needs of the community once determined, in particular the needs of women, the elderly, children and other vulnerable individuals and groups. The State must then ensure physical security to the extent possible, refraining from threat to, or interference in personal and private activity in the home that does not infringe upon the corresponding rights of others. However, domestic violence, in particular, all forms of violence against women and child abuse must be prosecuted as any other violent crime.

12.2. Sources

In this section, your **Step 2**, the HLRN “Toolkit” provides the most important international legal basis and the popular claims that ground each element of the human right to adequate housing. This compilation attempts to be as comprehensive as possible; however, additional popular sources and legal developments will augment this inventory in the future.

It is vital to establish both the established sources in international law and the popular claims. The authority of the legal sources carries corresponding obligations on most States, and applies universally to all people on the planet as *human* rights. The popular sources advance claims that are “emerging” with human rights language eventually to be codified in the law. All legally established human rights norms originated as popular claims carried forth through various forms of historic struggle.

The Legal Authority

Please note that the legal instruments cited here carry differing levels of obligation, and they are organized for you accordingly. Customary law is made up of those norms and principles that legal opinion and interstate institutions consider so basic and so repeatedly affirmed as to be binding on all legal personalities. The Universal Declaration of Human Rights, the antecedent to all subsequent human rights treaties, is the most relevant example of customary law for our purposes, even though it does not establish a monitoring and enforcement mechanism to ensure compliance.

The ratified treaties (Covenants, Charters, Conventions, etc.) are binding on all their ratifying States parties, and each establishes an independent body to monitor and guide implementation. The treaty-monitoring process provides an opportunity for civil society, States and the international legal bodies each to play a role. These international treaties are also characterized as hard law (*lex lata*), because of their binding nature. Treaty law, by definition, is any agreement between two or more States. The treaties considered here are those of both international and regional nature.

The “soft-law” instruments (*lex feranda*) include the Declarations, Basic Principles, Minimum Rules, General Comments, etc., that are the multilateral commitments arising from international conferences, assemblies, summits, congresses and other specialised meetings. Also included in this category are the general and country-specific guidance that the treaty-monitoring bodies issue to guide and specify treaty obligations, as well as those instruments of inter-State agreement (decisions and resolutions) arising from the various political bodies of the international system (e.g., UN Commission on Human Rights, International Labour Organisation General Assembly, etc.). These instruments contain standards that are

declaratory of already-binding international law, reflect the collective political will of States and provide specificity to the general Articles in the binding instruments. However, these form legal and policy guidance without the corresponding obligations of treaty law and without the corresponding legal monitoring mechanisms.

Thus, the list of legal sources in this section of the HLRN “Toolkit” maintains a corresponding priority order such that presents the binding instruments first (in chronological order of their adoption), and follows with the nonbinding, declaratory sources (in their chronological order):

- ***International Treaty Law***
- ***Regional Treaty Law***
- ***Declaratory Instruments and Jurisprudence***

The Moral Argument

The popular sources are useful especially in demonstrating ground-level recognition of the various elements of adequate housing as rights in and of themselves, but also provide a list of human rights that reflect common human needs, but await codification as *bona fide* rights. The “emerging rights” include elements inextricable from the human right to adequate housing: water, land and energy, among others. The popular sources are indicators of the ever-evolving specificity of human rights law and the legal and problem-solving horizons toward which social movements and the human rights community are heading.

The relevant excerpts from these collective moral are listed in the “Toolkit” Sources (Step 2) as *Popular Sources*. These are moral, rather than legal, in nature. However, as claims, they bear legal dimensions in the sense that they are the substance of future legal standards. We continue to include these claims in the HLRN “Toolkit” as they emerge from popular struggles, natural and social sciences, nongovernmental forums, social movements, campaigns and labour action (strikes), as well as other forms of popular and collective problem-solving initiatives.

In this “Toolkit,” *Popular Sources* are distinguished from the legal sources by their presentation in *italic* script.

Another source of the human right with a legal dimension is the jurisprudence of course-based decisions on cases involving housing and land rights. These also could provide the basis for legal argument even in distant jurisdictions. Examples include the case-specific—but internationally relevant—rulings in famous decisions in favor of housing rights claims such as those arising from legal struggles in Cyprus, Palestine/Israel and South Africa:

Qa’adan versus Israel Lands Administration (ILA), Ministry of Construction and Housing, Tal-Iron Local Municipal Council, Jewish Agency for the Land of Israel (JA), KATZIR: Cooperative Association for Community Settlement in Samaria Ltd., and the Farmers Association; Case No. 6698/95 of the Israeli Supreme Court, sitting as the High Court of Justice.

Irene Grootboom and Others versus Oostenberg Municipality, Cape Metropolitan Council, the Premier of the Province of the Western Cape, National Housing Board, and Government of the Republic of South Africa, Constitutional Court of South Africa Case No: 6826/99 (1999).

Loizidou versus Turkey (Article 50 and Merits), European Court of Human Rights Case 40/1993/435/514 (18 December 1996).

✓ Legal sources

Customary International Law

Universal Declaration of Human Rights (UDHR) (1948)

Article 12. “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.”

International Treaty Law

Convention on the Rights of the Child (1989)

Article 16.1 & 2. “No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation. The child has the right to the protection of the law against such interference or attacks.”

International Covenant on Civil and Political Rights (1966)

Article 17.1. “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.”

Convention on the Elimination of All Forms of Racial Discrimination (1965)

Article 5. “...States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of... **(b)** The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution... **(e) (iii)** The right to housing...”

Regional Treaty Law

European Charter of Fundamental Rights (2000)

Article 7. Respect for private and family life

“Everyone has the right to respect for his or her private and family life, home and communications.”

Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women "Convention of Belem do Para" (1994)

Article 1. “For the purposes of this Convention, violence against women shall be understood as any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere.”

Article 2. “Violence against women shall be understood to include physical, sexual and psychological violence: **a.** that occurs within the family or domestic unit or within any other interpersonal relationship, whether or not the perpetrator shares or has shared the same residence with the woman, including, among others, rape, battery and sexual abuse; **b.** that occurs in the community and is perpetrated by any person, including, among others, rape, sexual abuse, torture, trafficking in persons, forced prostitution, kidnapping and sexual harassment in the workplace, as well as in educational institutions, health facilities or any

other place; and **c.** that is perpetrated or condoned by the state or its agents regardless of where it occurs.”

Chapter III, Duties of States, Article 7. “The States Parties condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence and undertake to:

(a) refrain from engaging in any act or practice of violence against women and to ensure that their authorities, officials, personnel, agents, and institutions act in conformity with this obligation; **(b)** apply due diligence to prevent, investigate and impose penalties for violence against women; **(c)** include in their domestic legislation penal, civil, administrative and any other type of provisions that may be needed to prevent, punish and eradicate violence against women and to adopt appropriate administrative measures where necessary; **(d)** adopt legal measures to require the perpetrator to refrain from harassing, intimidating or threatening the woman or using any method that harms or endangers her life or integrity, or damages her property; **(e)** take all appropriate measures, including legislative measures, to amend or repeal existing laws and regulations or to modify legal or customary practices which sustain the persistence and tolerance of violence against women; **(f)** establish fair and effective legal procedures for women who have been subjected to violence which include, among others, protective measures, a timely hearing and effective access to such procedures; **(g)** establish the necessary legal and administrative mechanisms to ensure that women subjected to violence have effective access to restitution, reparations or other just and effective remedies; and **(h)** adopt such legislative or other measures as may be necessary to give effect to this Convention.”

American Convention on Human Rights (1969)

Article 11. “No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honour or reputation.”

European Convention for Protection of Human Rights and Fundamental Freedoms (1950)

Article 8. “Everyone has the right to respect for his private and family life, his home and his correspondence.”

Declaratory Instruments and Jurisprudence

Sub-Commission on the Promotion and Protection of Human Rights, 1998/26, “Housing and property restitution in the context of the return of refugees and internally displaced persons”

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

Sub-Commission on the Promotion and Protection of Human Rights 1997/7, “The realization of the right to education”

18. “All persons have the right to adequate housing which includes, *inter alia*, the integrity of the home and access to and protection of common property resources. The home and its occupants shall be protected against any act of violence, threats of violence or other forms of

harassment, in particular as they relate to women and children. The home and its occupants shall further be protected against any arbitrary or unlawful interference with privacy or respect of the home.”

Arab Declaration on Sustainable Development for Human Settlements (Rabat Declaration) (1995)

General Principles and Goals...

2. “The Family is the fundamental nucleus of the society. All appropriate conditions must be provided to maintain its safety, to upgrade its living standard, to safeguard its values and solidarity, and to provide it with adequate housing, job opportunities, and a dignified living for its members, including the elderly and the handicapped.”

Sub-Commission on the Promotion and Protection of Human Rights resolution 1994/39, “Forced evictions”

“*Reaffirming* that every woman, man and child has the right to a secure place to live in peace and dignity,”

Declaration on the Elimination of Violence against Women (1993)

Article 2. “Violence against women shall be understood to encompass, but not be limited to, the following: physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation.”

The right to adequate housing: progress report submitted by Mr. Rajindar Sachar, Special Rapporteur Sub-Commission on the Promotion and Protection of Human Rights (E/CN.4/Sub.2/1993/15)

44. “‘Adequate housing’ is defined in the unanimously adopted Global Strategy as meaning: 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.”

Committee on Economic, Social and Cultural Rights (CESCR) General Comment No. 4, “the right to adequate housing” (1991)

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...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.”

American Declaration of the Rights and Duties of Man (1948)

Article IX. “Every person has the right to the inviolability of his home.”

✓ Popular sources

The European Charter for Human Rights in the City (2000)

Article X. “*Protection of Private and Family Life* **1.** The city protects the right to a private and family life and recognises that the respect for families, in whatever current form, is an essential element of local democracy. **2.** The municipal authorities guard the family from its

formation, without interfering in its internal life, and provide the members with facilities for access to a home and other similar opportunities. For this purpose they make available financial incentives for the more needy families and create structures and services for the assistance of small children and the elderly. 3. The municipal authorities develop active policies to oversee the physical integrity of members of families and encourage the disappearance of ill-treatment within them.

Article XXVI. *Accessibility of Local Police: The signatory cities encourage the development of corps of highly qualified municipal police, to be officers of “security and of neighbourhood”. These officers apply preventative policies against crime and act as a force for civic education.”*

Draft Declaration of the Right to Adequate Housing (1990)

(“Working for Housing Rights” Conference Planning Committee: Affordable housing Action Group, Centre for Equality Rights in Accommodation, National Action Committee on the Status of Women, Shelter for the Homeless Foundation, and Urban Core Support Network, meeting in Ottawa ON, Canada, May 1990)

“Access to a safe, affordable and secure place to live in peace and dignity.”

The Practice of Forced Evictions: Comprehensive Human Rights Guidelines on Development-based Displacement (1997)

Section Four. The Rights of All Persons

“All persons have the right to adequate housing, which includes, inter alia, the integrity of the home and access to and protection of common property resources. The home and its occupants shall be protected against any acts of violence, threats of violence or other forms of harassment, in particular as they relate to women and children. The home and its occupants shall further be protected against any arbitrary or unlawful interference with privacy or respect of the home.”

European Charter for Housing Rights and the Struggle against Exclusion (2000)

“Policies for housing must satisfy the following objectives and principles...Ensure decent and quality housing for each individual, irregardless of age, sex, race, nationality or income, so that he may live peacefully, in dignity and according to his convictions and culture, provided the principles of a democratic country and the right of the neighbours to live in peace and dignity are respected.”

12.3. Over-riding principles

Principles found in the initial Articles common to all the major international human rights treaties affirm standards of justice arising from the major legal systems of the world. These include principles of immediate application, such as the inalienable rights to self-determination; non-discrimination, in general; gender equality; and the rule of law, including access to justice and domestic application of the human rights contained in each treaty, particularly by adopting legislative measures.

In the case of economic, social and cultural rights, the International Covenant on Economic, Social and Cultural Rights (ICESCR) is the principle source of these rights in treaty form. The Covenant also clarifies that the State party’s treaty obligation entails ensuring the “progressive realisation” of the rights “to the maximum of its available resources” (Article 2.1), including the human right to adequate housing (Article 11). Therefore, a process of realising the rights should not regress, but should ensure “the continuous improvement of living conditions” (Article 11).

The ICESCR's Article 2.1 also requires States to undertake steps, individually and through international assistance and cooperation, especially economic and technical, progressively to achieve the full realization of the covenanted rights by all appropriate means. Thus, States party to the Covenant bear an obligation to apply these principles extraterritorially and in their international relations. Therefore, "international cooperation" forms an important practical aspect of ESC rights application and, therefore, one of the principles over-riding States' duties to implement human rights.

Comprehensive monitoring of the human right to adequate housing requires assessing each entitlement (element) in light of the rights and corresponding obligations arising from these over-riding legal principles:

- **Self-determination**
- **Nondiscrimination**
- **Gender equality**
- **Rule of law**
- **Progressive realization (nonregressivity/nonretrogression)**
- **International cooperation**

The normative approach provided in the international human rights system prevails upon the monitor to pose a number of relevant questions related to implementation not only of the specific content of the particular right, but also these over-riding principles common to the principal human rights treaties and applicable to all rights. This section will guide the monitor in applying these six over-riding principles in the respect, defense, promotion and fulfilment of the human right to adequate housing and land.

✓ **Self-determination**

General description

The principle of equal rights and self-determination of peoples is considered to have been a general principle of international law arising from common State practice already at the founding of the League of Nations. However, self-determination was first codified in the Charter of the United Nations in 1945, which sets forth the purposes of the United Nations as:

2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace...¹²¹¹

The Charter's Article 55 stipulates further:

With a view to the creation of conditions of stability and well-being, which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

- a. higher standards of living, full employment, and conditions of economic and social progress and development;¹²¹²
- b. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and

¹²¹¹ Charter of the United Nations, 26 June 1945, Article 1(2).

¹²¹² Ibid., Chapter IX, "International Economic and Social Co-operation," Article 55.

c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

Every State has the duty, therefore, through unilateral, bilateral and multilateral action to promote universal respect for, and observance of human rights and fundamental freedoms in accordance with the Charter. Its Article 2.2 clarifies the universal duty of State membership such that:

All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with the present Charter.

The principle of self-determination has been progressively reaffirmed and legally defined throughout the UN system since its founding.¹²¹³ The material significance of self-determination is further elaborated in the Covenants on human rights adopted in 1966.¹²¹⁴ The common Article 1(2) of both the ICCPR and ICESCR sets forth that:

All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

How concerned persons/communities exercise an effective role in determining the terms by which they realize the human right to adequate housing is also a subject of the inalienable right of self-determination. Self-determination is the right of peoples, not of States. It is the State, however, that is the legal personality obliged to ensure the protection, defense, promotion and fulfillment of self-determination as a duty under international public law, as well as the essential legitimizing factor of the State itself.¹²¹⁵

The concept of, and right to self-determination manifest in a spectrum of types and expressions of effective local control over developments and relations within a community and territory may involve either external or internal self-determination; that is, national independence as in the formal distinction of a self-determination unit with its own internationally recognized borders, a self-determination unit within the internationally

¹²¹³ For example, see Declaration on the Granting of Independence to Colonial Countries and Peoples (1960), preamble and Article 7; "Permanent sovereignty over natural resources," General Assembly resolution 1803 (XVII) (1962), preamble and paras. 1–2, 5–7; International Convention on the Elimination of All Forms of Racism and Racial Discrimination (1965), Articles 1 and 5; Declaration on Social Progress and Development (1969), Articles 2, 3 and Part II; Declaration on Principles of International Law (1970), preamble and, esp., "The principle of equal rights and self-determination of peoples"; ECOSOC Declaration on Race and Racial Prejudice (1978), Articles 1, 3, 5 and 9 Declaration on the Right to Development (1986) preamble and Article 1, 6 and 8.

¹²¹⁴ International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI), 16 December 1966 (entered into force 3 January 1976 in accordance with Article 27); Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI), 16 December 1966 (entered into force 23 March 1966 1976 in accordance with Article 49).

¹²¹⁵ Consistent with the principle of the Universal Declaration of Human Rights, Article 21, which states that "the will of the people shall be the basis of the authority of government."

recognized borders of a unitary State, or a community's¹²¹⁶ effective control over developments and relations affecting it as an independent State.¹²¹⁷

In its General Comment No. 12 on “the right of self-determination of peoples” (1984), The UN Human Rights Committee (HRC) gave its guidance on the corresponding obligations of States, with the following:

1. In accordance with the purposes and principles of the Charter of the United Nations, Article 1 of the International Covenant on Civil and Political Rights recognizes that all peoples have the right of self-determination. The right of self-determination is of particular importance because its realization is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights. It is for that reason that States set forth the right of self-determination in a provision of positive law in both Covenants and placed this provision as Article 1 apart from and before all of the other rights in the two Covenants.

2. Article 1 [of ICCPR] enshrines an inalienable right of all peoples as described in its paragraphs 1 and 2. By virtue of that right they freely "determine their political status and freely pursue their economic, social and cultural development". The Article imposes on all States parties corresponding obligations. This right and the corresponding obligations concerning its implementation are interrelated with other provisions of the Covenant and rules of international law.

3. Although the reporting obligations of all States parties include Article 1, only some reports give detailed explanations regarding each of its paragraphs. The Committee has noted that many of them completely ignore Article 1, provide inadequate information in regard to it or confine themselves to a reference to election laws. The Committee considers it highly desirable that States parties' reports should contain information on each paragraph of Article 1.

4. With regard to paragraph 1 of Article 1, States parties should describe the constitutional and political processes which in practice allow the exercise of this right.

5. Paragraph 2 affirms a particular aspect of the economic content of the right of self-determination, namely the right of peoples, for their own ends, freely to "dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence." This right entails corresponding duties for all States and the international community. States should indicate any factors or difficulties which prevent the free disposal of their natural wealth and resources contrary to the provisions of this paragraph and to what extent that affects the enjoyment of other rights set forth in the Covenant.

¹²¹⁶ While a standard legal definition of nation and people remains a subject of debate, the International Court of Justice has offered criteria for a community, having distinct rights as “a group of persons living in a given country or locality, having a race, religion, language and traditions of their own and united by the identity of race, religion, language and traditions in a sentiment of solidarity, with a view to preserving their traditions, maintaining their form of worship, insuring the instruction and upbringing of their children in accordance with the spirit and traditions of their race and rendering mutual assistance to each other,” Permanent Court of International Justice, The Greco-Bulgarian “Communities” Advisory Opinion No. 17, 13 July 1939 (Leyden: Sijthoff, 1930), 21.

¹²¹⁷ For a comprehensive consideration of the human right of self-determination and its applications, see Hurst Hannum. *Autonomy, Sovereignty, and Self-Determination: The Accommodation of Conflicting Rights* (Philadelphia: University of Pennsylvania Press, 1996).

6. Paragraph 3, in the Committee's opinion, is particularly important in that it imposes specific obligations on States parties, not only in relation to their own peoples but *vis-à-vis* all peoples which have not been able to exercise or have been deprived of the possibility of exercising their right to self-determination. The general nature of this paragraph is confirmed by its drafting history. It stipulates that "The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations". The obligations exist irrespective of whether a people entitled to self-determination depends on a State party to the Covenant or not. It follows that all States parties to the Covenant should take positive action to facilitate realization of and respect for the right of peoples to self-determination. Such positive action must be consistent with the States' obligations under the Charter of the United Nations and under international law: in particular, States must refrain from interfering in the internal affairs of other States and thereby adversely affecting the exercise of the right to self-determination. The reports should contain information on the performance of these obligations and the measures taken to that end.

7. In connection with Article 1 of the Covenant, the Committee refers to other international instruments concerning the right of all peoples to self-determination, in particular the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, adopted by the General Assembly on 24 October 1970 (General Assembly resolution 2625 (XXV)).

8. The Committee considers that history has proved that the realization of and respect for the right of self-determination of peoples contributes to the establishment of friendly relations and cooperation between States and to strengthening international peace and understanding.

Self-determination applied to communities

The over-riding principle of self-determination in this "Toolkit" is inspired by classic (customary and treaty) law criteria, as well as popular claims to the same. In both senses, the claim is legally fixed in the common Article 1 of the human rights treaties. Using the ICESCR as a basic and integrated instrument, the "ToolKit" especially applies this over-riding principle to Article 11, which guarantees the human right to housing.

In making the case for ultimate "self-determination" at the community level, this "Toolkit" draws on a number of popular instruments (mostly written and collectively endorsed statements, but also those rooted in oral traditions) asserting the "right" of communities to determine their own destiny. "Community" also enjoys a legal definition (see below).

Self-determination becomes as vital as any other need that grounds other human rights, including those other over-riding principles of rule of law, nondiscrimination, gender equality and international cooperation consistent with all human rights. In their collective dimension, these all become community "needs" and, consequently, "rights" insofar as their absence leads to erosion and violation of a bundle of individual, stand-alone rights and can lead to the deprivation or demise of a community as such.

It should be noted that States and others have recognized the real problem of "ethnocide" and "cultural genocide" resulting from assimilation policies so as to compel the rewriting of

the International Labour Organisation (ILO) Convention No. 107 on Indigenous and Tribal Populations in Independent Countries (1956), eventually to adopt the Indigenous and Tribal Peoples Convention No. 169 (1989). Relevant to the practice of self-determination is the question of land tenure, which ILO Convention No. 169 treats in Articles 13–19, while at the same time disclaiming that the term “people” in the Convention does not convey implications as a term of international law (i.e., conferring the right of self-determination).

However, it is the human consequence of the deprivation, rather than the legal “peoplehood,” that makes self-determination vital for any putative victims. Therefore, collective self-determination becomes the right of communities as necessary, even if they are not (or not yet) internationally recognized as a “people” or “nation,” the category To avoid the horrendous consequences of demise and deprivation, and to ensure survival of communities as a “right”—especially marginal and otherwise vulnerable ones such as those facing ethnic cleansing and/or elimination through military, administrative, globalization, forced eviction or development measures—local self-determination is vital, no matter what assimilationist governments individually or jointly say. In human rights, it is the human who has the first and final subject of respect, protection, promotion and fulfillment.

That having been said, and recognizing that self-determination can be either internal or external, the international public law term of art “internal self-determination unit” applies in the case of group or community, and is subject to case-by-case interpretation. This could refer to the rightful place of a minority or an indigenous people. It could conceivably apply also to a community of urban poor, particularly if their survival and/or well-being is threatened and their self-determination then becomes a need/right and requisite to the realization of other rights (life, adequate housing, culture, health, etc.).

In any case, the claimant of self-determination, whether an external or internal type, must meet the challenge and legal test of asserting that the claim at any level does not conflict with—or at least is balanced with—the rights of others. That may mean, of course, ensuring that self-determination claims do not negate general ecological values, others’ self-determination rights, the rights of women to gender equality, security of person, regional peace and security, etc.

What are the criteria for *bona fide* claimants to local self-determination in the terms of international law as developed? The criteria presented by Martinez-Cobo (*Study of Discrimination against Indigenous Peoples*, UN document E/CN.4/Sub.2/1986/7/Add.4) has grounded much of the self-determination thinking about indigenous peoplehood and the rights arising. Based on his criteria for indigenous “people,” the characteristics constituting a community with the right to claim external or internal self-determination could also be that the community (1) predate the influx of “others,” (2) possess distinct cultural attributes, (3) occupy an identifiable territory and (4) identify itself as a people/community having the right to self-determination.

Legally defining the subjects of self-determination

Definitions of “people” or “nation,” the legal self-determination rights holders, are generally unpopular with States and their sitting governments, unless the definition applies to an existing “nation-state.” Of course, very few States can claim adherence to this definition, that is, to contain a single native people or nation (except, perhaps, Portugal, excluding immigrants). The General Assembly has assumed the task of defining self-determination (particularly in resolution 1514(XV), 14 December 1960). That has been construed typically as applying to cases of decolonization (Angola, Algeria, Namibia, Mozambique, Palestine,

Puerto Rico, etc.). In its Advisory Opinion on Namibia, the International Court of Justice recognized Namibians as a “people” and “nation” in light of the value of, and for the purpose of decolonization. Despite this legal reference, the actual definition of “people” and “nation” remains under debate for political and practical reasons.

In addition to the guidance on “people,” including indigenous peoples, as explicit self-determination rights holders, we have an international law definition of what constitutes a “community.” The “community” definition does not deviate significantly from the four-part construct that Martínez-Cobo offered (above). It comes to us from the first International Court in a case sorting out criteria for transferring the ethnically Greek and Turkish communities between the Republic of Turkey and Greece after the First World War:

A group of persons living in a given country or locality having a race, religion, language and tradition of their own and united in the identity of race, religion, language and tradition in a sentiment of solidarity, with a view to preserving traditions, maintaining their form of worship, insuring the instruction and upbringing of their children in accordance with the spirit and traditions of their race and rendering mutual assistance to each other.¹²¹⁸

Leaving aside the probability that the purpose of the Court’s opinion (population transfer) would be legally impermissible today,¹²¹⁹ the legal definition of “community” it provided is actually less ambiguous than that of “people” or “nation.” The “people” definition remains elusive largely because some States find it a political Pandora’s box that could challenge their jurisdiction and/or effective control over territory. Until now, some governments instead persist in proffering the legally vacuous term “indigenous populations,” so that the legally more-significant term “people/s” would wane into disuse, as would also the corresponding rightful and self-preserving claims of its subjects to self-determination. However, if one is looking for a way to apply self-determination to “communities,” one has this definition of the ICJ’s predecessor as a reference.

Significant also is the fact that the Court’s definitive Advisory Opinion was intended for a narrow and specific purpose. That was not to recognize an external self-determination right, but to rationalize a population transfer scheme that today would be considered a clear violation of international public law. That is not only because of the absence of consent and the obvious human suffering population transfer causes, but also because it deviates from the most basic concept of contemporary statecraft and democratic governance, which is that the State administer—including by way of implementing the right to self-determination—for *all* of its citizens. Population transfers and external self-determination claims, therefore, serve as a seismograph of a government’s failure at effective statecraft.

This dissertation on self-determination has admittedly merged concepts and definitions of communities with peoples/nations, as the Permanent Court of International Justice effectively has done. Nonetheless, the values that sustain them are akin, and so should the safeguards that promise to prevent the worst of consequences arising from human rights violations against any identifiable group. In summary, self-determination has a local and community-based expression and basis as a right. For the purposes of advancing human rights through the “Toolkit,” both “communities” as well as “nations/peoples” hold the right and responsibility to determine their own habitat, the essence of a people and/or community’s survival and sustainability with dignity in its dwelling place.

¹²¹⁸ Permanent Court of International Justice, The Greco-Bulgarian “Communities,” Advisory Opinion No. 17, 31 July 1930 (Leyden: Sijthoff, 1930), p. 21.

¹²¹⁹ See report of the Special Rapporteurs Aun al-Khasawneh and Ribot Hatano, “The human rights dimensions of population transfer, including the implantation of settlers and settlements,” E/CN.4/Sub.2/1993/17.

Applied to physical security and privacy

Applied to the congruent rights to, the over-riding principle of self-determination affirms the inalienable right of every people and nation to determine the terms and prerequisites of the physical security and privacy within its administrative and territorial unit(s). The same prerogative applies to communities such that the determination corresponds to local specificity, reflecting the consent of the people subject to self-determination. Therefore, for peoples, as such, or for other affected persons, a measure of self-determination, assured through “genuine consultation,” is required to realize the congruent rights to physical security and privacy in the housing sphere.

✓ Nondiscrimination

General description

Like self-determination, an inalienable human right common to the major legal systems throughout the world, a fundamental requisite of justice is the absence of discrimination on any arbitrary basis. Discrimination typically results in deprivation of human needs and rights.

Given its centrality, the principle of nondiscrimination, consequently, is an over-riding human rights principle embodied in the first Articles of each major human rights treaty. Nondiscrimination, and its corresponding State obligation to ensure nondiscrimination, are enshrined in the preamble of all international declarations and resolutions concerned with human rights matters, governance and the relations between and among States, nations and peoples.

Common to Article 2 in both the Covenants, nondiscrimination stands out as an over-riding principle with *immediate* application to all the rights contained in those instruments.¹²²⁰ The Covenants prohibit arbitrary preferential or punitive treatment and oblige States parties to undertake steps to ensure that rights be exercised without distinction or discrimination “of any kind [as to] race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”¹²²¹

The International Convention on the Elimination of All Forms of Racial Discrimination (1965) defines discrimination as:

any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.¹²²²

Article 5 of that Convention actually offers the historic first codification of the human right to housing, with particular reference to the over-riding principle of nondiscrimination. It reads:

In compliance with the fundamental obligations laid down in Article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial

¹²²⁰ For further guidance on the legal obligations to immediate implementation of the nondiscrimination principle applied to housing rights, see the report of the Special Rapporteur on Adequate Housing E/CN.4/2002/59.

¹²²¹ ICESCR, Article 2.2; ICCPR, Article 2.1.

¹²²² Article 1, International Convention on the Elimination of All Forms of Racial Discrimination, adopted by General Assembly resolution 2106 (XX) of 21 December 1965, entered into force, 4 January 1969.

discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of... (e) Economic, social and cultural rights, in particular: (iii) The right to housing...

In the Convention and its negotiation history, an important distinction emerges: While it is the obligation of States' parties and their governments to combat both "racism" and "racial discrimination," the former is a state of mind that should be eradicated through measures including education and other efforts to bring about a cultural and social transformation toward antidiscrimination. The latter, "racial discrimination" is the actual activation of prejudice which, in its manifestation, is a material violation of the rights of others. Any official action or omission of practicing or condoning racial discrimination is a violation of an *immediate* obligation of the State, not subject to "progressive realization."

This distinction between (1) theoretical racism and (2) racial discrimination in practice has historic roots. It is found also in moral systems, as reflected in the Holy Qur'an, which recognizes the existence of prejudice, but, nevertheless, entreats against putting that into practice:

O you who believe, be upright for God, bearers of witness with justice; and let not hatred of a people incite you not to act equitably. Be just, [for] that is nearer to the observance of duty [the nearest thing to piety].¹²²³

This moral distinction was found relevant nearly one millennium later, during the French Revolution. Then, the revolutionary slogan and moral call to the Human Rights of Man and Citizen was "*liberté, égalité, fraternité*." While all three qualities were found desirable and necessary to build a new, democratic society, only liberty and equality could actually be legislated. Fraternity (or sorority) could be developed and encouraged by the State and civil society much more likely than it could be enforced. Nonetheless, a range of practical measures can be undertaken to nondiscrimination in actual practice.

Inherent in the principle of nondiscrimination is the understanding that programs formally providing advantages to persons and groups historically subject to discrimination are not considered to constitute unlawful discrimination. On the contrary, international public law calls upon States to provide additional assistance to those persons and groups subject to past and/or present discrimination, as in corrective/positive discrimination or affirmative action programs that redress foregoing patterns of deprivation.¹²²⁴

Applied to physical security and privacy

The congruent rights to physical security and privacy applied within the over-riding principle of nondiscrimination ensures that individuals and groups are not deprived of their security and privacy in or around the home. This relates to the States obligation also to ensure legal enforcement, protection and remedy, and to guarantee that this entitlement is not denied by any public or private party on the basis of race, color, creed, gender, sex, sexual orientation, political opinion, social or economic status, language, physical ability/disability, property, form of legitimate work, descent, or any other origin or arbitrary criterion. For indigenous, tribal or other land-based peoples, the State has the immediate obligation to recognize their

¹²²³ Chapter 5: The Food [al-Ma'da], Section 2: "Duty of Uprightness," verse 8. Maulana Muhammad Ali, transl. The Holy Qur'an (Lahore: Ahmadiyya Anjuman Isha'at Islam, 1963), p. 243.

¹²²⁴ See Marjorie Cohn, "Affirmative Action and the Equality Principle in Human Rights Treaties: United States' Violation of Its International Obligations," Virginia Journal of International Law, Vol. 43 (2002), 249-74.

rights to physical security and privacy in law and in administrative matters.¹²²⁵ Likewise, no State possesses the legal authority to practice or condone *de jure* or *de facto* discrimination that leads to the loss or denial of the congruent rights to physical security and privacy to any member of any group, particularly to the unfair advantage of another.

International public law requires that States to provide special assistance to persons and groups who have been subject to past and/or present discrimination, as in affirmative action programs that redress foregoing patterns of deprivation.¹²²⁶ Such affirmative action also extends to the congruent rights to physical security and privacy.

✓ Gender equality

General description

Despite the universal acceptance of the principle of gender equality in international law, many women are denied equal treatment and discriminated against in their housing on the basis of sex or gender. Approximately one-third of the world's women may be homeless, living in inadequate housing and own less than one percent of the world's property.¹²²⁷ The intersectionality of poverty or other factors (i.e., class, indigenous, refugee, migration, caste, sexual orientation, ethnic minority, age, disability, widowhood, citizenship or nationality status, etc.) further marginalize women. In the context of the increased feminization of poverty, decreased access to public services, and destruction of natural environments, all of which are accelerating with the process of globalization, women are increasingly placed in situations where they do not have adequate housing.

The denial of adequate housing for women is a violation of women's human rights. It can also result in the violation of women's other human rights such as rights to life, livelihood, adequate food, employment and political participation (e.g., voting rights). In particular, the lack of adequate housing also can make women more vulnerable to various forms of violence against women (e.g., domestic violence, trafficking, sexual and gender-based violence against migrant workers etc.).

The right to nondiscrimination in gender relations, as an over-riding principle in human rights implementation, is generally stated in UDHR, Article 2 (nondiscrimination) and throughout the Declaration in its language of human rights for "everyone" and "all are equal before the law." More specifically, gender equality has emerged as a binding, over-riding principle in the two Covenants' common Article 3:

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all...rights set forth in the present Covenant.

This principle is further elaborated in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).¹²²⁸ Article 13 obliges States parties to take all appropriate measures to eliminate discrimination against women in areas of economic and social life, and to ensure women's equal right to bank loans, mortgages, and other forms of social credit. In Article 14, paragraph 2, CEDAW specifically addresses women's equal rights in human settlements as the right of women in rural areas to enjoy adequate standard of

¹²²⁵ CESCR General Comment No. 4, "Legal Security of Tenure," op. cit., para. 8 (a).

¹²²⁶ See Marjorie Cohn, "Affirmative Action and the Equality Principle in Human Rights Treaties: United States' Violation of Its International Obligations," *Virginia Journal of International Law*, Vol. 43 (2002), 249–74.

¹²²⁷ COHRE Fact Sheet on Women's Right to Housing, Land and Property.

¹²²⁸ Adopted and opened for signature, ratification and accession by General Assembly resolution 34/180, 18 December 1979; entered into force, 3 September 1981, in accordance with Article 27(1).

living conditions, particularly, in relation to housing sanitation, electricity and water supply, transportation, education, communications and access to credit. This extends explicitly to women's "equal treatment in land and agrarian reform as well as in land resettlement schemes." Article 15 also addresses women's equal right to conclude contracts and administer property; while Article 16, paragraph 1 (c) guarantees women's equal rights and responsibilities during marriage and its dissolution, including equal rights for both spouses in respect of ownership, acquisition, management, administration, enjoyment and disposition of property.

This legal norm is carried forward in the Beijing Platform for Action (BPFA), which calls on Governments to remove all obstacles for women in obtaining affordable housing and access to land.¹²²⁹ This remains standard in the subsequent multilateral agreements formulated in the Istanbul Declaration and the Habitat Agenda (1996)¹²³⁰ and the World Summit on Sustainable Development (WSSD) Plan of Implementation (2002).¹²³¹

The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (1997), which were developed for understanding and determining violations of economic, social and cultural rights, affirmed that, in order to eliminate discrimination against women's rights recognized in the Covenant, the State party should face the need and legal obligation to eliminate discrimination against women that arises out of social, cultural and other structural advantages.¹²³²

Typically, for women the home is the single most important place in the world. Beyond shelter, it is a place for the vast majority of woman to generate income, care for children, and seek respite from violence and patriarchy in the community at large. For many still, it is the only place where women can participate fully in decisions and social activities.

Applied to physical security and privacy

The multiple dimensions of gender discrimination combines patterns of security and privacy denial with other factors (i.e., class, indigenous, refugee, migration, caste, sexual orientation, ethnic minority, age, disability, widowhood, citizenship or nationality status, etc.). In the context of the increased feminization of poverty, decreased access to public services, destruction of natural environments and harmful traditional practices, including domestic violence, women are increasingly placed in situations where they do not have adequate housing, including by denying them physical security and privacy.

Similar forms of gender discrimination are also common against some men, for their presumed passive sexual role, and transgendered persons, as well as sex workers. With a view to physical security and privacy in the housing sphere, this discrimination can manifest in violence against persons, forced eviction, attacks on the home and undue public interventions into private life for reasons as arbitrary as unauthorized sexuality.

For example, gender-biased laws on land and property, as well as gender-biased rental practices can place women in situations where they are more vulnerable to violence. Customs or laws that prevent women from owning or renting property make it difficult for

¹²²⁹ Para 58(m).

¹²³⁰ Para 40 (b), 78 (e) and (g).

¹²³¹ Para 67 (b).

¹²³² Related sources of gender equality for women in human settlements can be found in CEDAW Articles 1, 2(f), 3 and 5 (a); UDHR, Articles 2, 16, 17 and 25; UDHR, Articles 5 (d) (v) and (vi), 5 (e) (iii); ICERD, Article 2, para 1, Articles 3, 9, 16, 17, Article 23, para 4, ICCPR, Article 26; ICESCR, Article 2, para 2, Article 3, and Article 11, para 1; and CRC, Article 1, 16, para 1 and Article 27.

them to leave a violent situation, which can lead to more violence. Women who don't have adequate resources (i.e., low-income women) to pay the rent fully are sometimes exploited by landlords who sexually harass them in return for letting them stay.

Inadequate housing and living conditions also can make women vulnerable to violence. Poor women living in high-density and overcrowded conditions typically serve also as caregivers to several members of the household or larger community, especially during the deprivation following forced evictions.

In situations of domestic violence women's housing rights, equal tenure entitlements can be violated. A woman fearing abuse knows her house is unsafe, that she cannot continue to live there and may need to flee. This situation forms a kind of indirect, forced eviction. Alternatively, domestic violence could lead effectively to a woman's imprisonment in her own home, where fear of further repercussions prevents her escape. The preservation of security of tenure, alone, in such a context does not equate with fulfillment of the human right to adequate housing.

Acts of commission or omission by State authorities that commit or condone gender-based violations of physical security or privacy would violate both the gender-equality provisions of the major human rights treaties, as well as provisions of the Vienna Convention on the Law of Treaties (1969).¹²³³

✓ Rule of law

General description

In the over-riding principles pertaining to previously discussed forms of discrimination, human rights are, by their nature, equal, inalienable and universal. By this is meant that the criteria for applying the standards and norms are to be inconsistent in their application. One way to ensure that is through the formal and institutionalized rule of law.

As enshrined in UDHR, Article 6, "Everyone has the right to recognition everywhere as a person before the law." This right is codified in the ICCPR (Article 16), and is supported by regional instruments affirming the same.¹²³⁴ The equal inalienable and universal right to a fair trial, including the presumption of innocence, is enshrined in ICCPR,¹²³⁵ as well as the regional instruments.¹²³⁶

The law-abiding State and its officers must not withhold or impede remedies, apply the law inconsistently or arbitrarily, or exercise any form of discrimination that affects the human right to adequate housing. Inhabitants who have lost or undergone damage to their housing unjustly or illegally have the right to unobstructed access to legal remedy, including compensation for victims, which the State bears the corresponding obligation to respect, defend, promote and fulfill.

¹²³³ The Vienna Convention sets forth, in Article 27, that "[A] party may not invoke the provisions of its internal law as justification to perform a treaty," and the customary law principle, arising from Article 8 of the Universal Declaration of Human Rights, states that "everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him [her] by the constitution or by law."

¹²³⁴ African Convention on Human and Peoples' Rights, Article 5; Inter-American Convention on Human Rights, Article 3.

¹²³⁵ Article 10 reads: "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his[her] rights and obligations and of any criminal charge before him[her]." [Bracketed text added.] Article 14.2 sets forth that "Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to the law."

¹²³⁶ African Charter, Article 7; Inter-American Convention, Article 8; European Convention on Human Rights, Article 6.

States are required to maintain the rule of law in order to ensure a consistent, predictable and accessible resolution of disputes with remedy and compensation for the victims. This covers the right of equal access to public services, such as law enforcement, public defense and judicial services. The conduct of law enforcement officers, prosecutors and judges can determine whether or not the rule of law is respected or violated. Therefore, there is a tremendous need for the State to train, discipline and rehabilitate legal enforcers and practitioners. In the case of police services, the use of force is required to follow strictly the principle of presumed innocence and the criteria of necessity and proportionality in case where State force is used.¹²³⁷ Where local statutory law may be silent on housing rights safeguards, lawyers and judges bear an extra professional duty to apply the human rights norms to the extent possible.

The principles of remedy and reparation have been firmly established in instruments declaratory of the human right to access to justice. Culminating the development of international law derived from the major legal systems in the world, the revised Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law (2003) outline the right and corresponding State obligations as follows:

VII. Victim's Right to Remedy

Remedies for violations of international human rights and humanitarian law include the victim's right to:

- (a) Access justice;
- (b) Reparation for harm suffered; and
- (c) Access the factual information concerning the violations.

VIII. Victims' Right to Access Justice

A victim's right of access to justice includes all available judicial, administrative and other public proceedings, mechanisms and modalities that exist under domestic laws, as well as under international law. Obligations arising under international law to secure the individual or collective right to access justice and fair and impartial proceedings should be made available under domestic laws. To that end, States should:

Make known, through public and private mechanisms, all available remedies for violations of international human rights and humanitarian law;

Take measures to minimize the inconvenience to victims, protect their privacy as appropriate, and ensure their safety from intimidation and retaliation, as well as that of their families and witnesses, before, during, and after judicial, administrative, or other proceedings that affect the interests of victims;

Facilitate assistance to victims seeking access to justice.

Make available all appropriate diplomatic and legal means to ensure that victims can exercise their rights to a remedy and reparation for violations of international human rights or humanitarian law.

In addition to individual access to justice, adequate provisions should also be made to allow groups of victims to present collective claims for reparation and to receive reparation collectively.

¹²³⁷ Code of Conduct for Law Enforcement Officials, adopted by General Assembly resolution 34/169, 17 December 1979, Article 3; Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted at the Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August–7 September 1990, preamble and Articles 1–11.

The right to an adequate, effective and prompt remedy against a violation of international human rights or humanitarian law includes all available international processes in which an individual may have legal standing and should be without prejudice to any other domestic remedies.¹²³⁸

The restitution of housing and property is one form of restitutive/restorative justice sought in the rule of law applied to housing rights violation victims. Efforts continue to develop these methods and disparate efforts, not least in the development of draft guidelines on restitution for refugees.¹²³⁹

Applied to physical security and privacy

In the case of a dispute over the congruent rights to physical security or privacy, the State bears an obligation to ensure that the rule of law is applied in a context of equality, inalienability and universality of rights, particularly with regard to the human right to adequate housing. In the case where the State (e.g., courts or police) assume a role in a dispute over tenure, the State bears the responsibility to abide by its human rights obligations and refrain from violations of the right to housing, including congruent rights to physical security or privacy, such as forced eviction, or other forms of violence, or other punitive behavior inconsistent with the principles of (1) presumption of innocence until proven guilty and, in the use of force, (2) necessity and (3) proportionality. The State also bears the obligation to refrain from undue intervention in the private lives and consensual relations between individuals, excepting where violence or other forms of abuse violate human rights of persons directly affected.

The law-abiding State, its agents and offices must not withhold rights to physical security or privacy arbitrarily or exercise any form of arbitrary discrimination against the inhabitant. Those inhabitants who are vulnerable to, or victims of a violation of the congruent rights to physical security or privacy are entitled to unobstructed access to legal remedy, including compensation for victims, for which the State bears the corresponding obligation.

✓ Nonretrogression/progressive realization

General description

ICESCR's Article 2 identifies the State party's obligation to ensure the "progressive realisation" of ESC rights. That is widely interpreted to mean that the State party breaches this provision if it tolerates or causes "regressivity" in the enjoyment of the right. The relevant jurisprudence has established that, even in the case of scarce resources, the State must exert good-faith efforts, including through international cooperation, to advance—and not derogate—the enjoyment of ESC rights, including adequate housing and its constituent entitlements.

The treaty bodies have clarified further that neither political processes, domestic legislation, scarcity of resources, or agreements with other parties can be invoked to justify nonimplementation of human rights treaty obligations.¹²⁴⁰ For example, the binding nature of

¹²³⁸ As revised in accordance with UN Commission on Human Rights resolution E/CN.4/2003/34 (2003).

¹²³⁹ Progress report of the Special Rapporteur, Paulo Sérgio Pinheiro, "Housing and property restitution in the context of the return of refugees and internally displaced persons," E/CN.4/Sub.2/2004/22, 2 June 2004.

¹²⁴⁰ Letter of CESCR Chairperson Mme. Virginia Bonoan-Dandan to S.E. M. Yaakov Levy, Permanent Representative, Permanent Mission of Israel to the United Nations Office and Specialized Agencies at Geneva, 11 May 2001, annex to Letter by the Chairperson of the Committee on Economic, Social and Cultural Rights to the President of ECOSOC (11 May 2001).

a treaty obligation is further clarified in the Vienna Convention on the Law of Treaties (1969), clarifying in its Articles 27 and 46, that invoking an internal law is not admissible as a justification for nonimplementation of a treaty obligation.¹²⁴¹ To harmonize treaty obligations with local implementation, human rights obligations arising from the treaties and case law should guide policy formulation and decision-making processes in law-abiding States. Therefore, a process of realising the rights should not regress, but should ensure “the continuous improvement of living conditions” (Article 11).

This over-riding principle of “nonregressivity” has been reaffirmed in the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights (1986) and Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (1997),¹²⁴² as well as numerous cases of international jurisprudence through the monitoring functions of CESCR.

The many examples of globalization-era economic reforms demonstrate how the withdrawal of the State from its obligations to fulfill economic/social/cultural rights can lead to deprivation. The State nonetheless bears a covenanted obligation to ensure that economic policies do not make tenure more precarious and insecure, whether arising from domestic political change or pressures of an external actor, such as an international financial institution. In order to ensure “progressive realization,” therefore, it is vital to ensure that the human right to adequate housing forms a part of the overall human rights framework for development policy, especially guiding international cooperation arrangements. This civilizing process requires improved coordination among the relevant government bodies, such as ministries of Justice, Finance and Foreign Affairs. This is not only out of domestic duty toward citizens for States to ensure that development partnerships effect “progressive realization,” but also an extraterritorial obligation of the State party under ICESCR, Article 2.

The CESCR has commented also on the “core obligations” of States to implement the human right to adequate housing. It noted that, regardless of the state of development of any country, certain steps must be taken immediately, in addition to the over-riding principles of human rights law. These include abstaining from measures that would impinge upon the right, as well as to engage positively in practices to facilitate the people’s processes of groups seeking to improve their living conditions, in accordance with the specific elements outlined above.¹²⁴³

Applied to physical security and privacy

The State’s offices and agents, as well as its guiding policies and legislation should ensure that measures to ensure physical security and privacy in the housing sphere are increasingly safeguarded. This means that new laws or policies, as well as trends in official behavior and

¹²⁴¹ Article 27 (Internal law and observance of treaties): “A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to Article 46.” Article 46 (Provisions of internal law regarding competence to conclude treaties) states that: 1. A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance. 2. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith.”

¹²⁴² Text available at <http://ip.aaas.org/escrdocs.nsf/>.

¹²⁴³ “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.” General Comment No. 4, para. 10.

practice should improve in the direction of greater justice for all and protection for those vulnerable to, or victim of physical security and privacy violations. It also means that those same parties should develop greater capacity for, and actually delivery of relief to those who have been deprived of their physical security and privacy in the housing sphere.

✓ International Cooperation

General description

States parties to both Covenants bear an obligation to implement human rights within a context of “international economic cooperation.”¹²⁴⁴ The ICESCR’s Article 2.1 requires States party to undertake steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

In the spirit of the numerous multilateral agreements on human rights and development, “progressive realization of ESC rights,” as a borderless objective, logically engages “international cooperation” duties for States to conduct themselves accordingly through their relations with other States, nations and peoples:

In fraternity and solidarity
Domestically and extraterritorially
Individually, jointly and/or collectively.

The preamble of the United Nations Charter specifies the purposes of the world organization insofar as “we the peoples of the United Nations” are determined “to promote social progress and better standards of life in larger freedom.” Article 1, para. 3 of the Charter sets out one of the UN’s purposes as “to achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.”

Linking international cooperation and self-determination as essential to the peaceful order of the United Nations, the Charter’s Article 55 reads:

With a view to the creation of conditions or stability and well-being[,] which are necessary for peace and friendly relations among nations based on respect for the principles of equal rights and self-determination of peoples, the United Nations shall promote universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

The Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations considers as essential:

the progressive development and codification of the following principles:... (d) the duty of States to cooperate with one another in accordance with the Charter;...(g) the principle that States shall fulfill in good faith the obligations assumed by them in accordance with the Charter, so as to secure their more-effective application

¹²⁴⁴ Common Article 1.2.

within the international community would promote the realization of the purposes of the United Nations;...¹²⁴⁵

The UN States members share a duty to cooperate with one another, irrespective of their differences, to maintain international peace and security and promote international economic stability and progress, the general welfare of nations and international cooperation free from discrimination. To this noble end, the Declaration embodied by UN members commitments such that:

(c) States shall conduct their international relations in the economic, social, cultural, technical and trade fields in accordance with the principles of sovereign equality and nonintervention;

(d) States Members of the United Nations have the duty to take joint and separate action in cooperation with the United Nations in accordance with the relevant provisions of the Charter.

States should cooperate in the economic, social and cultural fields as well as in the field of science and technology and to the promotion of international cultural and educational progress. States should cooperate in the promotion of economic growth throughout the world, especially that of the developing countries.¹²⁴⁶

In addition to its Article 2, ICESCR also sets out to identify the UN systems itself as a vehicle for international cooperation to uphold the Covenant. The Covenant empowers ECOSOC to raise the Covenant-monitoring reports as a guide for UN technical assistance.¹²⁴⁷

Other instruments of international public law are dedicated to specifying norms for international cooperation agreements between and among States. Consistent with human rights norms and other *jus cogens* principles of law, the Vienna Convention, Article 53, provides clarity:

A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

States parties adhering to the international law principles of international cooperation are required to behave extraterritorially consistent with the progressive realization of economic/social/cultural rights. For our purposes, this extends especially to the human right to adequate housing and land.

As a donor country, a State must ensure that the projects and programs it supports do not erode any of the entitlements contained in their right to adequate housing for inhabitants in

¹²⁴⁵ Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly in its resolution 2625 (XXV) of 24 October 1970 Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly in its resolution 2625 (XXV) of 24 October 1970

¹²⁴⁶ Ibid.

¹²⁴⁷ Article 22 reads: "The Economic and Social Council may bring to the attention of other organs of the United Nations, their subsidiary organs and specialized agencies concerned with furnishing technical assistance any matters arising out of the reports referred to in this part of the present Covenant which [sic] may assist such bodies in deciding, each within its field of competence, on the advisability of international measures likely to contribute to the effective progressive implementation of the present Covenant."

beneficiary countries. That includes avoiding any action that leads to forced evictions, confiscation or demolition of housing. In the case of development assistance resulting in dislocation of inhabitants, all aspects of the undertaking are to be the subject of consultation with the affected persons, and the efforts should enhance legal security of tenure as a result within the covenanted human rights framework.

As a recipient country, structural adjustment, deregulated foreign investment, privatization and related measures typified by today's bilateral and multilateral arrangements assistance agreements and programs must be compatible with the human rights obligations of the affected State. Measures that deny or reduce tenure security would be illegal and unaccepted as a condition of the assistance. States parties to the human rights instruments have a self-preserving opportunity and responsibility to uphold their prior treaty obligations as a form of (moral, legal and practical) resistance to negotiation pressures or conditionalities that may derogate the terms of legal security of tenure for inhabitants.

As all human rights implementation ultimately is a local matter, regional instruments can be a source a greater specificity in determining of State obligations and practical measures needed to uphold economic, social and cultural rights. For example, the African Charter on Human and Peoples' Rights (1981) provides a broad agreement on the term of international cooperation in its Article 21: 1, which establishes that:

All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it. 2. In case of spoliation, the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation. 3. The free disposal of wealth and natural resources shall be exercised without prejudice to *the obligation of promoting international economic cooperation based on mutual respect, equitable exchange and the principles of international law*. 4. State Parties to the present Charter shall individually and collectively exercise the right to free disposal of their wealth and natural resources with a view to strengthening African Unity and solidarity. 5. *State Parties to the present Charter shall undertake to eliminate all forms of foreign exploitation particularly that practised by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources.* [Emphasis added.]

States Parties are required to review multilateral agreements on investment, trade-related intellectual property arrangements, poverty-reduction strategy papers (PRSPs), bilateral and multilateral relations in the World Trade Organization context, World Bank lending and assistance terms, and the International Monetary Fund programs operating in, or otherwise affecting the State, in order to ensure consistency with covenanted obligations and avoid either retrogressivity or violations of its citizens' ESC rights. The State party is obliged to apply the Covenant *a priori* to ensure that any such conditionality would be subject to the ESC rights safeguards for its own inhabitants, and for those of another State party.

Privatization programs may lead to deprivation of the housing rights entitlement to tenure security. In the event of workers living in administrative housing who become laid off as part of a privatization or State-enterprise sell-off arrangement may lose their tenure altogether. Even in cases where local legislation is silent, international treaty obligations remain for the State party to defend the workers' human right to adequate housing by legal and enforceable protection for their secure tenure and all other housing rights entitlements.

As an extreme example of international cooperation conducted in explicit violation of ESC rights applying to adequate housing and secure tenure would be a scenario wherein a State engaged in, or condoning third parties to engage in acts or omissions that would contribute to population transfer or any of its related international crimes, such as mass deportations, ethnic cleansing, destruction of civilian or private property, implantation of settlers and settler colonies, or other forms of demographic manipulation of an internal or external self-determination unit. Duty prohibits States party from allowing public or private resources to accrue to settler colonies in an occupied territory, for example, or engage in any other acts or omissions that would facilitate another State party's violations of the Covenant or Convention in this way. There are numerous examples today in countries where these forms of violation continues unaddressed with the accomplice and collaboration of other States. Impunity still characterizes the conduct of many of these crimes, as the perpetrators have not yet been prosecuted at any level, including at the International Criminal Court.

A State's participation in international economic sanctions or blockades that lead to violations of the ESC rights of persons other than the State Party's own residents, citizens and nationals may lead to conditions that undermine housing rights. CESCR has provided guidance to States parties of the Covenant on ESCRs affected by sanctions regimes and subject to protection measures to avoid regressivity and violation.¹²⁴⁸

Direct provision, or participation in multilateral programs of development and financial assistance actually may lead to violations of rights embodied in the Covenant (e.g., stagnation, deterioration or denial of work, education, health or housing rights, forced eviction, etc.) and constitute a breach of treaty obligations. Specifically, ICESCR and its enshrined rights should guide and govern a State's policies and conduct in any multilateral institution that imposes economic conditionalities on other States or their agents that bring about a negative consequences effect inhabitants housing rights conditions. The legacy of development banks' support for forced evictions of all possible scales and levels of deprivation has become notorious, and States that promote, finance or engage directly or indirectly in making decisions or executing these policies may be in breach of their human rights treaty obligations.

Applied to physical security and privacy

International relations, including security and development cooperation, should improve protection for physical security and privacy in the housing sphere. This may take the form of a request or offer of assistance to enhance administrative capacity, governance, service delivery, legal development, technical assistance or other material forms. Any cross-border cooperation and investment in human settlements and/or in other sector should not derogate the congruent rights to physical security and privacy of individuals or groups.

✓ Other principles of application

The principles discussed above are those explicitly stated in the major international human rights treaties. At the same time, we can consider additional principles and concepts that also guide the application of the human right to adequate housing. These arise from the international jurisprudence of individual State party reviews by the treaty-monitoring bodies, as well as from their General Comments and General Recommendations. They also come to us from popular claims of people's movements, from the political resolutions of the multilateral organizations, from expert opinions found in the legal literature, and from the

¹²⁴⁸ See CESCR General Comment No. 8, "the relationship between economic sanctions and respect for ESC rights."

evolving experience at implementing human rights. Three such principles of application for us to consider are known as the “indivisibility of rights,” “minimum core obligations” and “universality.”

Indivisibility

The concept of all human rights as indivisible is as practical as it is theoretical. It arises from the realization that, when we unpack the contents of a right, we encounter aspects of the other rights as well.

Take, for example, the “habitability” entitlement contained in the human right to adequate housing. The deterioration of the structural features of the home leaving the inhabitants exposed to the elements, or pollution in the immediate vicinity of the housing surely effect the enjoyment of the human right to “a standard of living adequate for the health and well-being of himself and of his family,” as recognized in Article 25 of the 1948 Universal Declaration of Human Rights (UDHR), and codified as the “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health” in Article 12 of the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR).

Likewise, homelessness is a status synonymous with the denial of voting rights in most States, where registration and voting require a *domicile fixe*. Thus, the human right to adequate housing is linked with everyone’s “right to take part in the government of his [sic] country, directly or through freely chosen representatives,” as promised in UDHR (Article 21), and codified in the Covenant on Civil and Political Rights (ICCPR), in 1966, as everyone’s “right to take part in public life, directly or through freely chosen representatives” (Article 25). Incorporating the experience of HIC members and others around the globe, it has become clear that our monitoring methodology calls our attention also to the “congruent” human right to participation and self-expression among the constituent entitlements of the human right to adequate housing.

Sorting, categorizing and distinguishing subjects of any kind can be a useful exercise that makes manageable order out of complexity and facilitates understanding. Human rights are no exception. However, in practice, we find that human rights are interdependent, and categorical separation can become artificial and actually impede understanding. One example is in the division of human rights found in the UDHR into the two, separate Covenants. The reason for adopting two basic Covenants, instead of one, is largely attributed to the divergent Cold War ideologies that dominated the General Assembly when it adopted the Covenants in 1966. Ideology is also the reason that one of the largest and wealthiest industrialized States has failed to ratify the ICESCR until today, and ideology also prevailed to exclude a “human right to own property” from that Covenant, although that right is included in the UDHR (Article 17). Despite the false impression left by the Covenants dividing human rights into two instruments camps, the ICCPR’s nonetheless recognizes, in its preamble, that:

... in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights.

Without appreciating the over-riding principle of indivisibility, other distortions can arise. With civil and political rights traditionally gaining from more attention and specificity than economic/social/cultural rights (consistent with some Western Bloc preferences), some

authors have proposed that we consider “generations” of rights.^{1249[1]} Presenting distinct rights in such a priority order perpetuates the historic neglect of economic/social/cultural rights and promotes a logic that may culminate in violations. Nominating civil and political rights in a hierarchical order as “first generation” rights classifies economic/social/cultural rights as secondary: the “second generation” of rights. Group rights, as distinct from individual rights, environmental rights and, in certain cases, self-determination thus become degraded as “third generation.” This view is kept alive by a simple misunderstanding of “progressive” realization, required in ICESCR, such that slow realization of economic/social/cultural rights is acceptable and that all aspects of economic/social/cultural rights, as such, are subject to gradual implementation. The indivisibility of human rights belies such gradualist or generational notions. Therefore, this toolkit cannot accommodate the divisive, generational approach to human rights not for ideological reasons, but for the fact that theories neatly segregating rights are not sustained in practice.

It is with this recognition of the indivisibility of rights that CESCR commented:

...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....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.^{1250[2]}

Core obligations

Alone, the very general reference to the human rights in treaty texts does not provide the specific guidance needed for States parties around the world to know their precise obligations. ICESCR’s English-language version requires States to “take steps.” The French texts calls on States “to act” (*s’engage à agir*) and, in Spanish, the Covenant requires States “to adopt measures” (*a adoptar medidas*), but offers little about what those steps/actions/measures should be, except to say that these should be “appropriate,”

^{1249[1]} French jurist Karel Vasak is attributed with first proposing the division of human rights into three generations, while at the International Institute of Human Rights (Strasbourg), in 1979. His division adapted the French Revolution’s slogan of Liberté, Égalité, Fraternité as ordinal categories. The three generations are subsequently reflected in some of the rubrics of the European Charter of Fundamental Rights.

First-generation human rights deal essentially with liberty. In Vasak’s view, these are seen as fundamentally civil and political in nature and serve to protect the individual from excesses of the State. First-generation rights include, inter alia, freedom of speech, the right to a fair trial, and freedom of religion, as enshrined in Articles 3–21 of UDHR and ICCPR.

Second-generation human rights would be those related to equality, and are supposedly the social, economic, and cultural rights. This theory sees these essentially as positive rights; that is, actions that the State is required to provide to the people under its jurisdiction, as opposed to actions from which the State should refrain—e.g., forced eviction—in order to realize rights.

Third-generation human rights correspond with fraternity, or involving “solidarity.” They include group and collective rights, such as self-determination, economic and social development, sovereignty over natural resources, and the right to participate in the common heritage of mankind. Treated as third generation, the generational theory of rights presumes that these rights are not yet binding and dubiously judicial.

In an alternative explanation for the three-generational approach rests on the political divisions of the Cold War, where the West promoted allegedly first-generation (civil and political) rights, and the East promoted second-generation (economic, social and cultural) rights. The Third World (i.e., third priority in the putative hierarchy) promoted (third-generation), solidarity rights, as in the decolonization struggles of the 1970s, including decolonization processes delayed until today.

^{1250[2]} General Comment No. 4: “the right to adequate housing” (1991), para. 9.

“progressive” (nonregressive/ nonretrogressive), nondiscriminatory (nondiscrimination), involve international cooperation and include legislative measures (rule of law). Therefore, the treaty-monitoring bodies bear the task of issuing General Comments and General Recommendations to supply the needed specificity, based on international public law and the implementation experience of all States parties.

In its General Comment No. 3: “The nature of States parties’ obligations,”^{1251[3]} CESCR addressed the principle of “minimum core obligations”:

...a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party. Thus, for example, a State party in which any significant number of individuals is deprived of ...basic shelter and housing...is, *prima facie*, failing to discharge its obligations under the Covenant. If the Covenant were to be read in such a way as not to establish such a minimum core obligation, it would be largely deprived of its *raison d’être*.^{1252[4]}

The General Comment, like the Covenant, takes into consideration material limits of States. However, the Covenant’s Article 2 (1) obligates each State party to take the necessary steps “to the maximum of its available resources,” and the treaty body has determined that the nature of treaty obligations are such that a State bears a heavy burden of proof to demonstrate that “every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations.”^{1253[5]}

The “minimum core obligations” also include those appropriate steps to respect, defend, promote and fulfill the human right to adequate housing, like other economic/social/cultural rights, as a matter of immediate application. Among the appropriate measures, in addition to harmonizing domestic legislation with the covenanted rights, is to provide judicial remedies to victims within the national legal system. That would be among the most effective measures to ensure compliance with obligations to implement certain aspects of economic/social/cultural rights *immediately*, such as by ensuring nondiscrimination. The Committee has determined that it is “difficult to sustain” any suggestion that these immediate obligations are inherently non-self-executing. This legal authority is consistent also with the terms of the Vienna Convention on the Law of Treaties (1969), which provides that “A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.”^{1254[6]} The treaty bodies have clarified further that neither political processes, domestic legislation, scarcity of resources, nor agreements with other parties could be invoked to justify nonimplementation of human rights treaty obligations.^{1255[7]}

Nondiscrimination is perhaps the most obvious and urgent of the immediate principles in implementing the human right to adequate housing. CESCR has provided specific guidance

^{1251[3]} Adopted by the CESCR in its fifth session (1990), E/1991/23.

^{1252[4]} *Ibid.*, para. 10.

^{1253[5]} *Ibid.*

^{1254[6]} Vienna Convention on the Law of Treaties, signed at Vienna, 23 May 1969; entered into force, 27 January 1980, Article 27: “Internal law and observance of treaties.” The Article also goes on to state that “this rule is without prejudice to Article 46.” Article 46: “Provisions of internal law regarding competence to conclude treaties” states that “1. A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance. 2. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith.”

^{1255[7]} Letter of CESCR Chairperson Mme. Virginia Bonoan-Dandan to S.E. M. Yaakov Levy, Permanent Representative, Permanent Mission of Israel to the United Nations Office and Specialized Agencies at Geneva, 11 May 2001, annex to Letter by the Chairperson of the Committee on Economic, Social and Cultural Rights to the President of ECOSOC (11 May 2001).

such that, among other things, “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.”^{1256[8]}

The measures needed for States parties to comply with obligations of immediate application include negative obligations. That is, many of the measures to realize the human right to adequate housing would require little more than the State and its agents to refrain from certain harmful practices, such as arbitrary house demolitions and forced eviction, or a meaningful commitment to enabling “self-help” or “social production of habitat” by affected groups. Such changes in State behavior would not require significant expenditure of public resources.

Universality

The principle of human rights’ “universality” is simply expressed in the UDHR’s recognition that “All human beings are born free and equal in dignity and rights” (Article 1). Everyone, without exception, is entitled to human rights by virtue of belonging to the human family. From a moral point of view, the universality of human rights is an essential principle if the human civilization is to advance for the better. In international law, the text of ICESCR also speaks consistently of right of “everyone,” which obliges States not to discriminate in adherence to minimum core obligations. In the field of housing, in particular, States are not permitted to interpret its minimum core obligations to apply selectively, that is, only to citizens, or only certain citizens, but also to ensure the human right to adequate housing is realized also for “everyone,” including residents, immigrants and migrant workers, etc. The only conditionality permitted in law is that the subjects of human rights qualify as members of the human family.

Before the Universal Declaration, the social movements, revolutions, antislavery struggles and intellectual contributions of the past have served as vehicles for the promotion of human rights that eventually have been incorporated into local and international law and practice. However, many of these famous accomplishments were limited in their substance or application, geographically or socially, or were subject to reversal. Social science and philosophy have contributed greatly to the recognition of human rights, but have not carried the force of law. The recognition of the universality of human rights overcomes the shortcomings left by these otherwise-significant accomplishments:

Limits in scope of application:

- The rights and ethics delivered through the world’s moral systems, especially those found in the religions, also are limited in scope by the fact that they apply to adherents to a particular faith group, not applying universally;
- The Magna Carta of 1215 imposed limits on royal impunity that equate as new rights for citizens, especially property-owning citizens. However, this historical achievement had only local application in the geographical realm of the English king.

^{1256[8]} General Comment No. 3: “The nature of States parties’ obligations,”^{1256[8]} CESCR addressed the principle of “minimum core obligations,” adopted by the CESCR in its fifth session (1990), E/1991/23, para. 11.

^{1256[9]} The Vienna Convention sets forth, in Article 27, that “[A] party may not invoke the provisions of its internal law as justification to perform a treaty,” and the customary law principle, arising from Article 8 of the Universal Declaration of Human Rights, states that “everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him [her] by the constitution or by law.”

Exclusion of social sectors and substantive rights:

- The “American Revolution,” in the English colonies that eventually became the original United States of America, realized the right to self-determination as a legal right and *raison d'état*. However, the right to self-determination, as inalienable as it is, applied in the American Revolution case as a right limited only to the white colonizers who identified themselves as a distinct people. The remaining indigenous peoples—whom the settlers mostly largely and replaced—have yet to achieve their self-determination to this day;
- The French Revolution, for all its achievements, realized rights for individuals. French farmers and workers sought recognition of their group rights in the context of the revolution; however, its leadership rejected those expansive notions of rights and insisted on *liberté, égalité and fraternité* with an individual focus;
- The results of the Bolshevik Revolution institutionalized recognition of group rights for workers, etc.; however, rejected a right to property ownership. However ethically grounded the rationale for that omission, the denial of property rights also has emerged as a common tool for depriving persons, communities and entire peoples of their means of subsistence, thereby demonstrating, by its violations, the importance of that neglected human right.

Retgression:

- The antislavery movement in Haiti at the end of the 18th Century resulted in a democratic regime and Constitution under the leadership of former slave and eventual General Toussaint Louverture. However, the same France that produced the world-changing Revolution only 12 years before saw the French General Napoleon I crush the new democracy in 1801 for reasons of imperial interest, reversing the accomplishments of Haitian antislavery democracy, with consequences extending to this day.

Despite their shortcomings, these episodes in the gradual achievement of rights through local struggle all have contributed to the accumulation of human rights recognition as universally applicable. Human rights law today embodies that cumulative recognition into an international and universal code that seeks to leave no human group, geographical region or human need without mutual protection in the multilateral legal regime.

Universality of human rights now means that it is impermissible to neglect certain rights as if they were intended selectively for certain cultures, as if and people of other cultures deserve an inferior standard. Universality also means that no State or government is exempt from its obligations, either for reasons of specificity of local law, as the Vienna Convention has addressed, or to uphold traditional practices that violate rights or their over-riding principles of application.

Interpreting rights consistent with one's own culture (as in the cultural adequacy of housing) means applying locally specific options and idiomatic expressions consistent with the human rights framework. However, practices that preserve or condone unequal rights to secure tenure, inheritance or other entitlements of the human right to adequate housing are not consistent with the present framework and likely to violate both the gender-equality provisions of the Covenant, as well as essential provisions of the Vienna Convention on the Law of Treaties (1969).^{1257[9]}

While local experience of application and struggle continue to provide specificity on how to realize human rights, reveal a variety of possible strategies and define emerging rights (such as the rights to water, land and energy), cultural specificity does not mean allowance for the derogation of rights to something short of the over-riding principles and entitlements reflected in this toolkit. As affirmed by moral arguments and legal authority, adequate housing is the right of everyone, everywhere.

Conclusion

The over-riding principles featured in the monitoring steps of this toolkit are those explicitly mentioned in the major human rights treaties. The “Other principles of application” are implied in the human rights instruments or recognized in international jurisprudence, but are not less important to keep in mind.

The HLRN toolkit attempts to go further than merely encouraging the monitor to keep these additional principles in mind, however. The toolkit’s design actually incorporates all of these three principles, but without culling them out as additional steps in the monitoring process.

The indivisibility of rights is already present in the 12 entitlements; whereas, the first eight derive directly from the CESCR’s General Comment No. 4 specifically on the right to housing. The “Congruent rights” derive from rights whose sources and concepts arise from the ICCPR, Refugee Convention and other instruments. Therefore, the housing rights entitlements themselves embody the indivisibility concept in a practical form.

The core minimum obligations applying in the case of the human right to adequate housing also are consistent with those entitlements outlined in the General Comment No. 4, which are embedded in this methodology (human right to adequate housing entitlements A–H). Naturally, the local specificity as to the nature and level of effort required to realize the human right to adequate housing is precisely your contribution through your monitoring effort, your critical process and by posing your solutions to problems in the field.

The universality of the human right to adequate housing is also inherent to this toolkit, by design. That is manifest in the wide range of international and regional instruments guaranteeing the right and incorporated into the Step 2 presentation of both the Sources in international law and Popular sources.

The good news is that, with these principles integrated in the design of the toolkit, you are able to apply them as a matter of course. Therefore, it would be unnecessary and redundant to create corresponding, additional tasks. By applying the methodology in this Housing and Land Rights Monitoring Toolkit, you will be putting all of these inter-related and interdependent principles into living practice.

12.4. Guarantees

Guarantees of the Human Right to Adequate Housing

We will now determine the existing assets guaranteeing the entitlements of the human right to adequate housing in your country situation. We can begin by making our assessment at the general and international level, then proceeding to the more instrumental and local level. The “guarantees” do not mean only legal provisions, but also institutional, policy and other assets that function to ensure, or at least contribute to implementation of the various contents of our human right to adequate housing.

Therefore, one should assess first the State's current obligations by its ratification of international (and then regional) treaties recognizing the human right to adequate housing, its over-riding principles and its specific entitlements. Then this method would have us determine any similar guarantees in the national constitution (or equivalent). At the more-specific level of legislation, the inquiry should have us identify which statutes, regulations and even municipal ordinances actually guarantee the right or any entitlement within the right. Presumably, public policies, programs, institutions and budgets in place should form the practical implementation counterparts to complement these legal criteria and the respect, defense, promotion and fulfillment of the human right at the most-localized operational level.

Inquiry Begins Here

Following this logic, our line of inquiry on "guarantees" poses a number of questions for the monitor to provide the answer. Now your role will become more active. Accordingly, we will follow the method of assessing the guarantees in your country situation for implementation of the human right to adequate housing from general to specific, thus, focusing on:

- Ratifications and multilateral commitments:** Obligations arising from multilateral (international and regional) ratification of relevant treaties;
- Constitutional provisions** relevant to the human right to adequate housing and land;
- National legal system:** Legislation and other local law;
- Institutions:** both binding and bonding institutions, whether as a formal structure, or a more-customary, social character;
- Policies:** having nationwide application;
- Programs:** long-term, policy-based and systematic efforts;
- Projects:** having more temporary and localized application; and
- Budgets** of public institutions.



In that order, our line of inquiry will explore these guarantees for each of the twelve entitlements of the human right to adequate housing and land. You will likely find that you may already have the answers to many of these questions from the previous sections on "Sources" and "Over-riding Principles." For instance, you have already learned about, and identified many multilateral treaty instruments guaranteeing the human right to adequate housing. Now, you will be able to fill in the rest of the guarantees to complete the picture of how these norms translate into legal and functional assurances locally for this and every entitlement of our human right that you choose to monitor and assess.

This method ensures that the monitor take into consideration also the guarantees of the over-riding human rights principles (as explained above in "Over-riding principles applied to legal security of tenure and freedom from dispossession" in Step 3 of this toolkit). These principles, found in the first Articles of all the major human rights treaties, are to be generally and universally applied in order to ensure a context for the realization of all rights, not least the human right to adequate housing and land. Since these principles over-ride, or sit on top of the human rights framework applied to housing and land, they appear first in the list of questions in our line of inquiry. These questions include a list of legal instruments and commitments by States to guarantee these over-riding principles. (Please note that these are

illustrative lists; they are not exclusive lists. You may know of other such guarantees, and you may find that some listed do not apply to your country situation.)

In the same way that we proceed from the general to the specific, the inquiry about the guarantees of the over-riding principles is followed by the more precise, practical guarantees that ensure the human right to adequate housing and land is made real in practice. Therefore, the systematic questions here include a test of (1) the present (general and contextual) guarantees for applying the over-riding principles of international human rights law in the case of the entitlement legal security of tenure and freedom from dispossession (i.e., self-determination, nondiscrimination, gender equality, rule of law, nonregressivity/nonretrogression and international cooperation), as well as (2) the (functional and specific) local guarantees of legal security of tenure and freedom from dispossession deriving from the guaranties listed above.

✓ Guarantees for applying the over-riding principles

Self-determination

Which international treaties has the State ratified, acceded to or succeeded to that guarantee that the principle of self-determination be applied, including in the housing context?

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention on the Elimination of All Forms of Racial Discrimination (1965)
- Convention on the Rights of the Child (1989)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- ILO No. 107 concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (1957)
- ILO Convention No. 169 concerning Indigenous Peoples in Independent Countries (1989)
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee that the principle of self-determination be applied, including in the housing context?

- Declaration on the Right to Development (1986)
- Declaration on Social Progress and Development (1969)
- Habitat II Agenda (1996)
- Istanbul Declaration (1996)
- Social Summit Declaration and Programme of Action (1995)
- Universal Declaration of Human Rights (1948)
- United Nations Commission on Human Rights resolutions
- UN General Assembly resolutions [various]
- Vienna Declaration and Programme of Action (1993)
- Durban Declaration and Programme of Action [of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] (2002)
- Johannesburg Declaration of the World Summit on Sustainable Development and Plan of Implementation (2001)

Which regional treaties has the State ratified, acceded to or succeeded to that guarantee that the principle of self-determination be applied, including in the housing context?

- African Charter on Human and Peoples Rights (1981)
- American Convention on Human Rights (1969)
- American Declaration of Human Rights (1948)
- Arab Charter on Human Rights (1994)
- (European) Convention for Protection of Human Rights and Fundamental Freedoms (1950)
- European Social Charter (1961)

Has the State participated in the adoption of multilateral agreements in the form of regional conferences, summits, or congresses, etc., or voted in favor of resolutions in regional organizations that guarantee that the principle of self-determination be applied, including in the housing context?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (2000)
- Rabat Declaration (1995)

Nondiscrimination

Which international treaties has the State ratified, acceded to or succeeded to that guarantee that the over-riding principle and human right to freedom from discrimination be applied, including also in the housing context?

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention on the Elimination of All Forms of Racial Discrimination (1965)
- Convention on the Rights of the Child (1989)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- International Labour Organisation Convention No. 107 concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (1957)
- International Labour Organisation Convention No. 117 *on Social Policy (Basic Aims and Standards)* (1962)
- ILO Convention No. 169 concerning Indigenous Peoples in Independent Countries (1989)
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)
- Refugee Convention (1951)
- Convention relating to the Status of Stateless Persons (1954)
- Convention on the Reduction of Statelessness (1961)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee that the over-riding principle and human right to freedom from discrimination be applied, including also in the housing context?

- Declaration on Asylum (1967)
- Declaration on the Right to Development (1986)
- Declaration on Social Progress and Development (1969)
- Declaration on the Elimination of Violence against Women (1993)
- Habitat II Agenda (1996)
- Declaration on Cities and Other Human Settlements in the New Millennium [Habitat II+5 UNGAR S-25/2] (2001)
- UN Guidelines on Internally Displaced Persons (1998) [vote in favor of adoption in UNHRCR E/CN.4/1998/53/Add.2, dated 11 February 1998]
- International Labour Organisation Recommendation No. 162 concerning Older Workers (1980)
- Istanbul Declaration (1996)
- Rio Declaration and Agenda 21 (1992)
- Social Summit Declaration and Programme of Action (1995)
- Universal Declaration of Human Rights (1948)
- UN General Assembly resolutions [various]
- United Nations Commission on Human Rights resolutions [various]
- Vancouver Declaration Human Settlements (1976)
- Vienna Declaration and Programme of Action (1993)
- Durban Declaration and Programme of Action [of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] (2002)
- Johannesburg Declaration of the World Summit on Sustainable Development Plan of Implementation (2001)

Which regional treaties has the State ratified, acceded to or succeeded to that guarantee that the over-riding principle and human right to freedom from discrimination be applied, including also in the housing context?

- African Charter on Human and Peoples Rights (1981)
- American Convention on Human Rights (1969)
- Arab Charter on Human Rights (1994)
- (European) Convention for Protection of Human Rights and Fundamental Freedoms (1950)
- European Social Charter (1961)

Has the State participated in the adoption of multilateral agreements in the form of regional-level conferences, summits, or congresses, etc., or voted in favor of resolutions in regional organizations that guarantee application of the over-riding principle and human right to freedom from discrimination, including also in the housing context?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (2000)

- Rabat Declaration (1995)

Gender equality

Which international treaties has the State ratified, acceded to or succeeded to that guarantee the application of the over-riding principle of gender equality be applied, including also in the housing context?

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention on the Rights of the Child (1989)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- International Labour Organisation Convention No. 117 *on Social Policy (Basic Aims and Standards)* (1962)
- International Labour Organisation Convention No. 131 Concerning Minimum Wage Fixing, with Special Reference to Developing Countries (1970)
- International Labour Organisation Convention Recommendation No. 115 concerning Workers' Housing (1961)
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee the application of the over-riding principle of gender equality be applied, including also in the housing context?

- Declaration on Asylum (1967)
- Declaration on the Right to Development (1986)
- Declaration on Social Progress and Development (1969)
- Habitat II Agenda (1996)
- Declaration on Cities and Other Human Settlements in the New Millennium [Habitat II+5 UNGAR S-25/2] (2001)
- International Labour Organisation Recommendation No. 162 concerning Older Workers (1980)
- Istanbul Declaration (1996)
- Rio Declaration and Agenda 21 (1992)
- Social Summit Declaration and Programme of Action (1995)
- Universal Declaration of Human Rights (1948)
- United Nations Commission on Human Rights resolutions
- Vienna Declaration and Programme of Action (1993)
- Durban Declaration and Programme of Action [of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] (2002)
- Johannesburg Declaration of the World Summit on Sustainable Development and Plan of Implementation (2001)

Which regional treaties has the State ratified, acceded to or succeeded to that guarantee the application of the over-riding principle of gender equality be applied, including also in the housing context?

- African Charter on Human and Peoples Rights (1981)

- American Convention on Human Rights (1969)
- American Declaration of Human Rights (1948)
- Arab Charter on Human Rights (1994)
- (European) Convention for Protection of Human Rights and Fundamental Freedoms (1950)
- European Social Charter (1961)

Has the State participated in the adoption of multilateral agreements in the form of regional conferences, summits, or congresses, etc., or voted in favor of resolutions in regional organizations that guarantee the application of the over-riding principle of gender equality be applied, including also in the housing context?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (2000)
- Rabat Declaration (1995)

Rule of law

Which international treaties has the State ratified, acceded to or succeeded to that guarantee the State's application of the over-riding principle of the rule of law, which also extends to the housing sphere?

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention on the Elimination of All Forms of Racial Discrimination (1965)
- Convention on the Rights of the Child (1989)
- Rome Statute on the Establishment of the International Criminal Court (1998)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- International Labour Organisation Convention No. 107 concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (1957)
- International Labour Organisation Convention No. 117 on Social Policy (Basic Aims and Standards) (1962)
- International Labour Organisation Convention No. 131 Concerning Minimum Wage Fixing, with Special Reference to Developing Countries (1970)
- ILO Convention No. 169 concerning Indigenous Peoples in Independent Countries (1989)
- International Labour Organisation Convention Recommendation No. 115 concerning Workers' Housing (1961)
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)
- Refugee Convention (1951)
- Convention relating to the Status of Stateless Persons (1954)
- Convention on the Reduction of Statelessness (1961)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee the State's application of the over-riding principle of the rule of law, which also extends to the housing sphere?

- Declaration on Asylum (1967)
- Declaration on the Right to Development (1986)
- Declaration on Social Progress and Development (1969)
- Habitat II Agenda (1996)
- Declaration on Cities and Other Human Settlements in the New Millennium [Habitat II+5 UNGAR S-25/2] (2001)
- International Labour Organisation Recommendation No. 162 concerning Older Workers (1980)
- Istanbul Declaration (1996)
- Rio Declaration and Agenda 21 (1992)
- Social Summit Declaration and Programme of Action (1995)
- Universal Declaration of Human Rights (1948)
- United Nations Commission on Human Rights resolutions
- Vancouver Declaration Human Settlements (1976)
- Vienna Declaration and Programme of Action (1993)
- Durban Declaration and Programme of Action [of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] (2002)
- Johannesburg Declaration of the World Summit on Sustainable Development and Plan of Implementation (2001)

Which regional treaties has the State ratified, acceded to or succeeded to that guarantee the State's application of the over-riding principle of the rule of law, which also extends to the housing sphere?

- African Charter on Human and Peoples Rights (1981)
- American Convention on Human Rights (1969)
- American Declaration of Human Rights (1948)
- Arab Charter on Human Rights (1994)
- (European) Convention for Protection of Human Rights and Fundamental Freedoms (1950)
- European Social Charter (1961)

Has the State participated in the adoption of multilateral agreements in the form of regional conferences, summits, or congresses, etc., or voted in favor of resolutions in regional organizations that guarantee the State's application of the over-riding principle of the rule of law, which also extends to the housing sphere?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (2000)
- Rabat Declaration (1995)

Nonregressivity/nonretrogression

Which international treaties has the State ratified, acceded to or succeeded to that guarantee the State's implementation of the principle of nonregressivity/nonretrogression in the respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human right to adequate housing and land?

- Convention on the Elimination of All Forms of Racial Discrimination (1965)
- Convention on the Rights of the Child (1989)
- International Covenant on Economic, Social and Cultural Rights (1966)
- International Labour Organisation Convention No. 117 *on Social Policy (Basic Aims and Standards)* (1962)
- International Labour Organisation Convention Recommendation No. 115 concerning Workers' Housing (1961)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee the State's implementation of the principle of nonregressivity/nonretrogression in the respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human right to adequate housing and land?

- Declaration on the Right to Development (1986)
- Declaration on Social Progress and Development (1969)
- Habitat II Agenda (1996)
- Declaration on Cities and Other Human Settlements in the New Millennium [Habitat II+5 UNGAR S-25/2] (2001)
- Istanbul Declaration (1996)
- Rio Declaration and Agenda 21 (1992)
- Social Summit Declaration and Programme of Action (1995)
- Universal Declaration of Human Rights (1948)
- United Nations Commission on Human Rights resolutions
- Vancouver Declaration Human Settlements (1976)
- Vienna Declaration and Programme of Action (1993)
- Durban Declaration and Programme of Action [of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] (2002)
- Johannesburg Declaration of the World Summit on Sustainable Development and Plan of Implementation (2001)

Which regional treaties has the State ratified, acceded to or succeeded to that guarantee the State's implementation of the principle of nonregressivity/nonretrogression in the respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human right to adequate housing and land?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (200)
- Rabat Declaration (1995)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee the State's implementation of the principle of nonregressivity/nonretrogression in the respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human right to adequate housing and land?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (2000)
- Rabat Declaration (1995)

International Cooperation

Which international treaties has the State ratified, acceded to or succeeded to that guarantee the State's implementation of the principle of international cooperation to ensure respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human rights to adequate housing and land?

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention on the Elimination of All Forms of Racial Discrimination (1965)
- Convention on the Rights of the Child (1989)
- Rome Statute on the Establishment of the International Criminal Court (1998)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- International Labour Organisation Convention No. 107 concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (1957)
- International Labour Organisation Convention No. 117 *on Social Policy (Basic Aims and Standards)* (1962)
- International Labour Organisation Convention No. 131 Concerning Minimum Wage Fixing, with Special Reference to Developing Countries (1970)
- ILO Convention No. 169 concerning Indigenous Peoples in Independent Countries (1989)
- International Labour Organisation Convention Recommendation No. 115 concerning Workers' Housing (1961)
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)
- Refugee Convention (1951)
- Convention relating to the Status of Stateless Persons (1954)
- Convention on the Reduction of Statelessness (1961)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee the State's implementation of the principle of international cooperation to ensure respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human rights to adequate housing and land?

- Agenda 21 (1992)
- Declaration on Environment and Development (1992)
- Declaration on Asylum (1967)
- Declaration on the Right to Development (1986)
- Declaration on Social Progress and Development (1969)
- Habitat II Agenda (1996)
- Declaration on Cities and Other Human Settlements in the New Millennium [Habitat II+5 UNGAR S-25/2] (2001)
- International Labour Organisation Recommendation No. 162 concerning Older Workers (1980)
- Istanbul Declaration (1996)
- Rio Declaration and Agenda 21 (1992)
- Social Summit Declaration and Programme of Action (1995)
- Universal Declaration of Human Rights (1948)
- United Nations Commission on Human Rights resolutions
- Vancouver Declaration Human Settlements (1976)
- Vienna Declaration and Programme of Action (1993)
- Durban Declaration and Programme of Action [of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] (2002)
- Johannesburg Declaration of the World Summit on Sustainable Development and Plan of Implementation (2001)

Which regional treaties has the State ratified, acceded to or succeeded to that guarantee the State's implementation of the principle of international cooperation to ensure respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human rights to adequate housing and land?

- African Charter on Human and Peoples Rights (1981)
- American Convention on Human Rights (1969)
- American Declaration of Human Rights (1948)
- Arab Charter on Human Rights (1994)
- (European) Convention for Protection of Human Rights and Fundamental Freedoms (1950)
- European Social Charter (1961)

Has the State participated in the adoption of multilateral agreements in the form of global UN conferences, summits, or congresses, etc., or voted in favor of resolutions in international organizations that guarantee the State's implementation of the principle of international cooperation to ensure respect, defense, promotion and fulfillment of economic, social and cultural rights, including the human rights to adequate housing and land?

- American Declaration on the Rights and Duties of Man (1948)
- American Declaration of Human Rights (1948)
- African Union resolutions [various]
- European Commission resolution [various]
- Istanbul Summit Declaration (1999)
- League of Arab States resolutions [various]
- al-Manama Declaration (2000)
- Rabat Declaration (1995)

What additional multilateral commitments has the State made to guarantee nondiscrimination in the respect, protection, promotion and fulfillment of the human right to adequate housing and, by extension, the congruent rights to security of person and privacy?

Do not forget that the body of the binding international treaties that the State already has ratified contains binding human rights obligations that take precedence over nonbinding declarations of mere intent or political will. Monitoring these obligations is the covenanted task of the treaty parties [ratifying States], which has been delegated to neutral treaty-monitoring bodies that are supported in their task by government and civil-society monitors. Keep in mind also that some multilateral declarations and many agreements with international financial and development institutions may contain standards less protective of human rights and freedoms than those of a binding nature under human rights treaties. Those agreements may even impede the enjoyment of economic/social/cultural rights. Such agreements are to be evaluated subject to prior human rights treaty obligations—not vice versa.

✓ Local guarantees

Ratifications and international commitments

Which international treaties has the State ratified (acceded or succeeded to) that guarantee the human right to adequate housing, in particular the congruent rights to security of person and privacy?

Constitutional provisions

- Does the State have a Constitution, or equivalent, guaranteeing the right to human right to housing and land, including the congruent rights to security of person and privacy?
- Does the State have a Constitution, or equivalent, guaranteeing the right to local self-determination?
- Does the State have a Constitution, or equivalent, guaranteeing the right to freedom from discrimination?
- Does the State have a Constitution, or equivalent, guaranteeing gender equality?
- Does the State have a Constitution, or equivalent, guaranteeing the rule of law, including access to justice and democratic participation and representation?
- Does the State have a Constitution, or equivalent, guaranteeing the right to the continuous improvement of living conditions?
- Does the State have a Constitution, or equivalent, providing that international relations be conducted within the framework and objectives of human rights, including economic, social and cultural rights?

National legal system

- Is the right to adequate housing, including the congruent rights to security of person and privacy recognized as a distinct right in the country's legal system?

- Is national and local legislation consistent with the human rights right to housing and land, including the congruent rights to security of person and privacy?
- Is national and local legislation consistent with the principle of local self-determination?
- Is national and local legislation consistent with the right to freedom from discrimination? What statutes has the State/government legislated, and are in force, to ensure nondiscrimination in the respect, defense, promotion and implementation of the human right to adequate housing, in particular, the congruent rights to security of person and privacy?
- Do the concerned persons or community have the sense that the terms of their entitlement to the congruent rights to security of person and privacy are equal and consistent with others'?
- Does national and local law maintain the principle of gender equality, particular as it relates to housing, land and the congruent rights to security of person and privacy?
- Do local and national laws and regulations uphold the rule of law, including access to justice and democratic participation and representation in matters related to housing, land and the congruent rights to security of person and privacy?
- Does the State's legal system maintain the right to the continuous improvement of living conditions?
- Are the laws and regulations of the State consistent with the principle that international relations, including international entities operating locally, conduct themselves within the framework and objectives of human rights, including economic, social and cultural rights, in particular, the human right to adequate housing and land, including the congruent rights to security of person and privacy?
- Does the performance of the law-enforcement services guarantee the practice and enforcement of the respect, defense, promotion and implementation of the human right to adequate housing, including the congruent rights to security of person and privacy?
- Are judges and lawyers performing sufficiently and consistently to uphold the human right to adequate housing, including the entitlement of the congruent rights to security of person and privacy? What are some examples?

Institutions

- Is there a sense in the community that the State and government institutions represent their aspirations to self-determination?
- What State and public institutions exist as a guarantee of nondiscrimination in the respect, defense, promotion and implementation of the human right to adequate housing, in particular, the congruent rights to security of person and privacy?
- Do the concerned persons or community have the possibility to exercise an effective role in determining the terms and conditions of the congruent rights to security of person and privacy?

- What State and public institutions exist as a guarantee of gender equality in the defense, promotion and implementation of the human right to adequate housing, in particular, the congruent rights to security of person and privacy?
- What private and nongovernmental institutions exist as a guarantee of gender equality in the defense, promotion and implementation of the human right to adequate housing, in particular, the congruent rights to security of person and privacy?
- What informal institutions (including social norms) function so as to help implement the human right to adequate housing and, in particular, the congruent rights to security of person and privacy?¹²⁵⁸
- What social institutions and consistent social practices exist as a guarantee of gender equality in the defense, promotion and implementation of the human right to adequate housing, in particular, the congruent rights to security of person and privacy?
- How have these institutions actually improved capacity to protect, or actual protection of the congruent rights to security of person and privacy for those in need?

Policies

- What statewide policies are in place and implemented to guarantee of the human right to adequate housing and, in particular, the congruent rights to security of person and privacy?

Keep in mind that the body of the binding international treaties that the State has ratified contain provisions that call for human rights to be implemented in the presence of the over-riding principles of self-determination, nondiscrimination, gender equality, the rule of law, international cooperation in the implementation of human rights, and progressive realization (nonregressivity/ nonretrogression) and the continuous improvement of living conditions.

- How have national policies enhanced local self-determination so as to ensure acceptable levels of the congruent rights to security of person and privacy?
- How have national policies to ensure nondiscrimination positively affected the congruent rights to security of person and privacy in the country?
- How have national gender policies led to improvements in the conditions of the congruent rights to security of person and privacy in the housing sphere, especially for those in need?
- How have the State's policies on access to justice enhanced conditions of the congruent rights to security of person and privacy, especially for those in need?

¹²⁵⁸ The operative concept of institutions here encompasses both bonding and bridging institutions. "Institutions," in this sense, involve the rules of the game under which formal and informal activity is conducted, and include public institutions, private institutions, collective practices and norms, as well as changing norms (e.g., brought about through the youth, technology, economic or demographic shifts, and other emerging behaviours). According to Douglas C. North, 1993 Nobel economics laureate, institutions are "humanly devised constraints that shape human interaction."

- How have national housing policies ensured the continuous improvement of living conditions, in particular the housing rights entitlement of the congruent rights to security of person and privacy, especially for those in need?
- In what ways have national housing policies ensured that international relations and international entities operating within the country respect, defend, promote and fulfil the human right to housing, in particular the entitlement of the congruent rights to security of person and privacy for those in need?
- To what extent have external parties positively influenced your country's official policies or practices in guaranteeing the entitlement to the congruent rights to security of person and privacy?

Programs

- What progressive steps has the State made on a national scale in the past period (year[s], or since your last assessment) to improve housing rights, especially the entitlement of the congruent rights to security of person and privacy? (These may include: law reforms, improved infrastructure, more effective implementation methods, population registry programs, programs to consider ratification of international covenants, and evaluations of housing rights implementation, etc.)

Keep in mind that the body of binding international treaties that the State has ratified contain provisions that call for human rights to be implemented in the presence of the over-riding principles of self-determination, nondiscrimination, gender equality, the rule of law, international cooperation in the implementation of human rights, and progressive realization (nonregressivity/ nonretrogression) and the continuous improvement of living conditions.

- What private-sector or NGO programs are in place and implemented to guarantee the human right to adequate housing and, in particular, the congruent rights to security of person and privacy?
- How have these national programs enhanced local self-determination in a way that has improved the conditions of the congruent rights to security of person and privacy?
- What national programs are completed, ongoing, or planned to ensure nondiscrimination positively affected the congruent rights to security of person and privacy in the country?
- Are there any national gender programs completed, ongoing or planned with the purpose and effect of improving the conditions of the congruent rights to security of person and privacy in the housing sphere, especially for those in need? Do they cover land rights and inheritance issues?
- What are have the State's recent, present or future programs to enhance access to justice that are intended to improve housing and living conditions, especially for those in need? How have those programs implemented to date succeeded in enhancing the congruent rights to security of person and privacy of housing?
- How have national housing programs ensured the continuous improvement of living conditions, in particular the housing rights entitlement of the congruent rights to security of person and privacy, especially for those in need?

- In what ways have national housing programs ensured that international relations and international entities operating within the country respect, defend, promote and fulfil the human right to housing, in particular the entitlement of the congruent rights to security of person and privacy for those in need?
- Has the government in the concerned State cooperated with other State or non-State parties to find identify and adapt good practices locally to improve the congruent rights to security of person and privacy for all those living there?

Projects

- What progressive actions has the State undertaken in the way of limited-scale or pilot projects in the past period (year[s], or since your last assessment) to improve housing rights, especially the entitlement of the congruent rights to security of person and privacy?
- What private-sector or NGO projects are in place and implemented to guarantee the human right to adequate housing and, in particular, the congruent rights to security of person and privacy?
- How have such local projects enhanced local self-determination in a way that has improved the conditions of the congruent rights to security of person and privacy?
- What projects completed, ongoing, or planned to ensure nondiscrimination positively affected the congruent rights to security of person and privacy in the country?
- Are there any gender-based projects completed, ongoing or planned with the purpose and effect of improving the conditions of the congruent rights to security of person and privacy in the housing sphere, especially for those in need? Do they cover land rights and inheritance issues?
- What are have the State's recent, present or future projects to enhance access to justice that are intended to improve housing and living conditions, especially for those in need? How have those programs implemented to date succeeded in enhancing the congruent rights to security of person and privacy of housing?
- How have these projects ensured the continuous improvement of living conditions, in particular the housing rights entitlement of the congruent rights to security of person and privacy, especially for those in need?
- In what ways have public or private projects ensured that international relations and international entities operating within the country respect, defend, promote and fulfil the human right to housing, in particular the entitlement of the congruent rights to security of person and privacy for those in need?
- Has the government in the concerned State cooperated with other State or non-State parties to find identify and adapt good practices locally through projects that actually improve the congruent rights to security of person and privacy for all those living affected?

- Are there foreign State or foreign private interests operating projects affecting the housing and human settlements sector in the country and affecting the situation under review? Are their roles positively affecting the enjoyment of the congruent rights to security of person and privacy?

Budgets

- What public budgets are in place to guarantee the human right to adequate housing and, in particular, the congruent rights to security of person and privacy? How does the budget correspond to actual spending and implementation targets?
- Is the necessary public budget information available to conduct a multiyear assessment of the financial performance of policies, programs and projects affecting housing and living conditions of those vulnerable and needy inhabitants of the country?
- Does the public have access to the budgets of private companies and organizations operating in the housing sphere and having an effect on the housing rights entitlement of the congruent rights to security of person and privacy?
- Does the reliable budget information support the public claims of those responsible for the budgets intended for improvement of living conditions of the needy, particularly in the housing rights entitlement of the congruent rights to security of person and privacy?
- What international obligations and commitments affect the public budget with ramifications on the housing sector, including the entitlement of the congruent rights to security of person and privacy?
- What national obligations and commitments affect the public budget with ramifications on the housing sector, including the entitlement of the congruent rights to security of person and privacy?
- What financial policies affect the public budget with ramifications on the housing sector, including the entitlement of the congruent rights to security of person and privacy?

12.5. Obstacles, impediments, barriers

At the present stage in the monitoring process, you have well identified the elements arising from the human right and legal concept of adequate housing. You have completed the necessary review of international minimum standards that codify the right, along with the corresponding obligations on the ratifying State. Your process has taken you through the moral arguments of social movements and others, who are the very source of human rights throughout history. Those sources fill legal gaps and provide specificity to local human rights priorities and application. In your context, you also have identified which of the binding instruments and other theoretical guarantees apply to the case at hand.

At this point, you are advancing beyond the theoretical dimensions of the human right to adequate housing, its constituent elements and its guarantees. As a housing-and-land-rights monitor, you will now enter the practical dimension and assess the most difficult challenge in the field of human rights: implementation. The following sample questions guide the monitor to prepare needed data and arguments by detailing the present obstacles, impediments, barriers, threats and constraints that have brought about, or threaten to bring about a

violation or deprivation of the right and the element of security and privacy, which you are currently addressing.

When monitoring documenting any stage of this toolkit inquiry, or assessing the conditions affecting any right, it is essential to ensure the highest quality of information possible. It has been said often that information is power. In our case, this is especially true, but the degree of that power will depend largely on the following qualities of your information:

- Completeness
- Level of detail and specificity
- Date (freshness) of the information
- Integrity of the information (i.e., lack of contradictions)
- Effective (articulate, concise, understandable and correct) use of language
- Relevance: linkage to the question of housing and land rights implementation
- Credibility of source (reputation, effective presentation, link to issue and community)

In order to begin assessing the compatibility of the theoretical affirmations of the human right to housing and land with the local reality, you will determine now whether, and to what extent barriers, contradictions, obstacles, and impediments contribute to actual and/or potential violations of the congruent right to security and privacy. This process is aided with the following battery of questions:

- Have officials of a State forced the return (refoulement) of refugees back to their country or origin where they face threats to their persons or property? [See the entitlement and congruent right to “**Movement, resettlement, nonrefoulement, return and restitution**” in the present toolkit.]
- Is the violation of security and privacy in this case a result of colonization, population transfer, ethnic cleansing, implantation of settlers or other related international crime? [See the entitlement and congruent right to “**Movement, resettlement, nonrefoulement, return and restitution**” in the present toolkit.]

✓ **Obstacles to the over-riding principles**

Self-determination

- Are the people dissatisfied with the terms of their security and privacy?
- Do the concerned persons or community lack the possibility to exercise an effective role in determining the terms of security and privacy?
- Does the community lack sufficient information or capacity sufficiently to enjoy the human right to adequate housing, in particular, the entitlement of Resettlement, movement, *nonrefoulement*, return and restitution? [See the “**Information, education, capacity and capacity building**” entitlement in this toolkit.]
- Is illiteracy an impediment to the community’s access to sufficient information to enjoy the human right to adequate housing, in particular Resettlement, movement, *nonrefoulement*, return and restitution? [See the “**Information, education, capacity and capacity building**” entitlement in this toolkit.]

Nondiscrimination

- To what extent is discrimination an issue in realizing the congruent right to security and privacy?
- Is there (does the affected community report) any type of discrimination practiced randomly, occasionally or on the social level, or institutionalized in some form, affecting security and privacy?
- What are the nature of the discrimination and its effects of the entitlement of security and privacy?

Gender equality

- Is there any gender-based discrimination applied in realizing the congruent right to security and privacy?
- Is the discrimination practiced randomly, occasionally or on the social level, or is it institutionalized in some form such that affects security and privacy?
- Does local law on inheritance, divorce or other specialization fail to provide equal rights to males and females of all ages? How?

Rule of law

- Has the State failed to ratify any of the relevant international or regional treaties guaranteeing the right to adequate housing?
- Has the State concerned failed to ratify the Rome Statue on the International Criminal Court?
- Has the State issued any reservations, declarations or understandings to international or regional treaties that possibly limit the affect of right to adequate housing guarantees, particularly so as to affect the entitlement of Resettlement, movement, *nonrefoulement*, return and restitution?
- Has the State government failed to conduct a legal evaluation of housing rights implementation?
- Has the State government failed to present timely reports to the relevant treaty-monitoring bodies covering the right to adequate housing?
- Has the State and its government failed to implement in good faith the Concluding Observations of the various treaty bodies concerning implementation of the right to adequate housing?
- Do the three branches of government (judiciary, legislative and executive) operate with autonomous authority?
- Do the three branches of government coordinate to uphold and enforce a single system of law?

- Does the State lack a Constitution, or equivalent, guaranteeing gender equality?
- Does the State lack a Constitution, or equivalent, guaranteeing the rule of law, including access to justice and democratic participation and representation?
- Does the State lack a Constitution, or equivalent, guaranteeing the right to the continuous improvement of living conditions?
- Does the State lack a Constitution, or equivalent, providing that international relations be conducted within the framework and objectives of human rights, including economic, social and cultural rights?
- Does the country's legal system lack recognition of the human right to adequate housing, including Resettlement, movement, *nonrefoulement*, return and restitution?
- Do legal or procedural shortcomings impede the admissibility of claims invoking international treaty obligations in the defense of human right to adequate housing, in particular, the entitlement to Resettlement, movement, *nonrefoulement*, return and restitution?
- Has the State failed to ratify the Rome Statute on the International Criminal Court, limiting the options to seek justice and remedy for gross violations of the human right to adequate housing?
- Does the political system in the country lack coordination among branches of executive, legislative and judicial government?
- Does the State lack a Constitution, or equivalent, guaranteeing the rule of law, including access to justice and democratic participation and representation?
- Are there contradictions in the national law affecting security and privacy?
- Is there insufficient enforcement of laws and/or policies against arbitrary eviction enforced, including safeguards for vulnerable groups, such as: women, children, orphans, etc.?
- Do local authorities fail to recognize explicitly the application of the international human rights treaties that the State has signed and/or ratified and that guarantee the right to adequate housing, including the entitlement of Resettlement, movement, *nonrefoulement*, return and restitution?
- Has the legislature failed to harmonize national laws with international human rights treaty obligations in the formulation of policies affecting the human right to adequate housing, in particular, with affect on Resettlement, movement, *nonrefoulement*, return and restitution?
- Is national and local legislation inconsistent with the human rights right to housing and land, including Resettlement, movement, *nonrefoulement*, return and restitution?
- Is law enforcement inadequate to ensure enjoyment of the entitlement of Resettlement, movement, *nonrefoulement*, return and restitution?

- Are law enforcement officers in need of training in, and information about the right to adequate housing in order to uphold the entitlement of Resettlement, movement, *nonrefoulement*, return and restitution?
- Do lawyers, prosecutors and/or judges lack awareness and training in the housing and land rights law in order to uphold and defend the entitlement of Resettlement, movement, *nonrefoulement*, return and restitution?
- Has the national court system failed in any way to admit claims of housing and land rights victims, including those whose congruent right to security and privacy has been violated?
- Do the rule-of-law, regulations, or their enforcement fail to govern market forces effectively to ensure the respect, protection, promotion and fulfilment of the right to adequate housing (e.g., governing monopolies, procedures for legal redress)? How does fact affect the enjoyment of the housing rights congruent right to security and privacy?
- Does local law restrict civil society associations from advocating rights or providing services that would advance the respect, defense, promotion and fulfillment of the human right to housing, including XXX?

Nonregressivity / nonretrogression

- Has the State failed to take steps to improve housing rights, especially affecting security and privacy, in the past period (year[s], or since your last assessment)?
- Have new laws degraded protection of right to adequate housing in the recent period, particularly affecting security and privacy?
- Have new policies degraded protection or enjoyment of right to adequate housing in the recent period, particularly affecting security and privacy?
- Have national programs led to a decline in the enjoyment of right to adequate housing in the recent period, particularly affecting security and privacy?
- Have infrastructure or physical features of the built or natural environment led to a decline in the enjoyment of right to adequate housing, particularly affecting security and privacy?
- Have nationwide programs failed to improve, or led to a decline in, the enjoyment of right to adequate housing, in particular the terms of security and privacy?
- Have local projects supported by State or local authorities failed to improve, or led to a decline in, the enjoyment of right to adequate housing, in particular the terms of security and privacy?
- Have public budget allocations failed to improve, or led to a decline in, the enjoyment of right to adequate housing, in particular the terms of security and privacy?
- To what extent has the State government's efforts fallen short in the improvement the terms of security and privacy, especially of the poor, vulnerable and minorities?

International cooperation

- Are foreign State or non-State interests operating in the housing and human settlements sector in the country and affecting the entitlement of security and privacy? Are their roles negatively affecting the enjoyment of security and privacy?
- To what extent have external parties (States, or international financial institutions) negatively influenced your country's official policies or practices in guaranteeing the right to security and privacy?
- Has the State neglected to take steps, "individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources" and capacities to ensure (especially poor and vulnerable) people's security and privacy?

✓ Local obstacles

Institutions

- As far as right to adequate housing and security and privacy are concerned, are there gaps or shortcomings in the State, government and other public institutions positioned to improve living conditions, including the housing-rights entitlement of security and privacy?
- Has there been a recent decrease in the quantity or quality of civil society institutions upon which the community now relies.
- Do the concerned private and nongovernmental institutions fail to guarantee gender equality in the defense, promotion and implementation of the human right to adequate housing, in particular, security and privacy?
- What informal institutions (including social norms) function so as to impede the enjoyment of the human right to adequate housing and, in particular, security and privacy?¹²⁵⁹
- Do these institutions actually lack the will or capacity to protect legal security and privacy for those in need?
- Do these institutions actually lack the will, knowledge or capacity to use the relevant treaty body Concluding Observations in work of monitoring and lobbying officials

Policies

- Do the relevant ministries omit to incorporate international human rights treaty obligations in the formulation of policies affecting the human right to adequate housing, in particular, with affect on XXX?
- What statewide policies are still needed to guarantee of the human right to adequate housing and, in particular, security and privacy?

¹²⁵⁹ The operative concept of institutions here encompasses both bonding and bridging institutions. "Institutions," in this sense, involve the rules of the game under which formal and informal activity is conducted, and include public institutions, private institutions, collective practices and norms, as well as changing norms (e.g., brought about through the youth, technology, economic or demographic shifts, and other emerging behaviours). According to Douglas C. North, 1993 Nobel economics laureate, institutions are "humanly devised constraints that shape human interaction."

- Have the relevant national policies neglected to ensure acceptable levels of self-determination in determining the terms and conditions of security and privacy? How and why?
- Have national policies failed to reach their targets (even despite announcements of official intent) positively to affect security and privacy? How and why?
- Have national gender policies led to improvements in the conditions of legal security and privacy in the housing sphere, especially for those in need? How and why?
- Have the State's policies on access to justice failed to improve conditions of legal security and privacy, especially for those in need?
- Have national housing policies failed to ensure the continuous improvement of living conditions, in particular, by stagnating or degrading the housing rights entitlement of security and privacy, especially for those in need? How and why?
- Do national housing policies lack consideration of, and/or reference to the international human rights instruments relevant to the right to adequate housing and security and privacy, and to which the State is bound?
- To what extent have external parties negatively influenced your country's official policies or practices in guaranteeing the security and privacy?
- Have State housing-policy implementing institutions omitted to seek international cooperation in the human right framework by conditioning international entities operating within the country also to respect, defend, promote and fulfil the human right to housing, in particular the entitlement of security and privacy?

Programs

- What negative steps has the State taken on a national scale in the past period (year[s], or since your last assessment) to improve housing rights, especially the entitlement of security and privacy? These may include declining legal assistance laws, deteriorating infrastructure without repair, declining implementation efforts?



- What related private-sector or NGO programs have failed to enhance the enjoyment of the right to adequate housing, in particular, security and privacy?
- Is there a lack of, and need for national gender programs completed, ongoing or planned with the purpose and effect of improving the conditions of legal security and privacy in the housing sphere, especially for those in need?
- Do existing programs omit to cover land and inheritance rights?
- Have the intergovernmental relations declined between your State and others leading to a decline on options for international cooperation in advancing the respect, defense,

promotion and/or fulfilment of the right to adequate housing, in particular security and privacy?

- Has the government in the concerned State declined to cooperate with other States, intergovernmental agencies, or foreign non-State parties to identify and adapt good practices locally to improve the congruent right to security and privacy?

Projects

- What relevant State actions or omissions have led to the failure of limited-scale or pilot projects in the past period (year[s], or since your last assessment) to improve housing rights, especially the entitlement of security and privacy?
- What private-sector or NGO projects have failed to seek, or fallen short of their intended goal to guarantee the human right to adequate housing and, in particular, security and privacy?
- Have such local projects undermined local self-determination with negative effect on the conditions of security and privacy? How and why?
- Are foreign State or foreign private interests operating projects negatively affecting the housing and human settlements sector in the country and affecting the entitlement of security and privacy? How and why?
- Have projects conducted by local or international entities in the country privatized the provision of housing or public services replaced the role and responsibility of the State and local authorities to fulfil the right to adequate housing, in particular the entitlement of security and privacy for those in need?

Budgets

- Are there obstacles to obtaining adequate information about public expenditures in the housing sector, or in areas affecting the enjoyment of the right to adequate housing, including security and privacy?
- Is there a lack of legal and actual protection of the right to information, including information and documentation on public budget expenditures in the housing sphere related to the entitlement of security and privacy?
- Are public budgets inadequate to guarantee the human right to adequate housing and, in particular, security and privacy?
- Is there underspending of the budget such that impedes the achievement of policy, program or project implementation targets, affecting security and privacy?
- Do public budget items and actual financial performance reflect a lack of sufficient priority given to implementing policies, programs and projects to improve housing and living conditions, affecting also security and privacy, of those vulnerable and needy inhabitants of the country?

- Does the public have access to the budgets and financial performance data of private companies and organizations operating in the housing sphere and having an effect on the housing rights entitlement of security and privacy?
- Does the reliable budget information contradict the public claims of officials and institutions responsible for the continuous improvement of living conditions of the needy, particularly in the housing rights entitlement of security and privacy?
- Do international obligations and commitments negatively affect the public budget with ramifications on the housing sector, including with negative affect on the entitlement of security and privacy?
- What national obligations and commitments affect the public budget with ramifications on the housing sector, including the entitlement of security and privacy?
- What financial policies constrain the public budget with negative consequences on the housing sector, including the entitlement of security and privacy?
- Is the achievement of security and privacy accompanied by an inordinate economic burden?
- Is the State failing to regulate effectively the terms and conditions of housing market, so as to avoid corruption, collusion, fraud, discrimination, nepotism and any arbitrary criteria? How is this affecting the entitlement of security and privacy?
- Is the State prohibiting or impeding individual and community initiatives toward obtaining security and privacy, individually as well as collectively?
- Are State authorities permitting other parties to interfere with community efforts toward obtaining security and privacy, individually as well as collectively?
- Are present government mechanisms and structures inefficient at assisting the needy population from gaining access to security and privacy?
- Does the State lack needed resources to ensure security and privacy, especially for the poor, vulnerable and needy?
- Does national political disharmony impede enjoyment of the right to adequate housing and security and privacy?
- Is there armed conflict in the country impeding the private and/or public institutions from carrying out development and delivering services that safeguard and improve security and privacy conditions?
- Has a natural disaster inflicted parts of the country, creating conditions that negatively affect the right to adequate housing, including the congruent right to security and privacy? Do these conditions impede relief or reconstruction assistance by public and private actors?

12.6. The victims and vulnerable persons: the actors

At this step in the housing and land rights monitoring process, you will have to provide relevant facts and figures concerning the people who already have been affected and those who remain vulnerable. You should also identify and describe precisely which part of the population is affected.

Those affected (victims or vulnerable) individuals and groups could be, for example, an indigenous community historically undergoing discriminatory treatment and land confiscation. It is essential to report the number of affected people, among them proportions of children, women and other groups having special needs, such as the elderly, who may be particularly affected.

In your inquiry into the identities of the victims and the vulnerable inhabitants, it is vital that you determine the place and time, as well as the characteristics of the affected persons in the case. The numbers and any demographic data of the composition of the affected population are critical to understanding the case and characterizing the type of violations. The violation or vulnerability may be multidimensional (or intersectional), involving more than one form of discrimination. Knowing the victims and vulnerable persons can help determine which combinations of housing rights elements are simultaneously affected. In describing the population, knowing the particular vulnerabilities and special needs of the affected persons or community (whether arising from historical factors, gender, age or other demographics) complete the picture that you eventually will present to your intended audience.

✓ Distinguishing between the victims and vulnerable

It is also important for the monitor to distinguish between those victims, whom already have been violated, and those who are vulnerable to future violation or deprivation. Of course, this distinction will be strategically important later in the process, when the housing and land rights monitors and defenders choose an action in response to the violation. You will have to determine then if your intervention is to be remedial or preventive. In any case, an eye to those who remain vulnerable even after the principal violation, as well as after a particular solution to a case, will maintain the monitors focus—as necessary—on the further interventions needed toward the ultimate realization of the human right to adequate housing and land.

The following sample questions guide the monitor to prepare needed data and arguments, in the case of any present obstacles, but focusing on the human dimension in the case of a violation of the congruent right to security and privacy.

Victims

- Identify the type and form of violation of the congruent right to security and privacy:
 - Homelessness
 - Forced eviction
 - Arbitrary demolition
 - Denial of equal inheritance rights
 - Confiscation of property by public officials and bodies
 - Confiscation by private actors (criminal gang, settlers, armed groups)

- Who has been affected by the violation of the entitlement of security and privacy?

How many people have been affected in the same way in the last year (any time period)? Does it demonstrate a pattern?

Identify and provide demographic details of the victims:

- Numbers and proportions of refugees
- Numbers and proportions of migrant workers
- Numbers and proportions of minority persons
- Numbers and proportions of males and females
- Numbers and proportions of indigenous and/or tribal and semitribal people
- Numbers and proportions of elderly, disabled, medically challenged persons with special needs
- Numbers and proportions of members of groups subject to (current and historic) discrimination
- Numbers and proportions of impoverished inhabitants, including those subject to discrimination on the basis of their economic status or work (e.g., Dalits)
- Numbers and proportions of any other relevant group identity of victims



Where does the violation of this right mostly occur (i.e., rural, urban, slums)?

When does this violation mostly occur? Day or night? Weekend? Certain times of the year? Why does the violator choose this timing?

Vulnerable individuals and groups

Identify the type and form of vulnerability to future violation of the congruent right to security and privacy:

- Homelessness
- Forced eviction
- Arbitrary demolition
- Denial of equal inheritance rights
- Confiscation of property by public officials and bodies
- Confiscation by private actors (criminal gang, settlers, armed groups)

Who are the populations most likely to experience the violation of the right to security and privacy? Why are they vulnerable?

Identify and provide demographic details of the concerned vulnerable persons or groups:

- Numbers and proportions of refugees
- Numbers and proportions of migrant workers
- Numbers and proportions of minority persons
- Numbers and proportions of males and females
- Numbers and proportions of indigenous and/or tribal and semitribal people
- Numbers and proportions of elderly, disabled, medically challenged persons with special needs
- Numbers and proportions of members of groups subject to (current and historic) discrimination

- Numbers and proportions of impoverished inhabitants, including those subject to discrimination on the basis of their economic status or work (e.g., Dalits)
 - Numbers and proportions of any other relevant group identity of vulnerable persons
- Explain the insecurity of their situation and give details about the naturally vulnerable populations (women, children, indigenous, slum dwellers, refugees, workers/migrant workers, farmers, etc.).

Focus on multidimensional / intersectional affects

Your case will be enhanced when your information includes emphasis on the particular types of victimization or vulnerability by focusing on the social groups typically subject to multidimensional, or intersectional types of deprivation. The monitor should identify such multiple forms of deprivation for each of the groups already identified in this section (above). This step allows you to identify the nature and causes of the particular affects on certain groups who may be made vulnerable already in addition to, or in advance of the specific housing land rights violation, or anticipated violation. The following sample questions will lead you to clarify this point.

Women

- Are women in the given community or case subject to deprivation of their congruent right to security and privacy?
- What are the reasons for this condition? Is it by some custom, religion or other ideological motivation?
- Is the practice of domestic or social violence against women a cause of women's enjoyment of their congruent right to security and privacy?
- Are the formal or informal terms of inheritance already biased against women in a way that negatively affects the enjoyment of the congruent right to security and privacy?

Children

- Do housing conditions impede acceptable access to public goods and services as an element of the RAH, so as to obviate violence and abuse, including psychological & sexual abuse, within the home or community?
- Are housing conditions, in particular, the rights element of security and privacy, suitable for children to carry out their studies?
- Are housing conditions, including security and privacy, conducive to achieving the highest attainable standard of physical and mental health?

Racial, ethnic or other groups

- Who are the victims or vulnerable persons or community subject to discrimination that includes denial of security and privacy?

- ❑ Have the affected persons or groups (either the vulnerable or the victims) been denied their right to suitable housing, and particularly to security and privacy, because they belong to a specific minority, ethnic or indigenous group?
- ❑ How has historic discrimination, if any, affected the current situation?

✓ **Victims' case documentation form**

12.7. Losses/consequences

✓ **Quantification methodology**

Quantifying violations to the right to adequate housing: a tool for evaluating the effects of demolitions, confiscations and forced evictions

The purpose of this tool is to help determine the value of costs and losses that victims incur as a consequence of the violation their housing rights. Using this tool will aid in the various necessary stages of proper monitoring of specific violations of the right to housing, including:

1. Documentation and recording
2. Monitoring and reporting
3. Quantifying/evaluating
4. Identifying and solving problems
5. Follow-up assessments
6. Fact-finding missions
7. Public information and campaigns
8. Social mobilization
9. Media work
10. Compensation efforts
11. Legal defense and prosecution
12. Monitoring international obligations

The quantification methodology and “Loss Matrix” are designed to aid human rights workers responsible for each stage in the monitoring process, including interventions that are both preventive and remedial. These stages may involve the same individual human rights worker at each stage, or may involve a division of team labor. In either case, this tool also can serve as a vehicle for organizing tasks in a coordinated and complementary way, when more than one individual or organization is involved in the process. For instance, if different teams or organizations are specializing in respective geographical areas, applying this tool commonly aids the process to avoid duplication and the discrediting contradiction of facts.

Whether or not your monitoring objective is legal defense, policy analysis, compensation or public information, the quantification of the effects of the violation strengthen your argument and, consequently, help mobilize support for the movement to end, redress and compensate/obtain restitution for the violations. In particular, your findings will substantiate the assertion that many housing rights violations actually widen and deepen poverty, having a de-development effect on the community and country.

The material and otherwise-calculable costs resulting from the violation are determined for each unit (household) affected and then totaling them. Alternatively, in the case of multiple units affected, a representative sample should be obtained to determine the average values, which then are to be multiplied by actual numbers of units affected.

Other incalculable losses still have to be recorded and reported in narrative terms. Such narrative explanation and analysis will be useful as an accompaniment to this quantification table.

Both short-term and long-term values are to be assessed.(You can follow examples of traffic dispute jurisprudence, or the law pertaining to insurance or divorce cases in your country to come up with a methodology of determining personal injury and pain-and-suffering damages claims for compensation purposes.) Accurate and thorough quantification of costs and losses calls for both a great deal of cooperation between the monitor and the affected community, and a continuous relationship over time.In order to capture many of the values, sustained monitoring and calculation are required over time. It is, therefore, recommended that such monitoring effort be undertaken or coordinated by those who maintain a program and commitment to the affected community over the long term.

This tool seeks to quantify the costs of victims, as well as public, or social costs. For our purposes, the principal victim(s) would be those persons whose property and lives are directly affected by the act, be it a demolition, confiscation and/or eviction, etc.(This tool would be used for any and all categories of violation.) Ancillary or indirect victims would be those who undergo the cost or other harm as a result of an act intended or directed at others. The indirect victims' losses and damage should be included in the overall assessment of the violation's effects.

The middle column, entitled "Methodology," in the quantification table found at the "**Loss Matrix**" link contains commentary on the contents of the calculated costs/losses and provides guidance on how to calculate them. It is there where you will record in your applied version of the "Loss Matrix" the type of items or values totaled under the particular type of cost/loss. There, too, you could cite whether or not the values are losses/costs to the principal victims only, or include those of indirect victims, such as those enduring collateral damage from a house demolition. The "Methodology" description should be as complete but concise as possible, within a short line or two.

It is possible to modify "Loss Matrix" to the user's discretion. (However, we emphasize that any modifications be shared among the community of monitors to ensure compatibility of findings.) For example, certain direct and indirect victims' losses may need to be separately calculated for some reason. In that case, an additional column can be added. In any case, however, it is important to arrive at a global cost figure for the violations under review. The column at the far right under each category of cost should be totaled using the imbedded Excel formula.

Follow the links to access the details of the quantification methodology and "**Loss Matrix.**"

- Victim's material losses
- Victim's nonmaterial losses
- Other than victim's material losses (public costs)
- Other than victim's nonmaterial losses (including social costs)

Contents and methodology for determining each category of loss/costs

Victims' Material Losses

The Structure

The fair market value of the house, shelter or other structure(s). This is probably greater than the cost, as indicated in official records of the most recent tax assessment, for example. That price may be a guide, but is likely to be out of date with the value that would be obtained if the property were to be sold on the market. The market value would also likely be less than the “speculative value,” which is considered to be that value (price) that a speculator, investor or other interested party would anticipate after the demolition/eviction and after converting the structure—if partially retained—for eventual exchange or reassessment. The reference for determining the market value would be reliable real estate agents, banks, or other parties involved in the sale and exchange of such properties. The standard methodology would involve collecting three quotes/estimates and selecting the average, or taking the middle quote as the fair market value.

In the likely event that no such property market is actively issuing quotes on the value of the affected property. The remaining alternative method for determining market value would be the estimated cost of replacing the property at current market values.

Note that the victim incurring the loss in this case would be the owner(s) and or title holder(s), including those owning the property individually, or collectively, under formal title, or by traditional tenure systems.

Plot

The plot and the structure are considered separately in this methodology to accommodate systems where the two aspects of property value are determined separately, or by different methods. For example, a cooperative arrangement may provide for outright title to the structure, but a “share” of the land area under it. It also allows for disaggregating these values in the event of a dispute over one and not the other. In the event that the structure and the land are both held in title by the same owner and the values are customarily assessed in combination, the structure and plot values could be combined in the matrix.

The eviction and/or demolition may not involve the dispossession of land title or ownership of the plot on which the structure stands. In that case, the evaluator would proceed to the next categories and not enter a value for the plot. However, in some cases, such as in Israel, the land plot under a demolished structure may, perforce, be assumed by, or “revert to” the state as “state land” or “national land.” The evaluator must be familiar with the local laws and regulations to determine if that is the case in the event of an eviction or demolition. That may determine whether or not a value is entered in this category of the matrix or not.

In the case of a housing plot being confiscated by the state, determining the value of that plot may be difficult if, again, no market value can be determined for the affected area. In that case, the methodology would involve determining the cost at current market value of a comparable site in another location.

Contents

Each affected party should cooperate with the field workers to provide an inventory of the actual contents lost and damaged in the demolition. The value of those contents for this quantification purpose is the **replacement value** of the items, not the market value. The contents (furniture, clothing, foodstuffs, electronics, housewares items, etc.) would be subject to depreciation and the resale or fair-exchange values would not be sufficient to cover the cost of replacement. The replacement value represents the actual cost of

repurchasing items comparable in quality to those lost or damaged by the demolition. (For heirlooms and other items sentimental value, a replacement costs should be included in this category; however, the nonmaterial loss or irreplaceability should be expressed in the “Victims’ Nonmaterial Losses” section of the matrix, with a narrative either included in the matrix or attached to it.

Collateral damage

This section of the matrix allows for inclusion of the material losses to the indirect victims in particular, including neighbors’ and public property that are affected by the act. In cases of violent eviction or demolition, using bulldozer or explosives, for example, nearby property can be damaged in various degrees, or destroyed.

Infrastructure

This section refers to services and other infrastructure lost in the demolition/eviction/confiscation that would have to be replaced after the event. For example, electricity provided at the original site may have to be replaced by a generator or purchasing energy from an alternate source. Water, previously available from installed or nearby facilities may have to be replaced by purchasing water or hauling it from another source. The resulting added cost—including the relative cost of labor at the going rate of such work for hire, which is beyond the existing regular costs of obtaining same—is the value to be calculated here.

Business losses

If the demolition/eviction/confiscation results in the loss of a business, or a portion of business, that cost is to be included here. Those losses are the subject of subcategories to be detailed below.

Equipment/inventory

This includes the value of machinery and equipment, other installations, such as furnishings and built ins, as well as all stock and supplies. This should include also the property belonging to others lost or damaged in the event. For example, a laundry or repair service would hold clients’ property to be processed and returned. The values of those items are also to be included in this figure.

Prospective income

The loss resulting from inability to deliver goods and services, and the anticipate profit from existing stores, orders, contracts, etc. that would be unfulfilled due to the event. The short-term and long-term affects are to be calculated by different methods. This category of loss follows the method developed locally for determining “goodwill” as an asset, which would include the projected income from a pattern of business developed through the lifetime of the enterprise. [Refer to insurance law methods.]

Mortgage, other debts and penalties

The demolition/eviction/confiscation removes the owner’s relationship with the land and/or structure, contents, livestock, inventory and other matters of material value, such as

materials and work performed for physical improvement to the property. However, the event does not relieve the owner from responsibility to repay for those values obtained on a credit basis. Those values, including any penalties and increased interest resulting from the event, are to be included here for both the short-term and long-term. If a situation prevails, as in many legal systems, that a debtor relinquishes claims (as in a natural disaster, for example), then that cost should nonetheless be calculated and listed under the category of “Other than Victim’s Losses.”

Livestock

The value of livestock lost and the treatment of those injured by the event is calculated here. This would include also the labor costs for time spent in rounding up dispersed livestock at the rate of pay for such work for hire. The calculus for these values includes the loss of anticipated returns from normal sale of, and/or produce from the animals, including their normally anticipated progeny over the short-term and long-term. In the case of the animals’ value as beasts of burden, the returns on their labor are to be included in the figures provided under lost revenue, increased transportation costs, returns from crop loss, or other appropriate category.

Land

The landed property not associated with the affected structure itself is to be calculated on the basis of fair market value, as with the structure and its plot entered above. This could be land adjacent to the dwelling or other affected structure, or land confiscated separately. This land could be lost entirely through confiscation, or its value could be reduced as a result of the eviction or demolition. In the case of eviction, land title might not be lost outright, but the conditions created by the eviction may prevent the owner(s) from returning to or reclaiming their land. In that case, the land in question would be calculated as an outright loss.

Trees/crops

The value of a lost or damaged nonfruit-bearing, or otherwise unharvestable tree or other vegetation would be determined by the cost of purchasing and replanting a comparable replacement. The nonmaterial, aesthetic, or sentimental value of the tree or other vegetation would be included by narrative in the Victim’s Nonmaterial Losses item under Environment or Heritage, as appropriate. The value of harvestable trees and crops would include the value of the replacement itself for fruit-bearing trees and crops, as well as the (short-term and long-term) value of the harvest. The loss of timber would be calculated accordingly also, with the value being the anticipated return from the harvesting or sale of the tree itself.

The ecological loss of vegetation, depending on the nature of the event—if by demolition were by fire or other destructive means—also carries a value. Ecological damage is calculated on the basis of the restoration costs entailed. Collateral damage to wildlife and other natural assets, owing to the damage and the time required to restore it, may be of both a calculable and incalculable loss. Where possible, such calculable values should be included here. Otherwise, those losses are to be recorded in the narrative section of both the Victim’s and Nonvictim’s Nonmaterial Losses, for those losses would be of a more public nature.

Lost/decreased wages/income

The loss of a home, including subsequent short-term or long-term resettlement, may involve the loss of livelihood, whether that livelihood is linked to the dwelling and/or land lost. In any event, wages would inevitably be lost (to victim or her/his employer) for nonproductive time attending to the event and its aftermath. Resettlement can lead to loss of a job or jobs altogether, or necessitate securing alternative employment, especially if temporary or long-term resettlement is far from the regular workplace. To calculate that value, one would subtract the short-term and long-term wages and other income of affected persons from the normal, anticipated wages and other income before the event. Since obtaining new employment and other income involves a loss of certain benefits, such as accumulated vacation leave, seniority and other benefits, the relative loss of those values should be included here if calculable. Job seniority may not be calculable value in monetary terms if it involves merely standing vis-à-vis colleagues. However, if that seniority arguably would have led to promotion with material effect in the short or long terms, that value is to be factored here as well.

Health care

The event itself or its aftermath may have negative health consequences. Social science has recorded the effects of eviction and resettlement upon the increased mortality and morbidity rates of the affected communities. While these notable consequences belong among the Victim's Nonmaterial Losses, the care for these consequences has clearly calculable values. The loss of life, limb and other health effects are the subject of the laws of states for the purposes of calculating victim compensation in insurance and other cases involving law suits. A sample of such methods taken from such statutes could form a composite methodology for calculating victims' health losses here.

The overcrowding, such as in interim or alternative housing arrangements, often leads to negative health consequences for those evicted, as well as for those providing the alternative shelter in their own quarters. The care and treatment of these health consequences (such as influenza, scabies, malnutrition, etc.) are an additional value added to these health care costs.

Interim housing

Eviction, confiscation and demolition victims often seek alternative housing with relatives or friends, either within the community or elsewhere. This housing has a value, which is to be calculated on the basis of fair rental rates for such shelter, whether rent is paid or not. It remains a cost and value that is subsidized in one form or another. It also can lead to an actual expanded definition of what constitutes the victim, for persons and groups offering assistance in various forms can be counted as second tier victims by virtue of the loss—voluntary or otherwise—incur as a result of servicing the persons directly affected by the eviction, confiscation or demolition.

Bureaucratic and legal fees

While under threat of a violation, such as eviction, demolition and confiscation, the eventual victim would likely undergo costs related to both time spent and out-of-pocket costs in order to restrain or defend against the impending violation (if the threat is known in advance). Both the time and monetary costs incurred by both bureaucratic processes and legal advice and defense work should be quantified. Even if the legal advice given is free of charge to the affected person(s), those rendering the advice (NGO, CBO, other *pro bono* service) should

put a value on that service for the purposes of this costing exercise. (The costs of bureaucratic efforts by public personnel is determined below under “Other than Victims’ Nonmaterial Costs.”)

Before the victim(s) can restore their proper housing, s/he conventionally undergoes a procedure and cost toward obtaining a license to rebuild or otherwise restore a dwelling. The costs incurred in this process, including fees, legal service, bribes and other out-of-pocket expenses should be included as a category in its own right.

Alternative/replacement housing

The cost of securing comparable housing on a permanent basis is represented here. (Temporary lodging costs are treated above under “Interim housing.”) The comparable housing is meant to include a dwelling with similar spatial dimensions, infrastructure, location and services as the home lost in the violation. This may involve calculation of the replaceable features of the original dwelling with some adjustments, depending on circumstances. For instance, a comparable dwelling space may be found near the source of livelihood, but may be in a differently priced market, and the adjusted figure would account for that. That dwelling may be comparable in most aspects, but lack services or infrastructure. In that case, the cost of obtaining the replacement services or infrastructure at the local rate would have to be added. Likewise, if the replacement housing is comparable to the original dwelling lost, but its location is less convenient for commuting to one’s source of livelihood or family and original community members, that additional transportation cost would be included in the “Transportation” item below.

Since this category of cost is of a more-or-less permanent nature, it should be cited in the “Long-term” cost column of the matrix. Typically, obtaining permanent replacement housing is a lengthy process; therefore, calculating this costs would be a subject for, and a further argument for follow up monitoring of violation cases.

Resettlement

The expenses of traveling and transport of goods to both interim and replacement housing sites form part of the resettlement cost. This, too, would likely involve the efforts and time on the part of several persons—with equivalent values—in order to locate and secure the short-term and long-term housing alternatives. All related costs should be calculated as much as possible.

Transportation costs

This category is the amount of difference between the amounts spent on transportation as a result of the eviction, demolition or confiscation and the amounts spent (if any) on transportation in the normal conduct of life at the original place of residence. Such values include expenses *and* time spent commuting to and from the source of livelihood, visiting family and community members, going to market, carrying out cultural and religious activities, visiting grave sites, conducting other official or private business, etc.

Victims’ nonmaterial losses

Health

In addition to the cost of medical treatment, the loss of health has a value seldom calculated in monetary terms. Methods for calculating the values of losses of life and limb can be found in local legal practice concerning divorce, traffic and insurance. This loss will have to be described in some detail in order to make your case.

Living space

A reduction in living space can have negative physical and emotional effects, as when an evicted family takes refuge with friends and relatives in small, temporary quarters. Consequences may include nervousness, loss of sleep or skin ailments. Be sure to describe this situation as part of the victim's experience.

Reconstruction licensing

Long waiting and frustration may result from the search for a license to rebuild after demolition, eviction or confiscation. This loss can be measured in time and stress, and should be included here.

Psychological harm

The victims may suffer mental stress and psychological harm, especially in the context of violence during eviction, or the trauma that accompanies homelessness after the violation. Children are particularly susceptible. Their story needs to be told. You may find criteria for quantifying the value of pain and suffering from the specialized practice of local law on traffic and insurance.

Disintegration of family

Displacement and other violations of adequate housing could lead to separation of family members and the deterioration of family relationships. With the psychological depression arising from housing and land loss, some victims may engage in antisocial behavior, such as violence or substance abuse that harms family relations.

Loss of community

Eviction, resettlement or land loss can fragment communities and reduce social capital built up over time. It can separate people from support systems (including child-care arrangements, domestic division of labor, etc.) upon which they depend for livelihood and social activities, while women bear an extra burden of maintaining an uprooted home.

Investment in infrastructure

Even—and especially—the most-impooverished communities have to invest in local infrastructure (e.g., electricity, water, transport, roads), particularly if the municipal institutions exclude them. Separation from these facilities by forced eviction, confiscation or demolition means a total loss of that investment, which may not be quantified, partly because they are the product of volunteer labor.

Investment in sanitation and waste-management systems

A community may provide its own waste-management solutions, however simple it may be, especially in the absence of public services. The vital functions of waste management may no longer be possible because of the separation, causing a loss of labor divisions or disposal options and spell a deterioration in the quality of life, including entitlements to environmental health as a result of the violation.

Investment in security protection systems

Informal communities are typically forced to seek their own security arrangements, since civil police may fail to serve them, or deteriorating living conditions may coincide with increased social violence.

Investment in educational infrastructure

Local communities' arrangements for popular education may be curtailed with eviction, leading also to the disruption of formal education (e.g., lost school days). Each home also is a locus of educational infrastructure, especially where children carry out their homework.

Heritage

For heirlooms and other items of sentimental value, as for land-based identity and culture, a replacement cost should be included in this category. However, the incalculable nonmaterial dimension, or irreplaceability should be expressed in the "Victims' Nonmaterial Losses" section of the matrix, with a narrative either included in the matrix or attached to it.

Victims' nonmaterial costs

Environment/ecology

Various forms of housing rights violation can spell the loss of environmental safety, health and recreation. Displacement and eviction sever the relationship between the inhabitants and their habitat. It may also force them to live in precarious or unsafe environments as a consequence.

Standing/seniority

A home owner who loses her/his housing also loses the status that comes with the property and securely tenured lifestyle. The formerly real or perceived capacity of the victims to advise and support others dissipates with the violation of their right to adequate housing, especially through land loss.

Relocating long-standing communities to new areas makes them low-status newcomers in competition with new, indigenous neighbors. Environmental degradation or rezoning may affect the status of a community negatively, leading to intangible—but sometimes also quantifiable—losses.

Political marginalization

Homeless people in many States are denied the right to vote for lack of a fixed address. Resettlement renders inhabitants politically weak vis-à-vis new neighbors, especially without the benefit of local connections and established relationships.

Social marginalization

Losing one's home and place to live often means losing also the social integration once enjoyed in the former residence. Spatial marginalization to the outskirts of the city may be synonymous with exclusion from social services and infrastructure.

Further vulnerabilities

The loss of home, land and social capital (i.e., productive relations within the community) can leave the victim(s) without protection from the natural elements, and/or without livelihood and sources of income. The homeless woman becomes further vulnerable to threats against her personal security and integrity long after the housing-rights violation.

Other-than-victims' material costs (public costs)

Police

The law enforcement officials engaged in either committing or remedying a housing and land rights violation, for example, represent a cost to the public purse. You can calculate their number, multiplied by the hours/days engaged and by corresponding wages and benefits to derive an estimate of the public costs incurred.

Bulldozers

In some cases (e.g., in Israel), courts issue orders to targeted inhabitants and communities to demolish their own homes. If they do not comply, the State carries out the deed and charges the victim for the service. In other cases, the housing rights monitor would have to calculate the cost of using the equipment and the wages of the operator to determine the public expenditure in carrying out that part of the violation.

Legal practitioners

Lawyers, either arguing against or defending housing and land rights, as well as judges, prosecutors and court staff dedicate time and materials that are covered from public budgets. Their level of effort and cost per unit of time (hours or days) could form a method of calculating these public costs.

Army

Military personnel and equipment used in the violation (or defense against a violation) also represent a cost. Quantifying these costs may be a more-elusive exercise, but it may be useful to pose estimates for your public's consideration.

Other forces

The public bodies may subcontract tasks and functions to private parties; however, those expenditures related to the case at hand would factor among the nonvictim's material costs.

Bureaucratic and personnel costs

The inspection, administrative processing, clerical and other desk work in public institutions may be carried out in connection with your case and paid by the tax payer. Your educated estimate of these values forms part of the public cost scenario.

Other-than-victims' nonmaterial costs

Social costs

Housing rights violations can be a cause or consequence of social unrest in a country. Depressed living conditions within a community often coincide with increased social violence, and dislocation often generates new adversary relations among inhabitants competing over territory and property, either at the original site, or in resettlement. Squalid living conditions also could give rise to practices and pathogens that bear a social cost in the form of declining public health.

Civic order

Linked to adequate housing and other economic and social rights, civic order typically deteriorates commensurate with the deprivation of living conditions. Resistance to eviction and forced relocation, demolitions and dispossession by any party is the natural response to a breakdown in civic order, including that characterized by the State omitting to implement its obligation to respect, defend, promote and fulfill the human right to adequate housing and land.

Political legitimacy

Depending on the facts and scale of a particular situation, a housing and land rights violation could undermine the legitimacy of the political party, government or even State in whose name the violation is committed. Alternatively, resolving and remedying a violation could have the opposite effect of recovering the loss of official credibility and legitimacy.

✓ **Loss matrix**

✓ **Housing contents inventory**

12.8. Duty holders

The professional monitor of the human right to adequate housing should provide a list as complete as possible of the duty holders both legally and morally responsible. This legal duty holder (i.e., the State and its agents) may be operating in conjunction with others in either the violation or the potential solution. The audience of your eventual action, whether they are the general public, journalists, or a prosecutor or judge, will need a clear and complete picture of the legal personalities, those who are responsible for their acts of commission and/or acts of omission, and who does what to whom, from the beginning to the present.

As borne out in the foregoing sections on sources of law and guarantees, the concerned State is always the principal duty holder. The State is the legal personality that is treaty bound by the obligation to respect, protect, promote and fulfil human rights, but also to aid those who have been deprived of them. The State's duties are threefold:

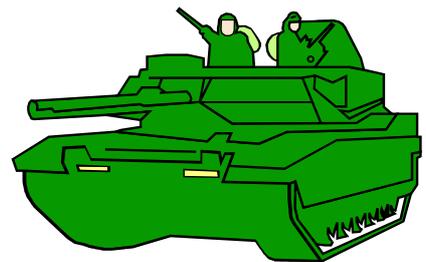
- To avoid deprivation,
- To protect and defend those facing deprivation,
- To provide remedy in the forms of assistance and justice to those deprived.

You may find that the State, as duty holder, has committed acts that cause deprivation, or omitted to protect or remedy a deprivation through the obstacles identified above. One might also find that the duty holder is constrained by other actors or factors, such as natural disaster, or global economic recession.

Identifiable institutions and man-made forces, either internal or external, may be known to contribute to a violation. These may include actors such as the International Monetary Fund (IMF), the World Bank, a multinational corporation or national planners. You may find that these parties are either directly or indirectly responsible for the deprivation, or conditions leading up to it. So, too, are factors such as debt or traditional social practices. Especially when the role of the State is passive (i.e., by denial or failure to protect and ensure remedy to the victims), other actors may come to the fore. Private companies, including multinational corporations, for instance, regularly acquire assets and carry out projects that involve forced evictions and land confiscation. In some cases, the regional and international development banks have their well-articulated policies on compensation/relocation. However, these companies may be the right hand of State policies, or implementers of international public projects. That is why it can be crucial to record the relations between the different actors forming a whole chain of duty holders.

One must not overlook the possibility that duty holders, particularly as violators owing remedy and restitution to victims, might also be members of the community, or even family members of the victim(s). Where does the State duty lie in such a situation?

As the legal personality obliged to respect, defend, promote and fulfil the human right to adequate housing, the State's duty lies squarely in the execution of its human rights obligations to regulate behavior of legal persons within its jurisdiction (and areas where it exercises effective control) in order to uphold rights. The human rights treaties and other instruments provide the guidance on how States—and statecraft—should address human rights violations by third parties not only as matters of civil or criminal law, but also as means to ensure the legitimacy of the concerned government, or even State itself.



To have a full outline of questions for identifying the duty holders and the applicable legal obligations, you can use this "Toolkit" very effectively, since each element of the right to adequate housing that you have identified as relevant to your case has corresponding duty holders.

Primary duty holders: State authorities

- Has the State failed to take to prevent the violation of housing rights, especially security and privacy? What are those neglected steps?

- ❑ Has the State protected the impoverished and vulnerable inhabitants and aided the victims (e.g., by prosecution, return, compensation, etc.) in the violation of housing rights, especially security and privacy? Which are the particular bodies responsible for these preventive and remedial steps?
- ❑ Has the State taken sufficient measures to promote the entitlement of security and privacy (e.g., human rights education, campaigns, public-service announcements, awareness-raising publications, etc)? Which are the specific bodies responsible for those measures?
- ❑ What is the State's relationship with other duties holders regarding the assessed violations? Explain the nature of that relationship. Is it a contract, foreign aid package, nepotism, political patronage, etc.?



Secondary: Have other actors affected the denial of the right to security and privacy in housing?

- ❑ Are other local, non-State actors somehow engaged in the denial of security and privacy? Who are they and what is their role?
- ❑ What role do international financial institutions (IFIs) such as the World Bank, IMF, a regional development bank, or the World Trade Organisation have in determining the policies or conditions affecting security and privacy in the affected community/country?
- ❑ What role and influence do multinational corporations or international development agencies have in determining the policies or conditions of security and privacy in the affected community/country?
- ❑ How are these secondary duty holders responsible for the violation of the right to security and privacy? To what extent do they influence State policies, programs, and laws having an effect on the violation?
- ❑ Do the secondary duty holders have internal policies/codes of conduct regarding housing rights, especially affecting the congruent right to security and privacy? If so, are they publicly accessible?
- ❑ What are the relevant details of those policies or codes? How do they protect the right to adequate housing and the entitlement of security and privacy?
- ❑ Are these conditions part of an implementation contract or other cooperative agreement with State bodies or other partners?
- ❑ Before implementation, do they study the impact the projects will have or consider the possible unintended consequences?
- ❑ If there are several secondary duty holders, what is their relationship to each other, and how do they share responsibility for the assessed violation of the congruent right to security and privacy? What is the relationship between each of them and the State?

- Do local authorities lack sufficient autonomy in housing and community development to apply locally relevant options to ensure the human right to adequate housing, especially security and privacy?
- Do local authorities use their autonomy to protect and influence the central authorities of the State in a positive way, or do they participate in the violation and denial of the State's obligations and national policies?

Assessment

- To what extent is the State responsible for the vulnerability or violation of the housing rights congruent right to security and privacy?
- To what extent are non-State actors responsible for the vulnerability or violation of the housing rights congruent right to security and privacy?

12.9. Actions

The following table of actions (comprised of both preparation and implementation tasks) arranges a variety of possible problem-solving options for you by categorizing them for organizational and selective decision-making purposes. It is not an exhaustive set of options, but merely part of an array of possibilities for you to undertake with the affected community, depending on the present strengths (assets), weaknesses (liabilities), opportunities and threats.

Before selecting your actions, you should conduct a strategic planning exercise. For guidance click [here](#).

Footnotes shown here refer to relevant manuals, training materials, expertise, trainers, recorded experiences and/or methodologies already available to guide your chosen action toward a desired goal/result/solution. Toolkit users are encouraged to consult the HIC-HLRN website regularly for updates and further reference (www.hlrn.org) on constantly evolving updates, including strategies and practices arising from experiences throughout the global HIC and HIC-HLRN community.

Action		Solution
Preparation	Implementation	
Alternative tenure options		
Gather information for community to consider	Develop "limited equity cooperatives" ¹²⁶⁰	Legal secure tenure in adequate housing and

¹²⁶⁰ The limited-equity cooperative is a form of housing tenure in which shareholder residents manage their buildings, within limits imposed by a charter, and have the right to get back what they have paid for their shares plus an allowance for improvements, if and when they decide to leave. See Duncan Kennedy, "The Limited Equity Coop as a Vehicle for Affordable Housing in a Race and Class Divided Society," 46 Howard Law Journal 85-125, 85 (Fall 2002).

tenure options	Inform and train community in pursuing land-tenure options ¹²⁶¹	sustainable land
Community capacity building		
Conduct training for community on their human right to adequate housing ¹²⁶²	Mobilize community in local and national human rights campaigns	Greater community participation in projects, programs and policy formulation with well-defined human rights orientations
Legal service organizations and centers provide legal advice and representation to disadvantaged individuals and communities ¹²⁶³	Organize popular resistance to HRAH violations (demonstrations, petitions, sit-ins, street theater, etc.) ¹²⁶⁴	Community blocks housing rights violations by State and non-State entities
<i>Pro bono</i> (volunteer) lawyers provide legal advice and representation to disadvantaged individuals and communities	Organize national campaign on RAH ¹²⁶⁵	Coordinated community action and reaction to influence State authorities on housing policies
Build capacity of community-based and other civil society organizations to manage projects and campaigns ¹²⁶⁶		CBOs and NGOs more capable to support the affected people in responding rapidly and effectively to crises/violations
Train communities (in HRAH, strategic planning, technical skills, etc.) ¹²⁶⁷	Public agencies provide adequate technical, marketing and research assistance to disadvantaged community	Community better able to mount specific alternatives to official plans

¹²⁶¹ Luanne Warnock, *Sharing the Cost of Land Tenure and Stewardship* (Davis CA: Sustainable Agriculture Research and Education Program, University of California, 1996).

¹²⁶² See Circle of Rights (Washington: 2000); Jules N. Pretty, Irene Guijt, John Thompson and Ian Scoones, *Participatory Learning and Action, A Trainer's Guide* (London: International Institute for Environment and Development, 1995), available from Earthprint at www.earthprint.com; also materials of Peoples' Movement for Human Rights Education, <http://www.pdhre.org>.

¹²⁶³ Gridley Hall and Burton Fretz, "Legal Services in the Third World," *Clearinghouse Review* (December 1990); Jose Diokno, *Developmental Legal Aid in Rural Asean: Problems and Prospects* (Washington: 1981); Richard J. Wilson and Jennifer Rasmussen, *Promoting Justice: A Practical Guide to Strategic Human Rights Lawyering* (Washington: Human Rights Law Group: 2001).

¹²⁶⁴ Morjane Baba, *Guérilla Kit* (Paris: La Découverte, 2003); Mike Prokosh and Laura Raymond, *The Global Activist's Manual: Local Ways to Change the World* (New York: Nation Books, 2002).

¹²⁶⁵ "Global Struggle and National Focus Note" (Geneva: HIC, 1996).

¹²⁶⁶ Kaplan, Allan, *The Development of Capacity* (Geneva: UN Nongovernmental Liaison Service, 1999); Goggey, Shirley, *Rural Community Resource Centers: A Guide for Developing Countries* (London and Basingstoke: MacMillan, 1988).

¹²⁶⁷ Barrameda, Teresita V. and Lea I. Espallardo, *Learning, Reflecting and Acting for a Human Rights Future: A Training Manual for the Education of the Human Right to Housing in Urban Communities* (Quezon City: Process, Inc. and New York: PDHRE, 2000).

	on an affirmative-action basis	
Raise public awareness toward social mobilization through public education ¹²⁶⁸	Mobilize peaceful public protests to housing rights violations	Prevent forced evictions
Enhance monitoring-and-documentation skills and methods (e.g., archiving, statistics, multimedia, etc.) to build strong argumentation ¹²⁶⁹	Urgent Action appeals (organize regional and/or international mobilization) ¹²⁷⁰	Convince public of violations and need for resolution
	Public-information campaigns ¹²⁷¹	
Design and implement alternative planning (community generated techniques in the people's initiative to design their own living environment) ¹²⁷²		Participatory alternative housing projects adapted to the community's needs
Conduct an inventory (enumeration) of community human resources and social capital ¹²⁷³	Organize and divide volunteer labor of affected communities; and to areas to develop alternative plans	Community housing and built environment upgraded on-site as alternative to relocation.
	Community representatives lobby officials and legislators to cooperate with/approve community-proposed alternatives	Obtain adequate relocation site with suitable location, environmental conditions and livelihood options
Community organizing		

¹²⁶⁸ Writing for change: An interactive guide to effective writing, writing for science, writing for advocacy [CD and user's guide] (Oxford: fahamu and IDRC, 2000); International Human Rights Internship Program, Ripple in Still Water: Reflections by Activists on Local- and National- Level Work on Economic, Social and Cultural Rights (Washington: University of Minnesota Human Rights Resource Center, 1997), Chapter 6, online at <http://www1.umn.edu/humanrts/edumat/IHRIP/ripple/toc.html>; Allan McChesney, Promoting and Defending Economic, Social and Cultural Rights: A Handbook (Washington: AAAS and HURIDOCS, 2000) Chapter 7 online at: <http://shr.aaas.org/escr/handbook/>.

¹²⁶⁹ For guidance and methodology in documenting housing rights cases, see HLRN, Urgent Action! HLRN Guide to Practical Solidarity for Defending the Human Right to Adequate Housing [Arabic, English, French and Spanish versions] (Cairo: HLRN, 2003); and HIC Housing and Land Rights Network website: www.hlrn.org.

¹²⁷⁰ For guidance and methodology in building housing rights cases argumentation and mobilise solidarity, see HLRN, Urgent Action! HLRN Guide to Practical Solidarity for Defending the Human Right to Adequate Housing [Arabic, English, French and Spanish versions] (Cairo: HLRN, 2003); and HIC Housing and Land Rights Network website: www.hlrn.org.

¹²⁷¹ Strategic Campaigning (London: Amnesty International, 2003).

¹²⁷² Youth in Unity for Voluntary Action--YUVA and University of Tasmania, "Settlement Upgrading Manual) [Sakkardara alterantive plan] (October 2000); UNCHS, Human Settlements Development through Community Participation (Nairobi, UNCHS, 1991); Nick Waters, The Community Planning Handbook: How People Can Shape Their Cities, Towns and Villages in Any Part of the World (London: Earthscan, 2001).

¹²⁷³ Ibid.

Consult with community representatives and conduct an inventory (enumeration) of community human resources and social capital	Establish a tenants union ¹²⁷⁴	Community presents a common position in defense of its rights and interests
Identify and locate absentee landlord ¹²⁷⁵		
Cooperate and negotiate ¹²⁷⁶		
Learn/use conflict resolution techniques and, including alternative dispute resolution ¹²⁷⁷	Decriminalize actions taken to obtain elements of HRAH	Administrative recognition of tenure and the human right to adequate housing of people without economic access
Mobilize inhabitants	Organize squatter actions and squatter-empowerment interventions ¹²⁷⁸	
Cooperate with National Human Rights Institutions ¹²⁷⁹	Propose and lobby for the implementation of National Plans of Action for Human Rights ¹²⁸⁰	National housing shortage, upgrading needs and land conflicts addressed in a National Plan of Action with provision for law and policy reform

¹²⁷⁴ Tenant organizing resources” on the National Alliance of HUD Tenants website: <http://www.saveourhomes.org/>. Practical steps for forming a tenants union can be found on http://www.radio4all.org/aia/pro_tenant.html.

¹²⁷⁵ “Who is my landlord anyway?” (Seattle: The Tenants Union, 2004), go to <http://www.tenantsunion.org/research.html>.

¹²⁷⁶ For a collection of popular experiences in government-nongovernment cooperation in the field of human settlements, see Habitat International Coalition, Building the City with the People: New Trends in Community Initiatives with Local Governments (Mexico City: Habitat International Coalition, 1997), contents also available on line at HIC General Secretariat website, at <http://www.hic-net.org/library.asp>.

¹²⁷⁷ American Arbitration Association (AAA), Grievance Mediation Procedures (New York: AAA, 1992); AAA, Resolving Your Disputes (New York: AAA, 1993); American Bar Association, Alternative Dispute Resolution: An ADR Primer (Washington: Standing Committee on Dispute Resolution, 1989); Carpenter, Susan L. and W.J.D. Kennedy, Managing Public Disputes: A Practical Guide to Handling and Reaching Agreements (San Francisco: Jossey-Bass Publisher, 1988); Cochrane, Michael G. ed., Attorneys General and New Methods of Dispute Resolution (Washington: American Bar Association, 1990); Costantino, Cathy, A. and Merchant, Christina, S. Designing Conflict Management Systems (San Francisco: Josey-Bass Publisher, 1996); Edelman, Lester, Frank Carr, and James L. Creighton, The MiniTrial (Ft. Belvoir VA: U.S. Army Corps of Engineers Institute for Water Resources, 1989); Edelman, Lester, Frank Carr, Charles Lancaster, and James L. Creighton, Non-Binding Arbitration (Ft. Belvoir VA: U.S. Army Corps of Engineers Institute for Water Resources, 1990); Fine, Erika S. and Elizabeth S. Plapinger, eds. for the CPR legal Program, Containing Legal Costs: ADR Strategies for Corporation, Law Firms, and Government (Butterworth Legal Publishers, 1988); ; Folberg, Jay and Alison Taylor, Mediation: A Comprehensive Guide to Resolving Conflicts without Litigation (San Francisco: Jossey-Bass Publishers, 1984). For a bibliography and resources guide on alternative dispute resolution, see Office of Personnel Management website: <http://www.opm.gov/er/adrguide/Section7.asp>.

¹²⁷⁸ Diana Mitlin and David Satterthwaite eds., Empowering Squatter Citizen: Local Government, Civil Society and Urban Poverty Reduction (London: International Institute for Environment and Development, 2004), available from Earthprint at www.earthprint.com.

¹²⁷⁹ OHCHR, National Institutions for the Promotion and Protection of Human Rights [Human Rights Series No. 19] (Geneva: OHCHR, undated), at <http://www.unhcr.ch/html/menu6/2/fs19.htm>.

¹²⁸⁰ Office of the High Commissioner for Human Rights, Handbook on National Human Rights Plans of Action [Professional Training Series No. 10] (Geneva and New York: OHCHR, 2002), at: <http://www.ohchr.org/english/about/publications/docs/nhrap.pdf>.

Negotiate with municipal authorities to include the community/civil society as a partner ¹²⁸¹	Increase community participation in design, planning, implementation and maintenance of housing ¹²⁸²	Maintained and upgraded social housing
Train in negotiation and mediation skills ¹²⁸³	Negotiation toward reconciling evictions/removals and land grabbing ¹²⁸⁴	Indigenous peoples regain historic land claims
Develop community/local government cooperation	Monitor transparency in decision-making processes	Obtain social housing (provided by government), based on need, with amortization based on minimum wage level (affordability)
	Design infrastructure projects	
	Reform public policy toward providing affordable housing	
	Propose and implement National Shelter Strategy ¹²⁸⁵	
Design national (comprehensive) development plans		
Develop the cooperative sector	Promote cooperative sector initiatives to provide affordable housing	

¹²⁸¹ Janelle Plummer, *Municipalities and Community Participation: A Sourcebook for Capacity Building* (London: Earthscan, 2001); Janelle Plummer, ed., *Focusing Partnership: A Sourcebook for Municipal Capacity Building in Public-Private Partnerships* (London: Earthscan, 2002); Diane Warburton, ed., *Community and Sustainable Development: Participation in the Future* (London: Earthscan, 200X).

¹²⁸² UNCHS, *Human Settlements Development through Community Participation* (Nairobi: UNCHS, 1991).

¹²⁸³ Scott Beattie, "Is Mediation a Real Alternative to Law? Pitfalls for Aboriginal Participants," *Australian Dispute Resolution Journal* 8 (1997) 57; Larissa Behrendt, *Aboriginal Dispute Resolution: A Step towards Self-Determination and Community Autonomy*. (Sydney: Federation Press, 1995).

¹²⁸⁴ Michael Asch and Norman Zlotkin, "Affirming Aboriginal Title: A New Basis for Comprehensive Claims Negotiations," in Michael Asch, ed., *Aboriginal and Treaty Rights in Canada: Essays on Law, Equality, and Respect for Difference* (Vancouver: University of British Columbia Press, 1997).

¹²⁸⁵ UNCHS, *Developing a National Shelter Strategy: Lessons from Four Countries* (Nairobi: UNCHS, 1990); OHCHR, *Handbook on National Human Rights Plans of Action* (Geneva: OHCHR, 2001)

Use/lobby/cooperate with the international human rights system (interventions with factual, legal and political mechanisms of the UN and regional human rights systems) ¹²⁸⁶	Undertake negotiations at international/ multilateral level (whereby negotiators representing the State assert their prior obligations under international human rights treaty law against IFI [World Bank, regional development bank, IMF, etc.] and WTO conditionalities leading to housing rights regressive / retrogressive violations) ¹²⁸⁷	Obtain/ensure continuous regulation of housing market practices (e.g., to ensure tenure security, accessibility of housing, building materials, direct investment, etc.)
		End to practices of land confiscation through foreclosure, adverse possession and eminent domain without adequate, consensual alternatives
Develop / reform / enforce law ¹²⁸⁸		
Initiate/reform legislation and regulatory processes in compliance with the human-right-to-adequate - housing framework	Undertake class action suits (with minimum of [e.g., at least 15] physical or legal persons undertaking a litigation action, generally in the name of a whole group of the population), or public-interest litigation (e.g., India) ¹²⁸⁹	Law and policy enforced to respect, defend, promote and fulfill housing rights
		Law enforcement officers protect population from and implied protection
Collect sufficient data to determine material and nonmaterial losses to victims of housing and land rights violations		Violators prosecuted and punished
		Victims receive restitution and full compensation for violation and material and nonmaterial losses

¹²⁸⁶ See "NGO participation in the activities of the Committee on Economic, Social and Cultural Rights," UN doc. E/C.12/2000/6, 7 July 2000, website: <http://www.hchr.un.ch>; and "Revised general guidelines regarding the form and contents of reports to be submitted by states parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights," UN doc. E/C.12/1991/1, 17 June 1991.

¹²⁸⁷ INCHRITI, Trade, Investment, Finance and Human Rights: Essential Documents (Geneva: INCHRITI, 2001).

¹²⁸⁸ Mario Rosário, "[Action "Tsimba Ga Ku Aka" to build together](#)" (1996); Janeth López, "[Asesoría en vivienda para el proceso de reinserción en Colombia](#)" (1996); K.A. Jayaratne, "[Collaborative Partnership to Improve the Low Income Neighbourhoods](#)," (1996); Michael Shapcott, "[Rupert Pilot Project. A self-Help and Community Rehabilitation Project in Canada](#)" (1996); Leopold Mutembei, "[Struggles of the urban poor to improve their living conditions](#)" (1996); Leonard Chileshe Mulenga, "[The case of Bauleni Upgrading](#)" (1995); Johan Silas, "[The Improvement of Low Cost Housing and Environment](#)" (1996); in Habitat International Coalition, Building the City with the People: New Trends in Community Initiatives with Local Governments (Mexico City: Habitat International Coalition, 1997), contents also available on line at HIC General Secretariat website, at <http://www.hic-net.org/library.asp>.

¹²⁸⁹ "Public interest litigation" (PIL) is a form of litigation filed in a court of law, for the protection of "public interest." Most prominently used in the Indian context, it is not defined in any statute or act. It has been interpreted by judges to consider the intent of public at large. Although, the main and only focus of such litigation is public interest, PIL can be filed in cases involving, e.g., such issues as pollution, "terrorism," road safety, constructional hazards, violated human rights of the poor, the content or conduct of government policy, to compel municipal authorities to perform a public duty, etc. See, for example: Upendra Baxi, "Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India" [revised], in Upendra Baxi, ed., Law and Poverty: Critical Essays (Bombay: Tripathi 1988); Mario Gomez, In the Public Interest: Essays on Public Interest Litigation and Participatory Justice (Colombo: Legal Aid Centre, University of Colombo, 1993); Sampat Jain, Public Interest Legislation (New Delhi, Deep & Deep, 2002); Shri. V.S.Vadivel, "Public Interest Litigation (PIL) A Boon or Bane?" (Legal Services India, 2004),

<http://www.legalserviceindia.com/articles/pil.htm>; see also Help Line Law website: <http://www.helpinelaw.com/docs/main.php3?id=PIL11>.

Conduct national housing and land rights assessment ¹²⁹⁰	Lobby parliament	Law promotes housing and land acquisition and retention in disadvantaged communities consistent with international commitments to promote just patterns of land distribution
	Raise test cases, constitutional challenges through court system	
	Develop laws on properties left without will and testate in order to narrow the class of heirs and prevent fractionation of the ownership	Constitutional reform ¹²⁹¹
Nationwide constitutional review campaign		
Institutional reform		
Establish and maintain an effective Land Trust to support communities subject to discrimination and dispossession		Land ownership expanded for disadvantaged communities on an affirmative-action basis
Monitor and survey practices of public and private lending institutions for discrimination practices and patterns	Lobby for disciplinary action and rehabilitation of institutions to end discriminatory practices	Institutions apply uniform criteria in housing and community development programs, policies and transactions
International human rights system interventions		
Prepare and present collective parallel report to human rights treaty bodies (or submit cases under individual complaints procedures under Optional Protocols)		UN treaty body Concluding Observations coincide with community's evaluation of housing rights conditions and proposals for solutions

¹²⁹⁰ Apply this HIC-HLRN Housing and Land Rights Monitoring Toolkit on a national scale to all elements of the human right to adequate housing.

¹²⁹¹ See, for example, "The history of constitutional reform in Kenya," World History Archives (2004), <http://www.hartford-hwp.com/archives/36/index-bbh.html>.

Raise cases and submit briefs before regional human rights courts and commissions ¹²⁹²		State compelled to implement its treaty obligations to respect, defend, promote and fulfill the human right to adequate housing and land
Use Concluding Observations in public information and media campaigns, litigation		
Submit cases to UN Commission on Human Rights 1503 Procedure		States intervene to resolve impasse in housing rights violation case
Submit question/case to UNESCO complaints procedure		States intervene to resolve impasse in housing rights violation case
Legal defense		
Develop and deliver legal literacy and litigation strategy training ¹²⁹³	Provide legal-aid services to defend individual and community housing and land rights	Judicial rulings include legal precedents for future litigation and law reform to ensure individual and group rights to adequate housing and land
Collect detailed data on violations, perpetrators, values of losses and other consequences ¹²⁹⁴	Present admissible evidence in litigation on behalf of victims ¹²⁹⁵	
		Crimes and perpetrators prosecuted and punished
		Judicial remedies, including legal precedents for future litigation and law reform to ensure gender equality
Develop gender-awareness and gender-justice training for communities, police,	Provide legal-aid services to defend equal rights to housing and land for	Victims receive restitution and full compensation for violation and material and nonmaterial

¹²⁹² Litigating Economic, Social and Cultural Rights: Achievements, Challenges and Strategies (Geneva: COHRE, 2004), available at <http://www.cohre.org/library/Litigating%20ESCR%20Report.pdf>; Amicus Curiae in Grupo Interdisciplinario por los Derechos Humanos v. Colombia [submitted by COHRE to Inter-American Commission on Human Rights on case of housing destruction by paramilitary groups in Ituango and El Aro, Colombia], on line at <http://www.cohre.org/downloads/amicuscolombia1.doc>; Amicus Curiae in Justiça Global, et al. v. Government of Brazil, Inter-American Commission on Human Rights [submitted by COHRE on actual and threatened violations of housing rights, including forced evictions, with the planned Alcântara Spaceport expansion, in Brazil] available at <http://www.cohre.org/downloads/amicusbrazil1.doc>; Amicus Curiae in CELS & CEJIL v Argentina, Inter-American Commission on Human Rights [submitted by COHRE to Inter-American Commission on Human Rights on case local authorities conducting forced evictions in Barrio Ejército de los Andes, Provincia de Buenos Aires, Argentina], available at <http://www.cohre.org/downloads/amicusargentina1.doc>. See also COHRE Case Law Database on line at <http://www.cohre.org/tframe.htm>; Case law database for economic, social and cultural rights available on the ESCR-Net website at <http://www.escr-net.org/>; found in “Case Law” at http://www.escr-net.org/EngGeneral/Case_law.asp, or “Jurisprudencia” at http://www.escr-net.org/EspGeneral/Case_law.asp.

¹²⁹³ Margaret Schuler and Sakuntala Kadirgamar-Rajasingham, Legal Literacy: A Tool for Women's Empowerment (Washington: Women, Law and Development, OEF International, 1992).

¹²⁹⁴ See “Housing and Land Rights Violation Case Documentation Form” in this toolkit.

¹²⁹⁵ Domestic Implementation of International Human Rights: Litigating Economic, Social and Cultural Rights, on Human Rights Internet website at http://www.hri.ca/fortherecordCanada/vol1/guide-part_11.htm; Case Law Database for Economic, Social and Cultural Rights available on the ESCR-Net website at <http://www.escr-net.org/>; found in “Case Law” at http://www.escr-net.org/EngGeneral/Case_law.asp, or “Jurisprudencia” at http://www.escr-net.org/EspGeneral/Case_law.asp.

lawyers, prosecutors and judges ¹²⁹⁶	women and gender-discrimination victims	losses ¹²⁹⁷
Develop judicial procedures and expertise to provide for land-consolidation courts	Consolidate and reduce unstable “in-common” tenancy to maintain family and community land retention, especially to uphold land base for minority groups and indigenous peoples	Communities restore and retain their land base
Media cooperation and campaigns		
Conduct training for media professional in the human right to adequate, corresponding obligations, interviewing victims, quantifying victims’ losses and community follow-up ¹²⁹⁸	Meet journalists and media professionals to follow-up on training and present new documentation and information on developments	Informed public supports community alternative-development and/or anti-eviction proposals
Provide media outlets with economic analyses of various possible alternatives (on-site upgrading v. relocation)		
Provide media outlets with alternative plans and community proposals for their development		
Policy reform		
Reverse and prosecute discriminatory practices toward disadvantages individuals and communities by both public and private lending institutions		Fairness-in-lending policy formulated and enforced for housing and land purchase, rehabilitation and sustainability
Expand public-private initiatives to stimulate investment and multipurpose development communities		Integrated development with low-cost housing on public and donated lands
Provide housing and relief		
Exchange expertise in temporary housing and	Organize emergency relief (immediate provision of	Eviction and displacement victims receive emergency

¹²⁹⁶ Shelter Rights Initiative, Gender Specific Rights Litigation and Protection Strategies (Lagos: SRI, 1998); SRI, Manual on Judicial Protection of Economic, Social and Cultural Rights (Lagos: SRI, 2000).

¹²⁹⁷ “Seminar on the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms,” Netherlands Quarterly on Human Rights Special Issue (1993); S. Nadasen, “Restitution, Reconstruction, Reconciliation and Restribution: Land Reform—Balancing the Interests of the Dispossessed, the Homeless and Development,” Stellenbosch Law Review (1997), 360–77. For a bibliography of global restitution and compensation experience, go to: <http://userpage.fu-berlin.de/~theissen/biblio/>.

¹²⁹⁸ HIC-HLRN training module on “Housing and Land Rights for Media Professionals.”

relief provision	housing and/or housing resources at no cost to those denied: water, medical services, economic relief, housing resources and building materials, etc.)	(temporary) housing
Resource mobilization		
Conduct an inventory (accounting) of community (human and material) resources	Design, adapt and implement alternative-finance schemes; (e.g., small savings toward common projects) and self-financing for needy inhabitants (with freehold tenure options) ¹²⁹⁹	Upgrading and generally improved living conditions on site, as alternative to relocation
	Establish and operate nonbank institutions as lenders and builder of adequate, low-income housing ¹³⁰⁰	
	Organize self-help cooperation through rotating community credit (building & upgrading infrastructure, social production of housing ¹³⁰¹)	

¹²⁹⁹ Alternative Financing Models: Hybrids of Homeownership Mutual Housing (The Enterprise Foundation, 2003); "Capitalizing on Collaboratives: New Partners for Comm. Dev. Finance" (Washington: Center for Policy Alternatives, July 1996); Enrique Ortiz, FONHAPO: The Experience of the National Fund for Low Income Housing in Mexico (London: International Institute for Environment and Development, 1998), available from Earthprint at www.earthprint.com.

¹³⁰⁰ Jeffrey Carmichael and Michael Pomerleano, The Development and Regulation of Non-Bank Financial Institutions (Washington: World Bank, 2002); Indonesia: Housing Finance for the Urban Poor (Manila: Asia Development Bank, 2001); Peer Smet, "Indian Housing Finance Alliances and the Urban Poor," Global Built Environment Review Vol. 2, No. 1, 58–66, <http://www.edgehill.ac.uk/gber/pdf/vol2/issue1/Eight.pdf>.

¹³⁰¹ Joseph Schechla, ed., *Anatomies of a Social Movement* (Cairo: HIC-HLRN, 2004); Habitat International Coalition, *Building the City With the People. New Trends in Community Initiatives in Cooperation with Local Governments* (Mexico City: Habitat International Coalition, 1997); Prem Pangora, *Citizen's Initiatives for environmental improvements: The case of River Sabarmati, Ahmedabad, India* (Mexico City: Habitat International Coalition, 1997); Joël Audefroy, *Construyendo la Ciudad con la Gente. Nuevas tendencias en la colaboración entre las iniciativas comunitarias y los gobiernos locales* (Mexico City: Coalición Internacional para el Habitat, 1998); Gustavo Romero, La producción social del hábitat: reflexiones sobre su historia, concepciones y propuestas (2000), available on line at http://www.hic-net.org/online/Romero_PSH-intro.pdf; Eike Jacob, *Social Production of Habitat in Latin America* (2003); Habitat International Coalition-América Latina, "Social Production of Habitat. Conceptual framework" (2003); Enrique Ortiz, Social Production of Habitat: Marginal option or reality-transforming strategy? (2003), available on line at http://www.hic-net.org/online/Ortiz_SPH.pdf; Enrique Ortiz, *Vivitos y Coleando. 40 años trabajando por el hábitat popular en América Latina* (2002).

	<p>Immediate, diligent and effective increase in advice-and-lending services, on an affirmative-action basis within public lending institutions</p>	
	<p>Develop microcredit schemes (for upgrading and construction, but with social and legal components providing HRAH content)¹³⁰²</p>	
<p>Analyze economic costs of the various possible alternatives (on-site upgrading v. relocation)</p>		
<p>Raise material support (raise funds) from private, public and intergovernmental donors), including microcredit¹³⁰³</p>		
<p>Plan/undertake reconstruction,¹³⁰⁴ upgrading and general improvement of living conditions (with multiple parties cooperating)</p>		
<p>Restoration and increase housing subsidy programs for low-income people, including by tax reform (e.g., reversal of tax cuts for the wealthiest tax payers)</p>		<p>Low-income people pay no more than 30% of monthly incomes for adequate housing</p>
<p>Conduct an inventory of community financial and material resources</p>	<p>Develop community savings schemes</p>	<p>Social production of habitat: Community/self-financed upgrading of housing and improvement of living conditions</p>

¹³⁰² Nazrul Islam, [Grameen Bank Bangladesh. A credit institution for housing](#) (1996); Jaffer Murtaza, [The Tanzania-Bondeni Community Lands Trust](#) (1996).

¹³⁰³ Nazrul Islam, [Grameen Bank Bangladesh. A credit institution for housing](#) (1996); Jaffer Murtaza, [The Tanzania-Bondeni Community Lands Trust](#) (1996).

¹³⁰⁴ See York University Postwar Reconstruction and Development Unit, website: <http://www.york.ac.uk/depts/poli/prdu>.

Conduct public budget analysis from the housing rights perspective ¹³⁰⁵	Develop participatory budgeting ¹³⁰⁶ (ensuring that necessary programs and projects are budgeting according to housing rights obligations)	Public budgets comply with State's housing rights obligations to ensure "progressive realization" with "maximum of available resources"
Training other actors (outside community)		
Train civil servants in HRAH (including international treaty obligations upon the State and local authorities)	Reform urban/land planning criteria, procedures and objectives to harmonize with local community needs and criteria ¹³⁰⁷	Physical planning integrates human rights obligations, language and priorities directed to needy and vulnerable communities
Train lawyers in HRAH, (including international treaty obligations upon the State, as well as litigation strategies) ¹³⁰⁸	Legal argument, litigation and judicial decisions invoke international norms and treaty obligations	Legal recognition of traditional legal and tenure systems and provision of secure title ¹³⁰⁹
		Legal recognition of tenure and the human right to adequate housing of people without economic access

¹³⁰⁵ Ravikant Joshi, *A Case for Reform: how municipal budgets can change our cities* (Mumbai: YUVA Books, 2001); Maria Socorro I. Diokno, "A Rights-based Approach towards Budget Analysis" (Washington: International Human Rights Internship Program, 1999); Institute for Development Policy Analysis and Advocacy—IDPAA (Atiur Rahman et al.), *Alternative Budget Analysis: A Series of Studies on the National Budget for the Perspective of Poverty Eradication* [three volumes: Budget and the Poor, The Budget-making Process, People's Budget: An Alternative Exercise Using Participatory Tools] (Dhaka: University Press Ltd., 2002).

¹³⁰⁶ Rebecca Abers, 1998, "From clientelism to cooperation: Local government, participatory policy, and civic organizing in Porto Alegre, Brazil"; *Politics and Society*. 26(4)c 511–37; Rebecca Abers, *Inventing Local Democracy: Grassroots Politics in Brazil* (Boulder: Lynne Rynner, 2000); Baierle, Sergio, 1998, "The Explosion of Citizenship: The Emergence of a New Ethical-Political Principal in Popular Movement in Porto Alegre, Brazil," in Sonia E. Alvarez, Evelina Dagnino and Arturo Escobar, *Cultures of Politics/Politics of Cultures: Revisioning Latin America Social Movements* (Boulder: Westview Press, 1998); Sousa Boaventura de Santos, "Participatory Budgeting in Porto Alegre: Toward a Redistributive Democracy." *Politics and Society* 26(4) (1998), 461-509; *Quem é o público do Orçamento Participativo: se perfil, porque participa, e o que pensa do processo* (Porto Alegre: Cidade de Porto Alegre, 1999); Luciano Fedozzi, *Orçamento Participativo: Reflexões sobre a experiência de Porto Alegre* (Porto Alegre: Tomo Editorial, 1998); Pedro Jacobi and Macro Antonio Carvalho Teixeira, "Orçamento Participativo: co-responsabilidade na gestão das cidades," *São Paulo em Perspectiva*, 10 (3) (1996) 119–28; Brain Wampler, "Orçamento Participativo: Os paradoxos da participação e governo no Recife," *Cadernos de Estudos Sociais*, 15(2) (1999), 343–73; Brian Wampler, *A Guide to Participatory Budgeting* (October 2000). Internet sources: Participatory budget: The Case of Porto Alegre (Brazil) at:

<http://www.goethe.de/br/poa/buerg/en/framebag.htm> (2004);

World Bank: http://www.worldbank.org/html/fpd/urban/urb_age/porto.htm,

<http://www.worldbank.org/wbiep/decentralization/Topics13.7.htm>, <http://www.worldbank.org/participation/>; Inter-American Development Bank: <http://www.iadb.org/exr/IDB/stories/2000/eng/JAN00E/c200c1.htm>,

<http://www.iadb.org/exr/idb/sidebars/2000/eng/c200c4.htm>; Conference Proceedings on Participatory Budgeting:

<http://www.idre.ca/lacro/docs/conferencias/stren.html>, <http://www.ssc.wisc.edu/~wright/deliberative.html>,

<http://www.pqualc.org>.

¹³⁰⁷ UNCHS, *Developing a National Shelter Strategy: Lessons from Four Countries* (Nairobi: UNCHS, 1990); OHCHR, *Handbook on National Human Rights Plans of Action* (Geneva: OHCHR, revised draft May 2001).

¹³⁰⁸ Shelter Rights Initiative, *Gender Specific Rights Litigation and Protection Strategies* (Lagos: SRI, 1998); SRI, *Manual on Judicial Protection of Economic, Social and Cultural Rights* (Lagos: SRI, 2000).

¹³⁰⁹ Peter R. Grose, "An Indigenous Imperative: The Rationale for the Recognition of Aboriginal Dispute Resolution Mechanisms." *Mediation Quarterly* 12 (4) (summer 1995), 327–38.

		Judge issues restraining orders halting forced evictions and removals, land confiscation, property destruction and other housing and land rights
Train judges in HRAH (including international treaty obligations upon the State) ¹³¹⁰		Judicial decision orders return, restitution and compensation for evictees, IDPs, refugees ¹³¹¹
Train law enforcement officials in the human right to adequate housing (including international treaty obligations upon the State)	Quantify losses/costs of housing rights violations	Victims compensated for losses ¹³¹²
Transitional justice (post conflict) ¹³¹³		
Document details on violations, perpetrators, values of losses and other consequences ¹³¹⁴	Present evidence to truth (and reconciliation} commission ¹³¹⁵	Public aware of population transfer, mass dispossessions and other crimes committed during conflict

¹³¹⁰ Shelter Rights Initiative, Manual on Housing Rights Protection Strategies for Lower Court Judges (Lagos: SRI, 2000).

¹³¹¹ UNCHS, Housing and Property Rights in Kosovo (Pristina: UNCHS, March 2000).

¹³¹² For elaboration of the principles of compensation to victims of human rights violations, see Theo Van Boven, "Basic Principles and Guidelines on the Right to Reparation for Victims of Gross Violations of Human Rights and Humanitarian Law, Appendix 8 ("The van Boven Principles"), Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, E/CN.4/Sub.2/1996/17; also E/CN.4/1997/104, annex and subsequently revised as "Basic principles and guidelines on the right to a remedy and reparation for victims of violations of international human rights and humanitarian law," by Cherif Bassiouni, independent expert, Commission on Human Rights (E/CN.4/2000/62, annex). John Dugard, "Is the Truth and Reconciliation Process Compatible with International Law? An Unanswered Question," South African Journal on Human Rights Vol. 13, 258–68. For quantification methodology, see HIC-HLRN Loss Matrix in this Housing and Land Rights Monitoring Toolkit, or go to www.hlrn.org; for implementation, see to UNCHS, Housing and Property Rights in Kosovo (Pristina: UNCHS, 2000).

¹³¹³ For a general bibliography on transitional justice, go to <http://www.peacemakers.ca/bibliography/bib26reconciliation.html> or <http://userpage.fu-berlin.de/~theissen/biblio/> (on experiences of Germany and South Africa).

¹³¹⁴ Use "Housing and Land Rights Violation Case Documentation Form" in this toolkit.

¹³¹⁵ Kerry Able, and Jean Friesen, eds., Aboriginal Resource Use in Canada: Historical and Legal Aspects (Winnipeg: University of Manitoba Press, 1991); Alfred, Gerald R., and Franke Wilmer. "Indigenous Peoples, States and Conflict," in D. Carment and P. James, eds., Wars in the Midst of Peace: The International Politics of Ethnic Conflict (Pittsburg: University of Pittsburgh Press, 1997); Michael Coyle, "Claims Resolution: A Healing Process?" in J. Oakes, R. Riewe, K. Kinew and E. Maloney, eds., Sacred Lands: Aboriginal World Views, Claims and Conflicts (Calgary: Canadian Circumpolar Institute, 1998); Robert Rotberg and Dennis Thompson, eds., Truth v. Justice: The Morality of Truth Commissions (Princeton: Princeton University Press, 2000); Truth and Reconciliation Commission of South Africa Report, Vols. 1–5 (Cape Town: Juta, 1998); Theo van Boven, "Study Concerning the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms" [final report of Special Rapporteur] (Geneva: Commission on Human Rights, Subcommission on Prevention of Discrimination and Protection of Minorities) E/CN.4/Sub.2/1993/8. For an extensive bibliography of sources, go to: <http://userpage.fu-berlin.de/~theissen/biblio/>.

	Issue amnesty for past crimes and perpetrators of forced evictions/removals ¹³¹⁶	Social reconciliation
	Present evidence to Truth and Justice Commission	Social reconciliation
		Crimes and perpetrators prosecuted and punished
	Present evidence to “mixed courts”	Return, restitution and compensation for evictees, IDPs, refugees ¹³¹⁷

Of course, an illustrative list of potential interventions does not sufficiently convey the wealth of local governmental and nongovernmental experience available for review and exchange. Moreover, it is, as always, at the local level of implementation where human rights, including the human right to adequate housing, are transformed from moral suasion and legal theory to implementable reality. Therefore, both the practical, case-based perspective and the theoretical-and-comparative perspective become mutually dependent, mutually reinforcing and, hence, equally needed.

12.10. Evaluation & follow-up

Evaluation of any action you choose should be an ongoing function parallel to the events and development as they happen. This note offers some simple guidance on the specific evaluation tasks you will face. They are described in stages, with particular emphasis on the final stages and the vision for the future.

For our purposes, evaluation and follow-up imply two levels of assessment: (1) evaluation the action and (2) following the situation after the action concludes. The former is internal in nature and helps your organization, community or network become a learning institution by building on the lessons (successes, near-successes, failures and unanticipated results) of your efforts. The latter enables you, your organization, community or network to test the outcome to ascertain whether or not it has tangible benefits for those persons, communities, populations and peoples affected and targeted in your action. Ultimately, the follow-up process should lead you to the necessary conclusion as to what, if anything, to do next.

✓ Evaluating the action

¹³¹⁶ John Dugard, *Dealing with Crimes of a Past Regime: Is Amnesty Still an Option?* [The Third Manfred Lachs Memorial Lecture] (1999); Carla Edelenbosch, “Human Rights Violations - A Duty to Prosecute?” *Leiden Journal of International Law* Vol. 7, No. 2 (1994), 5–22; Dianne F. Orentlicher, “Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime,” *The Yale Law Journal* Vol. 100, No. 8 (1991) 2537–615.

¹³¹⁷ Uma Dhupelia Mesthrie, *The Truth and Reconciliation Commission and the Commission on Restitution of Land Rights: Some Comparative Thoughts* [“The TRC: Commissioning the Past” conference] (Johannesburg: University of the Witwatersrand, 1999); S. Nadasen, “Restitution, Reconstruction, Reconciliation and Redistribution: Land Reform: Balancing the Interests of the Dispossessed, the Homeless and Development,” *Stellenbosch Law Review* (1997) 360–77; David B. Southern, “Restitution or Compensation: The Land Question in East Germany,” *International and Comparative Law Quarterly* Vol. 42, No. 3 (1993), 690–97; David B. Southern, “Restitution or Compensation: The Open Property Question,” *German Politics* Vol. 2, No. 3, 436–49. For a bibliography of global restitution and compensation experience, go to: <http://userpage.fu-berlin.de/~theissen/biblio/>.

Evaluation your action includes three integrated but conceptually distinct processes: (1) monitoring progress, (2) formative evaluation and (3) measuring the development impact.

1. Monitoring implementation progress

Monitoring the implementation of your action is the most frequent—indeed constant—aspect of the learning process. This should involve periodic reports on production of outcomes, financial accounting and levels and nature of inputs (e.g., technical assistance, training, social production of habitat). The periodicity of the reporting could be quarterly, if the action is expected to proceed for a year or more. Alternatively, reporting could be more frequent, especially if it is a short-term action, or if it takes place in a fast-paced environment such as a threatened eviction or natural disaster situation, and particularly if extreme deprivation of human well-being is at stake.

The responsibility for monitoring is to be shared by a group of actors. Remembering that, like in the “Toolkit” guide for strategic planning, the more participation, the more-favorable the result (“more participation = more dignity”).

Reporting on the action, based on the monitoring of implementation progress, should be specifically assigned, most probably to the coordinator of the action or the chief executive officer of the principal body organizing the action. The audience of the reports should be both internal, for the benefit of those engaged, and external, depending on the obligations you have to supporters, members and/or funders. The assignment of duties, division of labor and timing of evaluation events should be completed also in the planning stage of your activity (see [“Strategic planning”](#) link above).

2. Formative Evaluation Indicators of Accomplishments

Midway in the process of your action, you should conduct an assessment of the *quality and adequacy* of the tasks undertaken by assessing the actual outcomes against the standard of expected results you already have set out for yourselves.

You should develop an evaluation plan and data collection instruments as part of the project implementation. That means, you should plan ahead to collect information that will verify your intended results, whether that be in the form of documents, press reports, opinion surveys, affidavits, water-quality test results, etc. The formative evaluation activities probably will require site visits, rapid assessment and low-cost data collection techniques such as focus groups, interviews, training evaluation forms, and simple targeted studies to identify key issues for action management.

3. Development-impact Assessment and Indicators

Development-impact assessments that you and your organization/community undertake less frequently, perhaps on an annual basis, will track changes in the outcomes, in order to determine the degree to which the larger environment of the human right to adequate housing is improving—or deteriorating, as the case may be.

Your action could—and should—produce an initial baseline report at the initial stage that coincides with your first inventory, site visits and/or assessment arising from your first use of this “Toolkit.” That report should record what you consider to be the key assumptions going into the activity, and will serve you in the subsequent stages of your action, especially at the

final stages, to test those assumptions and adjust strategies to incorporate the knowledge you have created.

For the purpose of your organization's integrity and the tactical responses you may require in the future, your action should be seen critically in the light of the purposes and goals you set out in your planning process (see "**Strategic planning**" link above). Some sample questions to include in your evaluation include the following:

- How does the action relate to your purpose statement of your organization/ community?
- How does the action relate to the goals(s) of your organization/community?
- Was the action planned or spontaneous?
- What was the expected result?
- Was that result achieved? If not, why?
- Were unintended results achieved?
- What were the lessons learned from this activity?
- How did this activity build/strengthen/develop your organization? What gains did you and others realize?
- How did your organization/community record and report the experience?
- How did your organization/community share and exchange the experience and lessons learned with others? Who? When? Where? What was the result?
- Has there been follow-up? Why? What? Who? When? Where?
- Click on "Following up the situation" for guidance on the last point.

✓ **Following up the situation**

Each successful or unsuccessful action needs to be tested further for at least two reasons: (1) in order to determine if the achievement is real or merely theoretical and (2) to determine what your next move is going to be.

The now famous *Irene Grootboom and Others v. Oostenberg Municipality*¹³¹⁸ case before the South African Constitutional Court (1999) found in favor of the plaintiffs by applying the principles of international law on the human right to adequate housing and the legal strictures on the practice of forced eviction. The Court ordered the Western Cape Provincial Government and the Oostenberg Municipality to grant housing and utilities to the 390 adults and 510 children wrongfully evicted community at Wallacedene their right to return and remain and to benefit from public services corresponding to that right. Until today, that decision has not been fully implemented.

Likewise, the landmark case of *Qa'dan v. Katzir*,¹³¹⁹ in Israel, resulted in the 2000 High Court ruling that Katzir (a settlement built on Palestinian land, directed and funded in large part by the Jewish Agency) acted unlawfully when discriminating on the basis of "nationality" by excluding a non-Jewish from obtaining housing there. Until this day, that decision has not been honored, the indigenous Adil and Iman Qa'dan family of Arab citizens of Israel do not have their home in Katzir, and the Jewish Agency continues to provide land and housing benefits only to those holding "Jewish nationality," and to the exclusion of others.

¹³¹⁸ Irene Grootboom and Others versus Oostenberg Municipality, Cape Metropolitan Council, the Premier of the Province of the Western Cape, National Housing Board, and Government of the Republic of South Africa, Constitutional Court of South Africa Case No: 6826/99..

¹³¹⁹ Qa'dan versus Israel Lands Administration (ILA), Ministry of Construction and Housing, Tal-Iron Local Municipal Council, Jewish Agency for the Land of Israel (JA), KATZIR: Cooperative Association for Community Settlement in Samaria Ltd., and the Farmers Association; Case No. 6698/95 of the Israeli Supreme Court, sitting as the High Court of Justice.

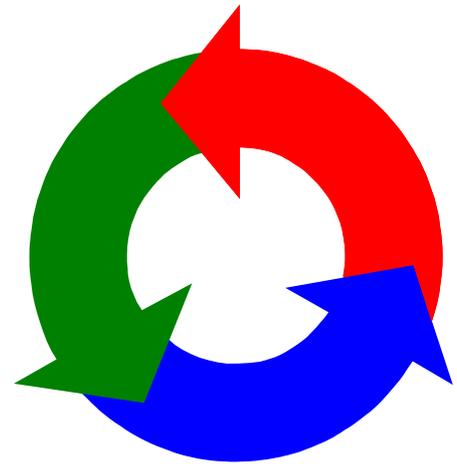
There are numerous examples of slum clearance and resettlement that result in the promised secure tenure of housing, but fail to comply with other elements of the human right in their implementation. [Note: HLRN and this “Toolkit” do not advocate slum clearance or resettlement.] Inhabitants in resettlement often lack access to public goods and services, suitable location, are denied compensation for losses and are subject to a process inconsistent with the over-riding principle of self-determination.¹³²⁰

All such gaps and shortcomings in the outcome of any housing rights defense effort remain to be addressed, even though some advocates and service-providing NGOs may consider these developments to be victorious at some level. The true test remains, however, to determine the tangibility of the results within the framework of the human right to adequate housing, and over the long term.

With all of its emphasis on the law, this “Toolkit” is intended to assist in the realization of the human right to adequate housing as a complement to the theoretical elaboration of the right in law. Implementation is the ultimate objective of human rights, as well as this “Toolkit.” Therefore, the tools provided here should serve also as the final evaluation criteria to examine whether or not the composite dimensions of the human rights are implemented and present or not.

You should use the elements (entitlements) of the human right to adequate housing here as your guide; these are also the binding criteria for all State parties and their representatives to apply as well. If you and your organization/community determine that certain criteria have been breached or neglected, then, alas, further remedial action will be required.

The bad news, perhaps, is that there may yet be more work to be done. However, even if one has to go back to the drawing board, at least the needed tools are available to the cyclical task. So, now, you can just do it.



¹³²⁰ See Housing and Land Rights Network, *Restructuring New Delhi’s Urban Habitat: Building an Apartheid City?* (HIC-HLRN: New Delhi, 2002).