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REGIONAL HOUSING ISSUES PROFILE

IMPLEMENTING HOUSING RIGHTS IN SOUTH EAST EUROPE

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CONTENTS

| | PAGE |
|---|-------------|
| 1. Introduction | 4 |
| 2. Some Key Housing Issues in the Region | 6 |
| 2.1 Growing Poverty | 6 |
| 2.2 Refugees and Displaced Persons | 6 |
| 2.3 Unresolved Housing and Property Restitution Issues | 6 |
| 2.4 Extensive Housing Destruction and Damage | 7 |
| 2.5 Unregulated Housing Privatisation | 7 |
| 2.6 Informal Housing Markets | 8 |
| 2.7 Insufficient Social Housing Resources | 8 |
| 2.8 Systematic Housing Discrimination | 8 |
| 2.9 Unclear Housing Law and Policy | 8 |
| 2.10 Limited Central Government Capacity in the Housing Sector | 8 |
| 2.11 Inadequate Housing and Living Conditions | 8 |
| 2.12 Insufficient Housing Finance Systems | 9 |
| 2.13 Housing Unaffordability | 9 |
| 2.14 Rapid Urbanisation | 9 |
| 2.15 Incomplete Housing and Property Registration | 9 |
| 2.16 Limited Influence of Civil Society on Housing Law and Policy | 9 |
| 3. Applying a Rights-Based Approach | 10 |
| 3.1 The Human Right to Adequate Housing | 10 |
| 3.2 State Obligations | 12 |
| 3.3 To Legislate or Not Legislate | 16 |
| 3.4 Progressive Realisation | 16 |
| 3.5 Housing Rights Violations | 17 |
| 4. Implementing Housing Rights in the Region | 19 |
| 4.1 Security of Tenure for All | 19 |
| 4.2 Privatisation with a Human (Rights) Face | 20 |
| 4.3 Housing Affordability | 21 |
| 4.4 Housing Finance | 21 |
| 4.5 Improving Housing Maintenance and Housing Adequacy | 21 |
| 4.6 Streamlining Housing Law with International Law | 22 |
| 4.7 Resolving the Refugee and IDP Question | 22 |
| 4.8 Ensure Effective Judicial Remedies for All | 22 |
| 4.9 Establishing National Housing Rights Offices | 23 |
| 4.10 Ending Housing Rights Violations in the Region | 23 |

| | | |
|-----------|---|-----------|
| 5. | Conclusion | 24 |
| 6. | Annexes | |
| 6.1 | Selected Legal Sources on Housing Rights Relevant to South Eastern Europe | 25 |
| 6.2 | General Comment No. 4 (Right to adequate housing) | 28 |
| 6.3 | General Comment No. 7 (Forced evictions) | 34 |
| 6.4 | Maastricht Guidelines on Violations of Economic, Social and Cultural Rights | 39 |

Introduction

Few regions have suffered the hardships that have confronted South-eastern Europe throughout the past decade. Whether due to ethnic conflicts or the difficulties associated with the shift from Socialist regimes to democratically governed and market-based economies, regional instability has affected many areas of life, and has had a particularly pronounced impact on the housing and property sectors. Indeed, the region faces an array of severe difficulties related to housing and property issues – growing homelessness, more than a million refugees and displaced persons who are still unable or unwilling to return to their original homes, a dysfunctional housing market in most countries, systematic discrimination against various ethnic groups, in particular the Roma, an expanding informal housing sector and a range of related problems. While local and national efforts are ongoing to resolve these dilemmas, and the international community is closely involved towards this end, clearly much remains to be achieved before housing rights are implemented in the region.

Now is the time for all relevant actors to grasp the opportunity of moving South-eastern Europe towards the emergence of a region where human rights, the rule of law, economic vitality and hope have replaced the mayhem of recent years. Few can have imagined how comprehensively South Africa would turn from apartheid-era outcast to a democratic model – especially in terms of how the post-apartheid Governments have addressed housing rights issues.¹ Similar transformational choices regarding a more positive future now face policy and lawmakers in South-east Europe, and members of the international community active in the region.

This paper argues that the application of a human rights-based approach to resolving many of the region's housing and property problems may hold out considerable prospects for positive change. All Stability Pact (SP) countries have clearly committed themselves to the protection and promotion of internationally recognised human rights. All of the countries addressed at this meeting today – Albania, Bosnia and Herzegovina, Croatia, Bulgaria, Romania, Federal Republic of Yugoslavia, the Former Yugoslav Republic of Macedonia – have ratified the International Covenant on Economic, Social and Cultural Rights, and most have become States parties to the European Convention on Human Rights and the Revised European Social Charter. These three international standards provide more than a sufficient legal framework for addressing housing issues through the lens of human rights obligations incumbent on each of these States.

The immense problems associated with housing and property in the region have received considerable coverage both inside the region and by the international community. However, far too little attention has been paid to the explicit human rights dimensions of housing and property (with perhaps the exception of how these issues affect the region's numerous refugees and IDPs), despite the fact that both housing and property rights are widely recognised under international, European and the national laws of the countries concerned. It is arguable, therefore, that

¹ In terms of law, South Africa has few parallels when it comes to legislating housing rights at the national level. This has occurred, in particular, in the legislative regulation of forced evictions. Not only have evictions been explicitly addressed in Article 26(3) of the Constitution, but subsequent implementing legislation, including the *Extension of Security of Tenure Act* (Act No. 62, 1997), the *Prevention of Illegal Evictions From and Unlawful Occupation of Land Bill* (which repealed the much maligned *Prevention of Illegal Squatting Act*) and others have been adopted in recent years to further refine constitutional protections against eviction. Article 26(3) asserts that “No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions”.

applying a rights-based approach to these questions is both a constructive and clear way of approaching these issues, as well as a means for providing new methods of examining and addressing the many outstanding housing and property dilemmas facing the SP countries.

This paper will firstly explore some of the key housing dilemmas facing SP countries today. Secondly, some of the elements of a right-based approach to housing will be elaborated. Finally, this paper concludes with coverage of ten housing rights concerns on the basis of which – grounded in human rights law – concrete, targeted and effective action can be taken to protect the housing and property rights of all of the region’s residents.

For such an approach to bear fruit, of course, the support (political, legal and financial) of the international community will be indispensable. Given the fact that the largest and most active donors in the region are party to the very same human rights treaties as those ratified by South-Eastern European States, the legal basis for a consolidated human rights-based approach to housing and property issues in the region is clearly apparent.

This paper, therefore, presents a challenge both to the Governments of the region, and to the international community (States and inter-governmental organisations), to uniformly begin to implement housing and property rights obligations. Few would dispute that these rights have been almost systematically denied during the past decade or more. Arguably, it is only through renewed emphasis on housing rights and other human rights that the social cohesion lacking in the region can have a chance to emerge.

2. Some Key Housing Issues in the Region

Severe housing problems confront all countries addressed in this paper. In fact, viewed through the lens of housing rights, this region represents a big challenge to Governments and the international community. If Governments in South-eastern Europe are to treat housing issues as human rights issues, a major overhaul of housing law, policy and practice will be required. This will surely be a long-term initiative, which will demand considerable political and economic support. Financial and other resources will also be required, in order to ensure that all residents of this region are able to enjoy and fully exercise the lawful housing rights that – in terms of law at least – they already possess and are meant to benefit from.

Some of the housing issues currently affecting the region, and all of which have distinct housing *rights* dimensions include:

2.1 Growing Poverty: Poverty levels are increasing throughout the region. While precise statistics are lacking, the combination of armed conflict, political instability, economic malaise, and the rapid transition to a market economy have all worked together to considerably increase regional impoverishment. This, in turn, continues to have a marked impact upon the housing sector, in particular with respect to housing supply, housing affordability and housing quality. Resultant homelessness has also dramatically increased. The shift from the Socialist view of housing as a social good (for which central Governments were almost entirely responsible) to the current position throughout the region of housing as a commodity, has had an unfavourable impact upon lower-income groups being able to access adequate and affordable housing.

2.2 Refugees and Displaced Persons: There remain at least 1.3 million displaced people in the Balkans, even though some two million have returned to their countries and homes since the end of the war in 1995. These are found primarily in Federal Republic of Yugoslavia (FRY), Croatia, Bosnia and Herzegovina (BiH) and the Former Yugoslav Republic of Macedonia (FYROM). Although international and bilateral donors have already contributed over 2.4 billion Euros to resolving the refugee and displaced person question and many refugees have been successful in providing their own housing solutions, this problem remains daunting. The Stability Pact Agenda for Regional Action (AREA) has been active in seeking to find durable solutions to the ongoing refugee and IDP issue, and has clearly recognised that continued support by the international community is vital to maintain the momentum of refugee returns, especially with respect to employment and housing.

2.3 Unresolved Housing and Property Restitution Issues: Housing and property restitution mechanisms have been established in BiH (The Commission on Real Property Claims), Kosovo (The Housing and Property Directorate) and ongoing or fledging national procedures are in place in Croatia, Albania, and Romania. In addition, programmes have been developed by the international community to promote restitution, such as the Property Legislation Implementation Programme (PLIP) in BiH. Despite such encouraging developments, unresolved housing and property restitution claims and related disputes continue to confront most countries. While the restitution issues affecting BiH, FRY, Kosovo, FYROM and Croatia are related to the various armed conflicts that have affected the region, the restitution issues arising in Albania and Romania stem largely from the confiscation of property during the Communist-era in those countries. Although the legal frameworks for restitution are, to varying degrees, in place, the implementation and enforcement of restitution laws remains a pressing problem,

largely because of ethnic considerations continuing to guide local decisions on restitution, which in turn systematically discriminate against certain ethnic groups.²

2.4 Extensive Housing Destruction and Damage: The various armed conflicts in the region, particularly in BiH, FRY, Kosovo and Croatia destroyed or damaged over a million homes. While considerable efforts have been made by the international community to assist with reconstruction, a major effort remains. Until a far greater number of homes are rebuilt, in part to provide alternative housing to those currently living in refugee homes, it is difficult to foresee how a large portion of refugees will ever be able to return to their home countries, let alone their original homes.

2.5 Unregulated Housing Privatisation: The transition from socialist to market-based approaches within the housing sector, has led to the privatisation of the vast majority of the public housing stock throughout the region. As a result, over 80% of housing in the region is found within the owner-occupation sector. The shift to private sector-driven approaches to housing has meant both an almost total halt to social housing construction, and that what little housing construction there currently is in the region, is largely done by private owners on an incremental basis or by private construction firms, who tend to build apartments that average- and low-income persons cannot afford. In addition, many financial institutions, which could potentially provide housing loans, remain cautious about introducing real mortgage lending in the post-socialist countries, due to the weakness of legal sanctions against non-payers and the overall economic problems facing the region. In countries where housing loans have been introduced, the middle-income groups have benefited, while the low-income and vulnerable groups cannot access such loans.

2.6 Informal Housing Markets: Given the high costs of new construction, coupled with the unwillingness of many financial institutions to lend to middle- and lower-income groups, informal housing markets have gradually started to fulfil people's housing requirements. As a result, a rapidly growing amount of irregular, unauthorized, and unofficial homes have appeared. In Tirana, for instance, over 30% of the housing stock consists of informal settlements. Informal housing settlements have also sprung up in FRY and elsewhere. The existence of informal housing markets has come about due to the failure of States to create the necessary conditions in these countries to allow all sectors of the population to access affordable, safe and adequate *legal* housing resources. As such, people are essentially left without other housing options, and create their own housing solutions. This is a very common feature of housing markets in the developing world, where both the market and the State have equally failed to generate sufficient housing resources for their populations. While unofficial housing provides a crucial function in ensuring that people actually have a reasonably adequate place to dwell, in the longer term this issue will have to be addressed by the Governments in the region, if societies based on the rule of law are to emerge.

² While unfulfilled restitution rights are common to all countries, international attention has recently focused on the failure of Croatia's restitution programme to protect and respect the rights of displaced Serb owners. According to one report: "The Croatian Return programme 'perpetuates the effects of conflict-era law and policy and erects barriers to the return of the Serb minority' (NRC, Briefing Note-Issues of Concern to Refugees and IDPs, 10 February 2002). See also: *Report of the OSCE Mission to the Republic of Croatia 24 May 2001*, which states that Croatia's laws and administrative procedures have "left an unclear patchwork of rules regulations and laws...as a matter of practice, creating an effective barrier against return." The UN Committee on Economic, Social and Cultural Rights has made similar pronouncements, see: UN doc. E/C.12/1/Add.73, 30 November 2001).

2.7 Insufficient Social Housing Resources: The mass housing privatisation of formerly social housing resources has severely reduced the stock of housing affordable to lower-income groups. In recent years, public sector provision of housing has almost ceased entirely. As a result of these developments, even the most vulnerable groups of society are forced to find housing solutions within the owner-occupied sector, which in turn, can create serious financial difficulties for lower-income and other vulnerable groups.

2.8 Systematic Housing Discrimination: In one way or another, most (if not all) ethnic groups in the region face some form of discrimination, which also impacts upon the ability to exercise housing rights. This inexcusable human rights violation severely taints both the image of the region, as well as undermining the enjoyment of basic rights to housing for many groups. Of all groups, the Roma suffer perhaps the worst discrimination, in that almost everywhere where Roma reside, they are not subject to equality of treatment. Clearly, the time is ripe for region-wide initiatives to reduce the extent of all forms of racial, ethnic and other discrimination in the region, all of which have been responsible for so much of the instability, violence and economic malaise in recent years.

2.9 Unclear Housing Law and Policy: The lack of a proper legal framework to address housing issues also affects all countries in the region. While housing and property laws do exist throughout the region, they are often inconsistent and do not reflect the changed realities on the ground. An additional problem is the lack of enforcement of such laws and policies. Not only does this situation undermine the prospects of complying with international human rights standards and other existing legal obligations held by all SP States, it also enables extra-legal processes to gain further ground. Indeed, the rule of law continues to be lacking in many areas in this region. A clear legal framework is vital for a broad range of areas, including housing loan and mortgage systems, building codes, new housing construction, land registration, price information, taxation, transaction costs, privatisation, restitution, housing service related user charges, rent regulations, protecting property rights, subsidy programmes and many others. Systematic legislative review is probably required for all countries, with a view to developing legal frameworks that strengthen, rather than undermine or impinge upon housing rights.

2.10 Limited Central Government Capacity in the Housing Sector: The shift from socialist to market-driven economies in the region was accompanied by a related shift in governmental housing competencies from centralised State control of the housing sector to the current situation where local governments guide housing policy and practice. While this shift surely maintains many positive dimensions, the legal human rights obligations held by central Governments have not been adequately acted upon. This is partly explained by the fact that legal authority and financial means have not yet been transferred to local governments, and partly because national housing policies, which should guide local governments in their daily implementation tasks, are mostly lacking.

2.11 Inadequate Housing and Living Conditions: Far too many residents of SP countries currently reside in homes that fall far short of basic international standards of housing adequacy. During privatisation, all housing maintenance responsibilities, which previously fell on the public authorities (even though they were often not carried out) were transferred to the new owners. Many of these new owners did not have the resources to maintain or renovate the homes in question, nor did subsidy programmes allow them to do so. Throughout much of the region, the required maintenance and upgrading costs are far higher than average salaries.

2.12 Insufficient Housing Finance Systems: In all countries in the region, there is a lack of housing finance institutions to meet the existing housing needs.³ While steps are being taken to develop market-based housing finance systems and housing credit and mortgage loan programme, these appear to fall considerably short of reaching lower-income groups.

2.13 Housing Unaffordability: As privatisation processes continue, housing costs have increased considerably throughout the region, even while housing subsidies and social housing resources have dramatically decreased. During the Socialist period, rents in social housing were kept exceptionally low, often amounting to no more than 2% of one's income. As such, when the housing system shifted, and subsidies were cut, those whose dwellings were not immediately privatised suffered considerably. This has obviously mostly affected lower-income groups. The high price of construction materials has increased building costs, which in turn has not allowed housing supply to keep up with housing demand. In addition, the limited private rental sector in the region has also contributed to the affordability problem, as people are forced to purchase homes that they may not effectively be able to afford. A larger private rental housing sector would reduce the demand for subsidies for owner occupied housing, and thus would promote the creation of a more balanced housing subsidy system. Currently, many households throughout the region cannot afford a mortgage on market terms, which seriously limits their housing options, and overall residential mobility. Lower-income groups are particularly affected, and require social housing resources. However, as mentioned, as a result of the dramatic privatisation policies pursued, the supply of social housing comes nowhere near meeting social housing requirements.⁴

2.14 Rapid Urbanisation: Armed conflicts and economic stagnation together have led to rapid urbanisation, often to cities which are not capable of coping with the housing requirements of the new urban dwellers. Tirana's population, for instance, has almost tripled in the past decade. The lack of economic opportunities in rural areas, as well, has facilitated urban growth. This growth, however, has not been matched by sufficient Government investment in providing the public infrastructure and housing required to ensure that all urban dwellers are able to exercise their housing rights.

2.15 Incomplete Housing and Property Registration Systems: Housing and property registration systems throughout the region remain incomplete, problematic and often a source of controversy. In FRY, user records are updated, while ownership records registered at the city courts have not been updated. In Kosovo, many cadastral records are missing or were destroyed, and are being painstakingly reconstructed by UNMIK. In Albania, the *Hipoteka* (deed registry) property registration system has been the source of many outstanding land and housing disputes. As a result of these inadequacies, many people lack clear title and proof of ownership or tenancy rights, which only compounds the already imperfect housing market.

2.16 Limited Influence of Civil Society on Housing Law and Policy: Compared to other regions, both within Europe and throughout the world, civil society in the Balkans has very limited influence on housing law and policy. The relatively limited number of housing NGOs and community-based groups, combined with the lack of history of popularly-led efforts at community improvement, is a serious impediment to finding solutions to the numerous housing

³ József Hegedüs, "*Financing of Housing in South East Europe*", 1st draft, in: South East Europe Strategic Review on Social Cohesion, Council of Europe Housing Network, SEER/Housing (2001) 3, November 2001.

⁴ Iván Tosics and József Hegedüs, "*Housing Problems in South East Europe*", South East Europe Strategic Review on Social Cohesion, Council of Europe Housing Network, SEER/Housing (2001) 2, November 2001.

rights dilemmas affecting the region. A housing rights culture needs to emerge from within civil society, and should be supported by the Governments of the region.

3. Applying a Rights-Based Approach

3.1 The human right to adequate housing

The human right to adequate housing is found in international human rights instruments, such as:

- the Universal Declaration on Human Rights (art. 25(1));
- the International Covenant on Economic, Social and Cultural Rights (art. 11(1));
- the Convention on the Elimination of All Forms of Racial Discrimination (art. 5(e)(iii));
- the Convention on the Rights of the Child (art. 27(3));
- the Convention on the Elimination of All Forms of Discrimination Against Women (art. 14(2));
- the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (art. 43(1)(d));

and numerous additional international standards (see Annex I).

Article 11(1) of the International Covenant on Economic, Social and Cultural rights (CESCR) contains perhaps the most significant international legal source of the right to adequate housing:

*The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family,⁵ including adequate food, clothing and **housing**, and to **the continuous improvement of living conditions**. The States Parties will take appropriate steps to ensure the realisation of this right, recognising to this effect the essential importance of international cooperation based on free consent. (emphasis added)*

As noted earlier, all Governments in the region have voluntarily ratified this Covenant, and are thus *legally obliged* to comply in full with the obligations and rights expressed in Article 11(1). At the European level, two human rights treaties include housing rights concerns. The Revised European Social Charter (1996)⁶, provides in Article 31:

*With a view to ensuring the effective exercise of **the right to housing**, the parties undertake to take measures designed to:*

- (1) prevent and reduce homelessness with a view to its gradual elimination;*
 - (2) promote access to housing of an adequate standard;*
 - (3) make the price of housing accessible to those without adequate resources.⁷*
- (emphasis added)

⁵ Although the language used in the older human rights treaties and covenants is gender biased, the texts are interpreted as referring both to men and women.

⁶ Adopted in Strasbourg on 3 May 1996.

⁷ In addition, Article 16 of the original European Social Charter asserts: *With a view to ensuring the necessary conditions for the full development of the family, which is the 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.* Article 4 of the Additional Protocol to the European Social Charter, adopted on 5 October 1988 states: *With a view to ensuring the effective exercise of the right of elderly persons to social protection, the States Parties undertake to adopt or encourage, either directly or in co-operation with public or private organisations, appropriate measures designed in particular...to enable elderly persons to choose their life-style freely and to lead independent lives in their familiar surroundings for as long as they wish and are able, by means of: **provision of housing suited to their needs and their states of health or of adequate support for adapting their housing...**[and] to*

Although not often considered to address housing issues, the European Convention on Human Rights and Fundamental Freedoms (1950)⁸, also recognises various rights directly relevant to the enjoyment of housing rights. These include:

Article 8(1): *Everyone has the **right to respect for his private and family life, his home and his correspondence.*** (emphasis added)

Article 1 of Protocol No. 1: *(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.*

(2) 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. (emphasis added)

Article 2(1) of Protocol No. 4: *Everyone lawfully within the territory of a State shall, within that territory, have **the right to liberty of movement and freedom to choose his residence.*** (emphasis added)

To date, it is apparent that few, if any, of the States in South-eastern Europe have complied with the legal obligations derived from these three human rights treaties, particularly during the past decade. In addition to other factors already outlined, a partial explanation for this still wide gap between law and reality can be explained by continuing misunderstandings concerning the implications of housing rights once these rights are recognised by Governments. Questions continue to be posed as to the contents and ultimate scope of housing rights, and answers to these, of course, will have diverse ramifications for governments as rights protectors, for NGO's as rights advocates and for citizens as the exercisers of these rights. Some of the more common questions posed about housing rights include:

- Can housing rights be defined to be classified as enforceable human rights?
- Are housing rights recognised under national laws?
- Are states that have accepted housing rights required to adopt national legislation?
- Can housing rights be violated in the same way as other human rights?
- Are housing rights affordable?
- Are housing rights really rights or merely goals or aspirations?

The answer to each of these queries is most certainly affirmative. Further clarification of such questions helps to decipher the scope of housing rights and to determine who has to do what to ensure that everyone can possess the components of this right.

The pursuit of housing rights as human rights promotes good governance, governmental accountability, transparency, democratic decision-making, popular participation and international co-operation.

guarantee elderly persons living in institutions appropriate support, while respecting their privacy, and participation in decisions concerning living conditions in the institution.

⁸ Adopted in Rome on 4 November 1950, entered into force on 3 September 1953.

Housing rights must be understood holistically as constituting both an independent right **and** a composite right comprising all relevant human rights matters linked in any way to the existence, protection and security of the home. For instance, constituent rights such as those to privacy and the right to the non-interference of the home, to non-discrimination, to equality of treatment, to personal security, to family life, to freedom of movement and to choose one's residence must be incorporated into any analysis striving to provide clarity about the right to adequate housing. The enjoyment or denial of each of these related rights will have a significant bearing upon the enjoyment or denial of housing rights. A correct understanding of housing rights recognizes not only the physical manifestations of a structure called 'the home', but equally embraces the procedural, remedial, security and non-material aspects of housing rights which, in many respects, may be ultimately more fundamental than purely the issue of housing supply or availability.

3.2 State Obligations

Over the past decade, considerable progress has been made to clarify the concept and contents of the human right to adequate housing, and the specific State obligations implied by recognition of this right. In 1991, the UN Committee on Economic, Social and Cultural Rights adopted *General Comment No. 4 on the Right to Adequate Housing*: this text provides perhaps the most authoritative legal interpretation of the right to adequate housing under international law to date.⁹

Firstly, the UN Committee clarifies that the right to adequate housing does not mean that the State has a duty to provide housing to any citizen on demand. General Comment No. 4 asserts that 'the right to housing should not be interpreted in a narrow or restrictive sense that equates it with the shelter provided by merely having a roof over one's head or views shelter exclusively as a commodity. Rather the norm should be seen as the right to live somewhere in security, peace and dignity'.¹⁰ General Comment No. 4 also provides a clear framework for understanding the concept of housing adequacy. In turn, this framework is often viewed as the core contents of the human right to adequate housing, consisting of seven components:

- (a) legal security of tenure;
- (b) availability of services, materials, facilities and infrastructure;
- (c) location;
- (d) habitability;
- (e) affordability;
- (f) accessibility; and
- (g) cultural adequacy.¹¹

General Comment No. 4 defines the key determinants of adequacy as follows:

“(a) Legal security of tenure: Tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property.

Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups;

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

⁹ E/C.12/1991/4, pp. 114-120.

¹⁰ *id.*, para. 7.

¹¹ *id.*, para. 8.

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

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

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

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

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

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

In addition to other obligations, all States parties possess a *minimum core obligation* to ensure the satisfaction of essential levels of each of the rights found in this decisive legal text. States that have housing rights obligations, therefore, must move as expeditiously and effectively as possible towards the full realisation of the right to housing and ensure that ‘essential levels’ of the right to housing are accessible to everyone.¹² This legal obligation exists independently of any increase in available resources. The Committee’s General Comment No. 3 supports the existence of *minimum core obligations* arising from the Covenant. It asserts that:

*[t]he Committee is of the view that 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 essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education 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 largely be deprived of its raison d’être”.*¹³

The Committee has also repeatedly affirmed that any *deliberately retrogressive measures* affecting housing or other rights can only be justified by reference to the totality of the rights provided for in the Covenant and in the context of the full utilisation of a State’s ‘available resources’. Ultimately, the obligation to use the maximum of its available resources requires the effective and equitable use of combined resources immediately.¹⁴

Housing rights must be enjoyed in an environment free of all forms of discrimination and on the basis of equality. For people to enjoy housing rights, they should have access to a home with secure tenure, which is affordable, adequate and has access to all basic social services. If a person does not enjoy housing rights or if their rights have been violated, they must have access to effective judicial remedies. All too few citizens of the region currently enjoy all of the attributes associated with housing rights.

¹² See, General Comment No. 3 (1990) The Nature of States parties Obligations (Article 2, Paragraph 1, of the Covenant), adopted by the UN Committee on Economic, Social and Cultural Rights.

¹³ UN doc. E/C.12/1990/8, at 56. This Comment also requires States to move ‘as expeditiously and effectively as possible towards [the full realization of the rights in the Covenant]’ (para. 9).

¹⁴ Article 2(1) of the Covenant and General Comment No. 3, para. 9.

Examples of Housing Rights Obligations¹⁵

State obligations under international law are generally understood to be comprised of four layers of legal duties, including duties to respect, protect, promote and fulfil these rights. In essence, respect obligations involve States duties to refrain from certain acts and omissions, such as illegal evictions and housing discrimination. Obligations to protect concern the duty of States to regulate the actions of non-State actors, such as landlords, so that they do not violate the housing rights of others. The promotion duty deals with particular steps the Governments should take to ensure the enjoyment of housing rights as expeditiously as possible. Finally, the duty to fulfil housing rights involves positive State interventions in the housing sector, including the provision of public funds towards this end. The following box provides examples of these four types of obligations:

| <i>Respect</i> | <i>Protect</i> | <i>Promote</i> | <i>Fulfil</i> |
|--|--|--|--|
| Prevention of Illegal Evictions and Forced Evictions | Preventing Violations of Housing Rights | Security of Tenure | Combating, Preventing and Ending Homelessness |
| Prevention of All Forms of Discrimination | Domestic Remedies and the Domestic Application of Int. Law | Legislative Review and Recognition of Housing Rights | Increase and Properly Target Public Expenditure on Housing |
| Prevention of any Measures of Retrogressivity | Ensuring Equality Rights for All Groups | Develop Benchmarks of Full Realization | Adequate and Habitable Housing for All |
| Housing-Based Freedoms | Access for All to Affordable Housing and the Development of an Affordability Benchmark | Develop National Housing Rights Strategies | Develop Minimum Physical Housing Standards |
| Right to Privacy and Respect for the Home | Accessibility of Housing to Disadvantaged Groups Requiring Special Measures | Focus on the Rights of Vulnerable Groups | Provision of All Necessary Services and Infrastructure |
| Popular Participation in Housing | Democratic Residential Control of Housing | Access to Housing Information | Popular Housing Finance and Saving Schemes |
| Respecting the Cultural Attributes of Housing | Regulating Rent Levels and Activities in the Private Housing Sector | Ensuring a Sufficient Supply of Affordable Land | Social Housing Construction |

¹⁵ From the UN Housing Rights Programme (HS/C/17/INF.6)

3.3 To Legislate or Not to Legislate?

While human rights law affords States some degree of discretion in implementing international standards, it is clear that an appropriate legal framework – consistent with international law – is a vital ingredient of an effective approach to implementing housing rights obligations. Article 2(1) of the Covenant requires States at the national level to use *all appropriate means*, including legislative, administrative, judicial, economic, social and educational measures, consistent with the nature of the rights in order to fulfil their obligations under the Covenant. Governments are also obliged, under the Covenant, to take *whatever steps are necessary* for the purposes of the full realisation of the right to adequate housing, including, but not only, the undertaking of legislative measures. General Comment No. 4 on the Right to Adequate Housing reiterates that "the role of legislative and administrative measures should not be underestimated".

3.4 Progressive Realisation

The notion that rights such as housing rights are subject to 'progressive realisation' has undergone a considerable transformation in recent years. While this phrase, which derives from Article 2(1) of the Covenant, has long been used by States as an escape clause from the obligations generated under the Covenant, in fact, it is now seen as an essential component of all human rights policies. This is perhaps most clearly articulated in the 1997 *Maastricht Guidelines on Violations of Economic, Social and Cultural Rights* which contend that:

As in the case of civil and political rights, States enjoy a margin of discretion in selecting the means for implementing their respective obligations. State practice and the application of legal norms to concrete cases and situations by international treaty monitoring bodies as well as by domestic courts have contributed to the development of universal minimum standards and the common understanding of the scope, nature and limitation of economic, social and cultural rights. The fact that the full realization of most economic, social and cultural rights can only be achieved progressively, which in fact also applies to most civil and political rights, does not alter the nature of the legal obligation of States which requires that certain steps be taken immediately and others as soon as possible. Therefore, the burden is on the State to demonstrate that it is making measurable progress toward the full realization of the rights in question. The State cannot use the "progressive realization" provisions in article 2 of the Covenant as a pretext for non-compliance. Nor can the State justify derogations or limitations of rights recognized in the Covenant because of different social, religious and cultural backgrounds.¹⁶

As such, the progressive realization clause of the Covenant means that States must move as *expeditiously* as possible towards the realization of the rights found in the Covenant. It is most distinctly not an excuse for inaction. This standard must be viewed, used and acted upon by States as a positive basis for preventing or reversing any regressive policies, laws or practices negatively affecting the full enjoyment of economic, social and cultural rights. It implies, by necessity, an obligation of States to improve the overall enjoyment of particular rights and presumes a constantly expanding web of legal protection for all right holders.

3.5 Housing Rights Violations

As attention to housing rights has expanded, so too has the focus on the acts and omission by Governments amounting to violations of these rights. Although all human rights have been

¹⁶ Guideline 8 of the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, adopted in 1997.

regularly declared to be indivisible and interdependent with one another, far greater seriousness has been accorded to violations of civil and political rights than economic, social and cultural rights. However, this is changing. *The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights* provide a great deal of clarity as to which 'acts of commission' and 'acts of omission' would constitute violations of the Covenant on Economic, Social and Cultural Rights. *The Maastricht Guidelines* provide a useful framework for determining the compatibility of domestic actions impinging on economic, social and cultural rights, including housing rights. Housing rights can and are violated in much the same way as other human rights. While the violations of rights associated with the practice of forced evictions are perhaps the most obvious active violation of the right to housing, such violations, of course, are not isolated to forced evictions. For example, a general decline in living and housing conditions, directly attributable to policy and legislative decisions by States parties, and in the absence of accompanying compensatory measures, would violate internationally recognised housing rights standards.¹⁷ Similarly, acts of racial or other forms of discrimination in the housing sphere, demolition or destruction of housing as a form of punishment, failing to reform or repeal legislation inconsistent with the contents of housing rights and a range of additional actions have been declared in principle, to constitute further violations of the right to adequate housing.¹⁸

As far as the international monitoring of the Covenant is concerned, the UN Committee on Economic, Social and Cultural Rights has identified several States parties to the CESCR which have violated the housing rights provisions of Article 11(1). The Committee has critically addressed housing rights issues in States parties relating to: (a) the rights of tenants; (b) the universal provision of security of tenure; (c) homelessness; (d) the need to construct low-income housing; (e) the lack of domestic remedies for housing rights violations; (f) land regularization; (g) the prevalence of inadequate living conditions and service availability; (h) the need to establish a national housing commission; (i) protection from discrimination within the housing sphere; and (j) expropriation for social housing purposes.

¹⁷General Comment No. 4, para. 11.

¹⁸See, for instance: Working Paper and First Progress Report of the UN Special Rapporteur on Promoting the Realization of the Right to Adequate Housing (UN docs. E/CN.4/Sub.2/1992/15 and E/CN.4/Sub.2/1993/15).

BOX 1: UN ADVANCES ON HOUSING RIGHTS IN THE 1990s

- 1990: First 'General Discussion' on Housing Rights
- 1990: First violation of housing rights declared
- 1990: New housing rights reporting guidelines for States reports issued
- 1991: First UN resolution on forced evictions
- 1991: Appointment of Special Rapporteur on Housing Rights
- 1991: General Comment No. 4 on Housing Rights adopted
- 1991: First 'injunction' against State party to the CESCR
- 1992: UN Rio Summit reaffirms housing rights
- 1993: UN Housing Agency (UNCHS) adopts its first housing rights resolution
- 1994: First UN resolution on children and housing rights
- 1994: Draft International Convention on Housing Rights proposed
- 1995: Preliminary UN Housing Rights Strategy issued
- 1995: Final report of Special Rapporteur on Housing Rights issued
- 1996: UN Expert Group Meeting on Right to Adequate Housing
- 1996: Habitat II reaffirms housing rights
- 1997: UN issues publication of 'The Human Right to Adequate Housing'
- 1997: UN Housing Rights Strategy approved
- 1997: General Comment No. 7 on Forced Evictions adopted
- 1997: UN Comprehensive Guidelines on Development-Based Displacement approved
- 1997: First UN resolution on women and the right to adequate housing, land and property
- 1998: First UN resolution on housing and property restitution refugees and IDPs

4. Implementing Housing Rights in the Region

4.1 Security of Tenure for All

Of all the core components of rights to housing, it is perhaps the right to security of tenure that forms the most indispensable element of the norm.¹⁹ When security of tenure - the right to feel safe in one's own home, to control one's own housing environment and the right not to be arbitrarily forcibly evicted - is threatened or simply non-existent, the full enjoyment of housing rights is highly unlikely. Considering security of tenure in terms of human rights also allows an approach to housing that treats all persons on the basis of equality. While it is true that all human rights are premised on principles of equality and non-discrimination, seeing security of tenure as a human right (rather than as a by-product of ownership or the comparatively rare cases of strong protection for private tenants) opens up the realm of human rights not merely to all people, but to *all people of all incomes and in all housing sectors*.

In practice the rights associated with ownership of housing generally tend to offer considerably higher (and thus more secure) levels of tenure, and better protection against eviction or other violations of housing rights than those afforded tenants or those residing in informal settlements. The right to security of tenure raises the baseline - or *minimum core entitlement* - guaranteed to all persons who possess housing rights. While security of tenure cannot always guarantee that forced evictions will be prohibited *in toto*, (particularly in lawless situations of conflict) perhaps no other measure can contribute as much to fulfilling the promise of housing rights than the conferral of this form of legal recognition.

In recognition of the central place of security of tenure to the rights of dwellers as well as to the important role it can play in promoting individual and family investments in the improvement of their own homes, international human rights standards are increasingly approaching security of tenure in terms of human rights. As mentioned, in *General Comment No. 4* security of tenure is given particular prominence. Similar perspectives have been included within a wide cross section of UN standards, many of which urge governments to confer immediately the right to security of tenure to all persons currently lacking this protection. For instance, UN Commission on Human Rights resolution 1993/77 encourages governments to "confer legal security of tenure to all persons currently threatened with forced eviction and to adopt all necessary measures giving full protection against forced evictions, based upon effective participation, consultation and negotiation with affected persons or groups". Given that most national legal systems recognise various degrees of tenure already, the implementation of this encouragement by the UN Commission on Human Rights should be feasible in all States.

Few measures will assist in promoting the enjoyment of the right to housing more constructively than the provision of security of tenure through the adoption and enforcement of appropriate laws that guarantee these rights in law and practice. This right is also cheap to confer and is viable in all countries notwithstanding overall levels of human development. The conferral of secure tenure is particularly important to slum dwellers, squatters, residents of housing owned or controlled by exploitative landlords, and others threatened by insecure housing situations and most likely to be evicted. When security of tenure is squarely in place, people are legally protected from most forms of forced eviction and consequently (even in the worst of slums) will begin investing in their own homes, and in the process augment the enjoyment of housing rights through personal efforts. While there are obvious distinctions between the systems and structures

¹⁹For two views on security of tenure, see: Hernando de Soto (2000) *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*, Basic Books; and Shlomo Angel (2000) *Housing Policy Matters: A Global Analysis*, Oxford University Press.

in which tenure security is generated, the universal importance and relevance of secure tenure is self-evident.

4.2 Privatisation with a Human (Rights) Face

It is clear that while privatisation has brought benefits to former tenants/social occupants, many people in the region – particularly lower-income groups - have suffered severe declines in living standards and housing conditions. The question thus becomes how to balance the privatisation and localisation of housing processes with broader social housing needs and the housing rights of the people concerned. While much could be said on this point, in terms of human rights approaches to housing, two provisions of *General Comment No. 4* are particularly noteworthy. Because all of the SP countries have ratified the Covenant on Economic, Social and Cultural Rights, these provisions – which provide an authoritative legal interpretation of the Covenant – are of direct relevance. States which fail to take these standards seriously, therefore, cannot be considered to be acting in full compliance with their existing international legal obligations. These provisions provide:

11. States parties must give due priority to those social groups living in unfavourable conditions by giving them particular consideration. Policies and legislation should correspondingly not be designed to benefit already advantaged social groups at the expense of others. The Committee is aware that external factors can affect the right to a continuous improvement of living conditions, and that in many States parties overall living conditions declined during the 1980s. However, as noted by the Committee in its General Comment 2 (1990) (E/1990/23, annex III), despite externally caused problems, the obligations under the Covenant continue to apply and are perhaps even more pertinent during times of economic contraction. It would thus appear to the Committee that a general decline in living and housing conditions, directly attributable to policy and legislative decisions by States parties, and in the absence of accompanying compensatory measures, would be inconsistent with the obligations under the Covenant.

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

The final sentence in paragraph 11 is particularly relevant, underlining the need for accompanying compensatory measures in cases where a general decline in living and housing conditions can be attributed to policy and legislative decisions. Such measures are clearly needed in the SEE region.

4.3 Housing Affordability

Steps also need to be taken throughout the region to address the issue of the increasing unaffordability of housing. New subsidy systems should be developed, and targeted to assist the most vulnerable groups, including the homeless, those residing in severely inadequate housing conditions, war victims, the elderly, the Roma population and others. Mortgage-based housing finance can go some way towards improving housing rights, but if the poorest 30-40% of the population cannot afford mortgages, supplementary financing systems need to be developed.

4.4 Housing Finance

International law does not indicate that a particular sum or portion of public spending should be devoted to housing, but it does oblige governments to devote the *maximum of available resources* towards securing housing rights. The provision of security of tenure and land title, measures of land reform, revision of national legislation, instituting systems of tax credits, enforcing non-discrimination provisions, supporting appropriate incentives to the private sector, allowing community-based and non-governmental organisations to operate and organise freely and so forth may involve shifting resources, but will not stifle economic progress. Above all, effective structures must be established combining positive State involvement within the housing sphere with patterns of policy, legislation and programmes fully consistent with housing rights obligations whereby both public and private funds are allocated consistent with housing demand. Even when 'available resources' are verifiably inadequate within countries, international law requires governments to ensure the widest possible enjoyment of the relevant rights under prevailing circumstances, and 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, these minimum responsibilities.²⁰

Securing housing rights (*and civil and political rights for that matter*) for the most disadvantaged sectors of society will cost the State money, and adequate public resources – to the maximum of available resources, need to be allocated towards this end. At the same time, however, this should not be taken (as it so often is) to imply that *all* elements of housing rights necessarily require substantial financial allocations. If public funds are spent wisely, efficiently and targeted to areas where deprivation is most severe, investments of this sort can achieve a great deal. Such spending need not bankrupt the delicate economies of the region, but can in fact bolster economies in many meaningful ways.

Above all, effective structures must be established combining positive State involvement within the housing sphere with patterns of policy, legislation and programmes fully consistent with housing rights obligations whereby funds are allocated consistent with housing demand.

4.5 Improving Housing Maintenance and Housing Adequacy

Housing quality has declined throughout the region in recent years, and Government responses towards improving housing adequacy have not been forthcoming or sufficient. With privatisation, housing renovation and maintenance has fallen on the new owners of formerly social housing resources, but few have the financial means to do so. For many people, housing supply is not the problem. Rather, the problem is housing quality. Analysts of the region widely agree that the maintenance and renewal of the existing privatised multi-family housing units must be a priority. Throughout the region, however, in practice, housing maintenance is not recognized as a priority housing concern. A targeted financial system needs to be developed to dramatically improve housing quality.

4.6 Streamlining Housing Law with International Law

²⁰ General Comment No. 3 (1990): the nature of States parties' obligations (art. 2, para. 1 of the Covenant), UN doc. E/C.12/1990/8, pp. 83-87.

Although the central State has largely withdrawn from the housing sector throughout the region, it holds legally binding obligations under international law to respect and protect housing rights. In that regard, States need to ensure that the entire domestic legal framework relevant to housing is fully compatible and consistent with the position of international law on these issues. It is worth reiterating the central international legal principle that States cannot justify the non-compliance with international law based on the contents of domestic law. Various areas of law will impact upon the enjoyment of housing rights, and each should be reviewed to ensure both consistency with international standards and to strengthen norms as required. In this regard, particular attention should be paid to:

- constitutional protection;
 - laws governing security of tenure and property rights;
 - laws addressing evictions, non-discrimination protections;
 - the equal rights of women to housing and property,
 - laws outlining the rights of vulnerable groups to access housing;
 - legislation addressing housing standards and quality
- and many others.

4.7 Resolving the Refugee and IDP Question

Despite the immense efforts of the international community and others to resolve the refugee and IDP question in the region, over one million people remain displaced from their original homes. While much has been said on this issue, it is worth pointing out that the failure to resolve this question also has a major impact on the broader region-wide enjoyment of housing rights. If refugees themselves freely choose local integration as the durable solution best suited for them, this does not in any way extinguish any legal claims they may have to housing, land or property in the countries or areas from which they have fled, and these housing rights must be respected.

4.8 Ensure Effective Judicial Remedies for All

Though rarely compiled or discussed, every nation has developed a ‘housing rights jurisprudence’, a collection of relevant laws, and decisions from courts and other bodies, which can be viewed comprehensively as the legal state of housing rights within a given jurisdiction. The UN Committee on Economic, Social and Cultural Rights “*views many component elements of the right to adequate housing as being at least consistent with the provision of domestic legal remedies. Depending on the legal system, such areas might include, but are not limited to:*

(a) legal appeals aimed at preventing planned evictions or demolitions through the issuance of court-ordered injunctions;

(b) legal procedures seeking compensation following an illegal eviction;

(c) complaints against illegal actions carried out or supported by landlords (whether public or private) in relation to rent levels, dwelling maintenance, and racial or other forms of discrimination;

(d) allegations of any form of discrimination in the allocation and availability of access to housing; and

(e) complaints against landlords concerning unhealthy or inadequate housing conditions. In some legal systems, it would also be appropriate to explore the possibility of facilitating class action suits in situations involving significantly increased levels of homelessness”²¹

²¹ Para. 17, General Comment No. 4.

At the European level, the European Social Charter and its procedure for collective complaints clearly allows complaints alleging violations of housing rights, whereas the European Court on Human Rights and Fundamental Freedoms has issued numerous decisions on cases linked to housing matters.²² The practice of States, the decisions of judicial bodies and the very nature of housing rights, therefore, reveal that there is nothing inherent in housing rights that makes these rights incapable of judicial consideration. The compatibility of housing rights standards and the capacity of making complaints, however, is by no means automatic in the South-eastern Europe. It would be difficult for any country to currently argue that fully independent and impartial judiciaries were solidly in place, and that all citizens have equal access to these courts as a means of enforcing their housing rights. Steps need to be taken to ensure that all residents of region have equal access to effective remedies by independent and impartial judiciaries, as one means of seeking to enforce the lawful housing rights that they already possess.

4.9 Establishing National Housing Rights Offices

A constructive manner to increase government capacity to implement human rights obligations and at the same time improve the performance of the housing sector, would involve the establishment of National Housing Rights Offices within the central Government administrations in all countries of the region. These offices would be entrusted with actually applying a rights-based approach to housing, monitoring housing rights conditions, and coordinating national efforts to secure full compliance with existing and future housing rights obligations. Ideally, these offices should also include representatives of other stakeholder groups, such as: the private sector, civil society organisations, and researchers.

4.10 Ending Housing Rights Violations in the Region

A first step in ending housing rights violations is recognition of what constitutes a violation and what does not. The above mentioned *Maastricht Guidelines on Violations of Economic, Social and Cultural Rights* help clarify which 'acts of commission' and 'acts of omission' would constitute violations of the Covenant on Economic, Social and Cultural Rights. Furthermore, these guidelines provide a useful framework for determining to what extent domestic actions or omissions can impinge on economic, social and cultural rights, including housing rights. For the detailed principles in these Guidelines, see Annex I, section 6.4.

If the countries of South-Eastern Europe are serious about applying the human rights standards they have all voluntarily undertaken to uphold, concerted efforts are required by all to prevent all such violations of housing rights. All Governments in the region need to examine the extent to which housing rights violations take place within their countries, and take the necessary steps to remedy them.

²² Scott Leckie (2002) "Housing Cases Under the European Convention on Human Rights" (forthcoming).

5. Conclusion

The SP countries face tremendous difficulties in the housing sphere. Increasing efforts are being made to face these difficulties. If the States in the region continue to take steps to systematically comply with their existing housing rights obligations under international law, measurable progress can be made. A creative mixture of effective legislation, the establishment of new institutions, market regulations, targeted public subsidies on both housing demand and supply, expanding citizen participation within the housing rights arena, and simply re-interpreting housing as a human rights issue can all assist in improving the enjoyment of housing rights in the region. Housing rights are as central to the overall enjoyment of human rights as any other right, and need to be sustainably treated as such by all Governments and citizens, and by the international community, which continues to have such a vital role in the implementation of housing rights in South-eastern Europe.

Annexes

6.1 Selected Legal Sources of Housing Rights

UNIVERSAL DECLARATION ON HUMAN RIGHTS (1948), adopted and proclaimed by United Nations General Assembly resolution 217A (III) on 10 December 1948. Article 25(1) states:

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

INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (1966), adopted by United Nations General Assembly (UNGA) resolution 2200A(XXI), 16 December 1966, entered into force on 3 January 1976. Article 11(1) states:

*The States Parties to the present Covenant recognise 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 realisation of this right, recognising to this effect the essential importance of international co-operation based on free consent.*

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (1966), adopted by United Nations General Assembly (UNGA) resolution 2200A(XXI), 16 December 1966, entered into force on 3 January 1976. Articles 12 & 17 state:

*Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and **freedom to choose his residence**. (Art. 12)*

....

*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.*

Everyone has the right to the protection of the law against such interference or attacks. (Art. 17).

INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (1979), adopted by UNGA resolution 34/180 on 18 December 1979, entered into force on 3 September 1981. Article 14(2)(h) states:

*States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right...(h) to enjoy adequate living conditions, particularly in relation to **housing**, sanitation, electricity and water supply, transport and communications.*

INTERNATIONAL CONVENTION ON THE RIGHTS OF THE CHILD (1989), adopted by UNGA resolution 44/25 on 20 November 1989, entered into force on 2 September 1990. Article 27(3) states:

*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 the case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and **housing**.*

EUROPEAN CONVENTION ON HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS (1950), adopted in Rome on 4 November 1950, entered into force on 3 September 1953.

*Everyone has the **right to respect for his private and family life, his home and his correspondence.** (Article 8(1));*

*(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.*

(2) 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.

(Article 1 of Protocol No. 1);

*Everyone lawfully within the territory of a State shall, within that territory, have **the right to liberty of movement and freedom to choose his residence.** (Article 2(1) of Protocol No. 4).*

THE REVISED EUROPEAN SOCIAL CHARTER (1996), adopted in Strasbourg on 3 May 1996.

Article 31:

*With a view to ensuring the effective exercise of **the right to housing**, the parties undertake to take measures designed to:*

*(1) **prevent and reduce homelessness with a view to its gradual elimination;***

*(2) **promote access to housing of an adequate standard;***

*(3) **make the price of housing accessible to those without adequate resources***

Article 16:

With a view to ensuring the necessary conditions for the full development of the family, which is the 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.*

Article 19(4):

*With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Contracting Party, the Contracting States undertake... (4) to secure for such workers lawfully within their territories, insofar as such matters are regulated by law or regulations or are subject to the control of administrative authorities, treatment not less favourable than that of their own nationals in respect to the following matters... (c) **accommodation**.*

Article 4 of the Additional Protocol to the European Social Charter, adopted on 5 October 1988 states:

*With a view to ensuring the effective exercise of the right of elderly persons to social protection, the States Parties undertake to adopt or encourage, either directly or in co-operation with public or private organisations, appropriate measures designed in particular...to enable elderly persons to choose their life-style freely and to lead independent lives in their familiar surroundings for as long as they wish and are able, by means of: **provision of housing suited to their needs and their states of health or of adequate support for adapting their housing....**[and] to guarantee elderly persons living in institutions appropriate support, while respecting their privacy, and participation in decisions concerning living conditions in the institution.*

6.2 GENERAL COMMENT NO. 4 (1991) THE RIGHT TO ADEQUATE HOUSING (ART. 11(1) OF THE COVENANT), adopted by the UN Committee on Economic, Social and Cultural Rights on 12 December 1991. U.N. Doc. E/CN.4/1991/4 (1991).

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

2. The Committee has been able to accumulate a large amount of information pertaining to this right. Since 1979, the Committee, and its predecessors have examined 75 reports dealing with the right to adequate housing. The Committee has also devoted a day of general discussion to the issue at each of its third (see E/1998/22, para. 312) and fourth sessions (E/1990/23, paras. 281-285). In addition, the Committee has taken careful note of information generated by the International Year of Shelter for the Homeless (1987), including the Global Strategy for Shelter to the year 2000 adopted by the General Assembly in its resolution 42/191 of 11 December 1987.¹ The Committee has also reviewed relevant reports and other documentation of the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities.²³

3. Although a wide variety of international instruments address the different dimensions of the right to adequate housing,²⁴ article 11(1) of the Covenant is the most comprehensive and perhaps the most important of the relevant provisions.

4. Despite the fact that the international community has frequently reaffirmed the importance of full respect for the right to adequate housing, there remains a disturbingly large gap between the standards set in article 11(1) of the Covenant and the situation prevailing in many parts of the world. While the problems are often particularly acute in some developing countries which confront major resource and other constraints, the Committee observes that significant problems of homelessness and inadequate housing also exist in some of the most economically developed societies. The United Nations estimates that there are over 100 million persons homeless worldwide and over 1 billion inadequately housed.²⁵ There is no indication that this number is decreasing. It seems clear that no State party is free of significant problems of one kind or another in relation to the right to housing.

²³ Commission on Human Rights resolutions 1986/36 and 1987/22; 4; reports by Mr. Danilo Turk, Special Rapporteur of the Sub-Commission (E/CN.4/Sub.2/1990/19, paras. 108-120; E/CN.4/Sub.2/1991/17, paras. 137 - 139); see also Sub-Commission resolution 1991/26.

²⁴ See for example, article 25 (1) of the Universal Declaration on Human Rights, article 5 (e) (iii) of the International Convention on the Elimination of All Forms of Racial Discrimination, article 14 (2) of the Convention on the Elimination of All Forms of Discrimination Against Women, the Declaration on Social Progress and Development, section III (8) of the Vancouver Declaration on Human Settlements, 1976 (Report of Habitat: United Nations Conference on Human Settlements (United Nations publications Sales No. E.76.IV.7 and corrigendum), chap. I), article 8 (1) of the Declaration on the Right to Development and the ILO Recommendation Concerning Workers' Housing, 1961 (No. 115).

²⁵ See footnote 3.

5. In some instances, the reports of States parties examined by the Committee have acknowledged and described difficulties in ensuring the right to adequate housing. For the most part, however, the information provided has been insufficient to enable the Committee to obtain an adequate picture of the situation prevailing in the State concerned. This General Comment thus aims to identify some of the principal issues which the Committee considers to be important in relation to this right.

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

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

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

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

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

safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services;

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

(d) Habitability: Adequate housing must be habitable, in terms of providing the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors. The physical safety of occupants must be guaranteed as well. The Committee encourages States parties to comprehensively apply the Health Principles of Housing²⁶ prepared by the World Health Organization (WHO) which view housing as the environmental factor most frequently associated with conditions for disease in epidemiological analyses; i.e. inadequate and deficient housing and living conditions are invariably associated with higher mortality and morbidity rates;

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

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

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

9. As noted above, the right to adequate housing cannot be viewed in isolation from other human rights contained in the two International Covenants and other applicable international

²⁶ Geneva, World Health Organization, 1990.

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

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

11. States parties must give due priority to those social groups living in unfavourable conditions by giving them particular consideration. Policies and legislation should correspondingly not be designed to benefit already advantaged social groups at the expense of others. The Committee is aware that external factors can affect the right to a continuous improvement of living conditions, and that in many States parties overall living conditions declined during the 1980s. However, as noted by the Committee in its General Comment 2 (1990) (E/1990/23, annex III), despite externally caused problems, the obligations under the Covenant continue to apply and are perhaps even more pertinent during times of economic contraction. It would thus appear to the Committee that a general decline in living and housing conditions, directly attributable to policy and legislative decisions by States parties, and in the absence of accompanying compensatory measures, would be inconsistent with the obligations under the Covenant.

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

13. Effective monitoring of the situation with respect to housing is another obligation of immediate effect. For a State party to satisfy its obligations under article 11 (1) it must demonstrate, inter alia, that it has taken whatever steps are necessary, either alone or on the basis of international cooperation, to ascertain the full extent of homelessness and inadequate housing within its jurisdiction. In this regard, the revised general guidelines regarding the form and contents of reports adopted by the Committee (E/C.12/1991/1) emphasize the need to "provide detailed information about those groups within ... society that are vulnerable and disadvantaged with regard to housing". They include, in particular, homeless persons and

families, those inadequately housed and without ready access to basic amenities, those living in "illegal" settlements, those subject to forced evictions and low-income groups.

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

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

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

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

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

19. Finally, article 11 (1) concludes with the obligation of States parties to recognize "the essential importance of international cooperation based on free consent". Traditionally, less than 5 per cent of all international assistance has been directed towards housing or human settlements, and often the manner by which such funding is provided does little to address the housing needs of disadvantaged groups. States parties, both recipients and providers, should ensure that a substantial proportion of financing is devoted to creating conditions leading to a higher number of persons being adequately housed. International financial institutions promoting measures of structural adjustment should ensure that such measures do not compromise the enjoyment of the right to adequate housing. States parties should, when contemplating international financial cooperation, seek to indicate areas relevant to the right to adequate housing where external financing would have the most effect. Such requests should take full account of the needs and views of the affected groups.

6.3 GENERAL COMMENT No. 7 (1997) on THE RIGHT TO ADEQUATE HOUSING: FORCED EVICTIONS (Art. 11(1) of the Covenant), adopted unanimously by the UN Committee on Economic, Social and Cultural Rights on 16 May 1997 (UN doc. E/C.12/1997/4)

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

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

3. The use of the term “forced evictions” is, in some respects, problematic. This expression seeks to convey a sense of arbitrariness and of illegality. To many observers, however, the reference to “forced evictions” is a tautology, while others have criticized the expression “illegal evictions” on the ground that it assumes that the relevant law provides adequate protection to the right to housing and conforms with the Covenant, which is by no means always the case. Similarly, it has been suggested that the term “unfair evictions” is even more subjective by virtue of its failure to refer to any legal framework at all. The international community, especially in the context of the Commission on Human Rights, has opted to refer to “forced evictions” primarily since all suggested alternatives also suffer from many such defects.

4. The term “forced evictions” as used throughout this General Comment is defined as the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection. The prohibition on forced evictions does not, however, apply to evictions carried out by force in accordance with the law and in conformity with the provisions of the International Human Rights Covenants.

5. The practice of forced evictions is widespread and affects persons in both developed and developing countries. Owing to the interrelation and interdependency which exist among all human rights, forced evictions frequently violate other human rights. Thus, while manifestly breaching the rights enshrined in the Covenant, the practice of forced evictions may also result in violations of civil and political rights, such as the right to life, the right to security of the person,

the right to non-interference with privacy, family and home and the right to the peaceful enjoyment of possessions.

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

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

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

9. In essence, the obligations of States Parties to the Covenant in relation to forced evictions are based on Article 11(1), read in conjunction with other relevant provisions. In particular, Article 2(1) obliges States to use “all appropriate means” to promote the right to adequate housing. However, in view of the nature of the practice of forced evictions, the reference to Article 2(1) to progressive achievement based on the availability of resources will rarely be relevant. The State itself must refrain from forced evictions and ensure that the law is enforced against its agents or third parties who carry out forced evictions (as defined in para. 3 above). Moreover, this approach is reinforced by Article 17(1) of the International Covenant on Civil and Political Rights which complements the right not to be forcefully evicted without adequate protection. That provision recognises, *inter alia*, the right to be protected against “arbitrary or unlawful interference” with one’s home. It is to be noted that the State’s obligation to ensure respect for that right is not qualified by considerations relating to its available resources.

10. Article 2(1) of the Covenant requires States Parties to use “all appropriate means”, including the adoption of legislative measures, to promote all the rights protected under the Covenant. Although the Committee has indicated in its General Comment No.3 (1991) that such measures may not be indispensable in relation to all rights, it is clear that legislation against forced evictions is an essential basis upon which to build a system of effective protection. Such legislation should include measures which (a) provide the greatest possible security of tenure to occupiers of houses and land, (b) conform to the Covenant and (c) are designed to control strictly the circumstances under which evictions may be carried out. The legislation must also apply in relation to all agents acting under the authority of the State or who are accountable to it. Moreover, in view of the increasing trend in some States towards their government greatly reducing their responsibilities in the housing sector, States Parties must ensure that legislative and other measures are adequate to prevent and, if appropriate, punish forced evictions carried out, without appropriate safeguards, by private persons or bodies. States parties should therefore review relevant legislation and policies to ensure that these are compatible with the obligations arising from the right to adequate housing and to repeal or amend any legislation or policies that are inconsistent with the requirements of the Covenant.

11. Women, children, youth, older persons, indigenous peoples, ethnic and other minorities, and other vulnerable individuals and groups all suffer disproportionately from the practice of forced evictions. Women in all groups are especially vulnerable given the extent to which statutory and other forms of discrimination which often apply in relation to property rights (including home ownership) or rights of access to property or accommodation and their particular vulnerability to acts of violence and sexual abuse when they are rendered homeless. The non-discrimination provisions of Articles 2(2) and 3 of the Covenant impose an additional obligation upon governments to ensure that, where evictions do occur, appropriate measures are taken to ensure that no forms of discrimination are involved.

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

13. Forced evictions and house demolitions as a punitive measure are also inconsistent with the norms of the Covenant. Likewise, the Committee takes note of the obligations enshrined within the 1949 Geneva Conventions and 1977 Protocols which relate to prohibitions on the displacement of the civilian population and the destruction of private property as these relate to the practice of forced evictions.

14. 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 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 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”.

15. In cases where eviction is considered to be justified, it should be carried out in strict compliance with the relevant provisions of international human rights law and in accordance with general principles of reasonableness and proportionality. In this regard it is especially pertinent to recall General Comment 16 by the Human Rights Committee, relating to Article 17 of the International Covenant on Civil and Political Rights, which states that interference with a person’s home can only take place “in cases envisaged by the law”. The Committee observed that the law “should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances”. The Committee also indicated that “relevant legislation must specify in details the precise circumstances in which such interferences may be permitted”.

16. Appropriate procedural protection and due process are essential aspects of all human rights but it is especially pertinent in relation to a matter such as forced evictions which directly invokes a large number of the rights recognised in both International Human Rights Covenants. The Committee considers that the procedural protections which should be applied in relation to forced evictions include: (a) an opportunity for genuine consultation with those affected; (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; (c) information on the proposed evictions and where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected; (d) especially where groups of people are involved, government officials or their representatives to be present during an eviction; (e) all persons carrying out the eviction to be properly

identified; (f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise; (g) provision of legal remedies; and (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.

17. Evictions should not result in rendering individuals 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.

18. 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 person 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”.

19. Some institutions, such as the World Bank and the Organisation for Economic Co-operation and Development (OECD) have adopted guidelines on relocation and/or resettlement with a view to limiting the scale and human suffering associated with the practice of forced eviction. Such practices often accompany large-scale development projects, such as dam-building and other major energy projects. Full respect for such guidelines, in so far as they reflect the obligations contained in the Covenant, on the part of both the agencies themselves and by States Parties to the Covenant is essential. The Committee recalls in this respect that 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 recognised human rights” (para. 10).

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

21. Information is also sought as to “measures taken during, inter alia, urban renewal programmes, redevelopment projects, site upgrading, preparation for international events (Olympics and other sporting competitions, exhibitions, conferences, etc.) ‘beautiful city’ campaigns, etc. which guarantee protection from eviction or guarantee rehousing based on mutual consent, by any persons living on or near to affected sites”. Despite these provision, few States Parties have included the requisite information in their reports to the Committee. The Committee, therefore, wishes to emphasise in this regard the importance it attaches to the receipt of such information.

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

6.4. Maastricht Guidelines on Violations on Economic, Social and Cultural Rights (1997)

I The significance of economic, social and cultural rights

1. Since the Limburg Principles were adopted in 1986, the economic and social conditions have declined at alarming rates for over 1.6 billion people, while they have advanced also at a dramatic pace for more than a quarter of the world's population.²⁷ The gap between rich and poor has doubled in the last three decades, with the poorest fifth of the world's population receiving 1.4% of the global income and the richest fifth 85%. The impact of these disparities on the lives of people - especially the poor - is dramatic and renders the enjoyment of economic, social and cultural rights illusory for a significant portion of humanity.

2. Since the end of the Cold War, there has been a trend in all regions of the world to reduce the role of the state and to rely on the market to resolve problems of human welfare, often in response to conditions generated by international and national financial markets and institutions and in an effort to attract investments from the multinational enterprises whose wealth and power exceed that of many states. It is no longer taken for granted that the realisation of economic, social and cultural rights depends significantly on action by the state, although, as a matter of international law, the state remains ultimately responsible for guaranteeing the realisation of these rights. While the challenge of addressing violations of economic, social and cultural rights is rendered more complicated by these trends, it is more urgent than ever to take these rights seriously and, therefore, to deal with the accountability of governments for failure to meet their obligations in this area.

3. There have also been significant legal developments enhancing economic, social and cultural rights since 1986, including the emerging jurisprudence of the Committee on Economic, Social and Cultural Rights and the adoption of instruments, such as the revised European Social Charter of 1996 and the Additional Protocol to the European Charter Providing for a System of Collective Complaints, and the San Salvador Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights of 1988. Governments have made firm commitments to address more effectively economic, social and cultural rights within the framework of seven UN World Summits conferences (1992-1996). Moreover, the potential exists for improved accountability for violations of economic, social and cultural rights through the proposed Optional Protocols to the International Covenant on Economic, Social and Cultural Rights and the Convention on the Elimination of All Forms of Discrimination Against Women. Significant developments within national civil society movements and regional and international NGOs in the field of economic, social and cultural rights have taken place.

4. It is now undisputed that all human rights are indivisible, interdependent, interrelated and of equal importance for human dignity. Therefore, states are as responsible for violations of economic, social and cultural rights as they are for violations of civil and political rights.

5. As in the case of civil and political rights, the failure by a State Party to comply with a treaty obligation concerning economic, social and cultural rights is, under international law, a violation of that treaty. Building upon the Limburg Principles²⁸, the considerations below relate

²⁷ UNDP, Human Development Report 1996, para 29.

²⁸ The relevant Limburg Principles are the following:

70. A failure by a State party to comply with an obligation contained in the Covenant is, under international law, a violation of the Covenant.

primarily to the International Covenant on Economic, Social and Cultural Rights (hereinafter "the Covenant"). They are equally relevant, however, to the interpretation and application of other norms of international and domestic law in the field of economic, social and cultural rights.

II The meaning of violations of economic, social and cultural rights

Obligations to respect, protect and fulfil

6. Like civil and political rights, economic, social and cultural rights impose three different types of obligations on States: the obligations to respect, protect and fulfil. Failure to perform any one of these three obligations constitutes a violation of such rights. The obligation to *respect* requires States to refrain from interfering with the enjoyment of economic, social and cultural rights. Thus, the right to housing is violated if the State engages in arbitrary forced evictions. The obligation to *protect* requires States to prevent violations of such rights by third parties. Thus, the failure to ensure that private employers comply with basic labour standards may amount to a violation of the right to work or the right to just and favourable conditions of work. The obligation to *fulfil* requires States to take appropriate legislative, administrative, budgetary, judicial and other measures towards the full realisation of such rights. Thus, the failure of States to provide essential primary health care to those in need may amount to a violation.

Obligations of conduct and of result

7. The obligations to respect, protect and fulfil each contain elements of obligation of conduct and obligation of result. The obligation of conduct requires action reasonably calculated to realize the enjoyment of a particular right. In the case of the right to health, for example, the

71. In determining what amounts to a failure to comply, it must be borne in mind that the Covenant affords to a State party a margin of discretion in selecting the means for carrying out its objects, and that factors beyond its reasonable control may adversely affect its capacity to implement particular rights.

72. A State party will be in violation of the Covenant, *inter alia*, if:

- it fails to take a step which it is required to take by the Covenant;
- it fails to remove promptly obstacles which it is under a duty to remove to permit the immediate fulfilment of a right;
- it fails to implement without delay a right which it is required by the Covenant to provide immediately;
- it wilfully fails to meet a generally accepted international minimum standard of achievement, which is within its powers to meet;
- it applies a limitation to a right recognized in the Covenant other than in accordance with the Covenant;
- it deliberately retards or halts the progressive realization of a right, unless it is acting within a limitation permitted by the Covenant or it does so due to a lack of available resources or *force majeure*;
- it fails to submit reports as required under the Covenant.

73. In accordance with international law each State party to the Covenant has the right to express the view that another State party is not complying with its obligations under the Covenant and to bring this to the attention of that State party. Any dispute that may thus arise shall be settled in accordance with the relevant rules of international law relating to the peaceful settlement of disputes. (The full text of the Limburg Principles was published in: UN Doc. E/CN.4/1987/17, Annex; Human Rights Quarterly, Vol. 9. pp. 122-135 (1987); Review of the International Commission of Jurists, Nr 37 (December 1986), pp. 43-55).

obligation of conduct could involve the adoption and implementation of a plan of action to reduce maternal mortality. The obligation of result requires States to achieve specific targets to satisfy a detailed substantive standard. With respect to the right to health, for example, the obligation of result requires the reduction of maternal mortality to levels agreed at the 1994 Cairo International Conference on Population and Development and the 1995 Beijing Fourth World Conference on Women.

Margin of discretion

8. As in the case of civil and political rights, States enjoy a margin of discretion in selecting the means for implementing their respective obligations. State practice and the application of legal norms to concrete cases and situations by international treaty monitoring bodies as well as by domestic courts have contributed to the development of universal minimum standards and the common understanding of the scope, nature and limitation of economic, social and cultural rights. The fact that the full realisation of most economic, social and cultural rights can only be achieved progressively, which in fact also applies to most civil and political rights, does not alter the nature of the legal obligation of States which requires that certain steps be taken immediately and others as soon as possible. Therefore, the burden is on the State to demonstrate that it is making measurable progress toward the full realisation of the rights in question. The State cannot use the "progressive realisation" provisions in article 2 of the Covenant as a pretext for non-compliance. Nor can the State justify derogations or limitations of rights recognised in the Covenant because of different social, religious and cultural backgrounds.

Minimum core obligations

9. Violations of the Covenant occur when a State fails to satisfy what the Committee on Economic, Social and Cultural Rights has referred to as "a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights [...]". Thus, for example, a State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, *prima facie*, violating the Covenant.²⁹ Such minimum core obligations apply irrespective of the availability of resources of the country concerned or any other factors and difficulties.

Availability of resources

10. In many cases, compliance with such obligations may be undertaken by most States with relative ease, and without significant resource implications. In other cases, however, full realisation of the rights may depend upon the availability of adequate financial and material resources. Nonetheless, as established by Limburg Principles 25-28, and confirmed by the developing jurisprudence of the Committee on Economic, Social and Cultural Rights, resource scarcity does not relieve States of certain minimum obligations in respect of the implementation of economic, social and cultural rights.

State policies

11. A violation of economic, social and cultural rights occurs when a State pursues, by action or omission, a policy or practice which deliberately contravenes or ignores obligations of the Covenant, or fails to achieve the required standard of conduct or result. Furthermore, any discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status with the purpose or effect of nullifying or impairing the equal enjoyment or exercise of economic, social and cultural rights constitutes a violation of the Covenant.

²⁹ See Committee on Economic, Social and Cultural Rights, *General Comment No. 3, (Fifth session, 1990)*, UN doc. E/1991/23, Annex III para. 10.

Gender discrimination

12. Discrimination against women in relation to the rights recognised in the Covenant, is understood in light of the standard of equality for women under the Convention on the Elimination of All Forms of Discrimination Against Women. That standard requires the elimination of all forms of discrimination against women including gender discrimination arising out of social, cultural and other structural disadvantages.

Inability to comply

13. In determining which actions or omissions amount to a violation of an economic, social or cultural right, it is important to distinguish the inability from the unwillingness of a State to comply with its treaty obligations. A State claiming that it is unable to carry out its obligation for reasons beyond its control has the burden of proving that this is the case. A temporary closure of an educational institution due to an earthquake, for instance, would be a circumstance beyond the control of the State, while the elimination of a social security scheme without an adequate replacement programme could be an example of unwillingness by the State to fulfil its obligations.

Violations through acts of commission

14. Violations of economic, social and cultural rights can occur through the direct action of States or other entities insufficiently regulated by States. Examples of such violations include:

- (a) The formal removal or suspension of legislation necessary for the continued enjoyment of an economic, social and cultural right that is currently enjoyed;
- (b) The active denial of such rights to particular individuals or groups, whether through legislated or enforced discrimination;
- (c) The active support for measures adopted by third parties which are inconsistent with economic, social and cultural rights;
- (d) The adoption of legislation or policies which are manifestly incompatible with pre-existing legal obligations relating to these rights, unless it is done with the purpose and effect of increasing equality and improving the realisation of economic, social and cultural rights for the most vulnerable groups;
- (e) The adoption of any deliberately retrogressive measure that reduces the extent to which any such right is guaranteed;
- (f) The calculated obstruction of, or halt to, the progressive realisation of a right protected by the Covenant, unless the State is acting within a limitation permitted by the Covenant or it does so due to a lack of available resources or *force majeure*;
- (g) The reduction or diversion of specific public expenditure, when such reduction or diversion results in the non-enjoyment of such rights and is not accompanied by adequate measures to ensure minimum subsistence rights for everyone.

Violations through acts of omission

15. Violations of economic, social, cultural rights can also occur through the omission or failure of States to take necessary measures stemming from legal obligations. Examples of such violations include:

- (a) The failure to take appropriate steps as required under the Covenant;
- (b) The failure to reform or repeal legislation which is manifestly inconsistent with an obligation of the Covenant;
- (c) The failure to enforce legislation or put into effect policies designed to implement provisions of the Covenant;
- (d) The failure to regulate activities of individuals or groups so as to prevent them from violating economic, social and cultural rights;

- (e) The failure to utilize the maximum of available resources towards the full realisation of the Covenant;
- (f) The failure to monitor the realisation of economic, social and cultural rights, including the development and application of criteria and indicators for assessing compliance;
- (g) The failure to remove promptly obstacles which it is under a duty to remove to permit the immediate fulfilment of a right guaranteed by the Covenant;
- (h) The failure to implement without delay a right which it is required by the Covenant to provide immediately;
- (i) The failure to meet a generally accepted international minimum standard of achievement, which is within its powers to meet;
- (j) The failure of a State to take into account its international legal obligations in the field of economic, social and cultural rights when entering into bilateral or multilateral agreements with other States, international organizations or multinational corporations.

III Responsibility for violations

State responsibility

16. The violations referred to in section II are in principle imputable to the State within whose jurisdiction they occur. As a consequence, the State responsible must establish mechanisms to correct such violations, including monitoring investigation, prosecution, and remedies for victims.

Alien domination or occupation

17. Under circumstances of alien domination, deprivations of economic, social and cultural rights may be imputable to the conduct of the State exercising effective control over the territory in question. This is true under conditions of colonialism, other forms of alien domination and military occupation. The dominating or occupying power bears responsibility for violations of economic, social and cultural rights. There are also circumstances in which States acting in concert violate economic, social and cultural rights.

Acts by non-state entities

18. The obligation to protect includes the State's responsibility to ensure that private entities or individuals, including transnational corporations over which they exercise jurisdiction, do not deprive individuals of their economic, social and cultural rights. States are responsible for violations of economic, social and cultural rights that result from their failure to exercise due diligence in controlling the behaviour of such non-state actors.

Acts by international organizations

19. The obligations of States to protect economic, social and cultural rights extend also to their participation in international organizations, where they act collectively. It is particularly important for States to use their influence to ensure that violations do not result from the programmes and policies of the organizations of which they are members. It is crucial for the elimination of violations of economic, social and cultural rights for international organizations, including international financial institutions, to correct their policies and practices so that they do not result in deprivation of economic, social and cultural rights. Member States of such organizations, individually or through the governing bodies, as well as the secretariat and nongovernmental organizations should encourage and generalize the trend of several such organizations to revise their policies and programmes to take into account issues of economic, social and cultural rights, especially when these policies and programmes are implemented in countries that lack the resources to resist the pressure brought by international institutions on their decision-making affecting economic, social and cultural rights.

IV Victims of violations

Individuals and groups

20. As is the case with civil and political rights, both individuals and groups can be victims of violations of economic, social and cultural rights. Certain groups suffer disproportionate harm in this respect such as lower-income groups, women, indigenous and tribal peoples, occupied populations, asylum seekers, refugees and internally displaced persons, minorities, the elderly, children, landless peasants, persons with disabilities and the homeless.

Criminal sanctions

21. Victims of violations of economic, social and cultural rights should not face criminal sanctions purely because of their status as victims, for example, through laws criminalizing persons for being homeless. Nor should anyone be penalized for claiming their economic, social and cultural rights.

V Remedies and other responses to violations

Access to remedies

22. Any person or group who is a victim of a violation of an economic, social or cultural right should have access to effective judicial or other appropriate remedies at both national and international levels.

Adequate reparation

23. All victims of violations of economic, social and cultural rights are entitled to adequate reparation, which may take the form of restitution, compensation, rehabilitation and satisfaction or guarantees of non-repetition.

No official sanctioning of violations

24. National judicial and other organs must ensure that any pronouncements they may make do not result in the official sanctioning of a violation of an international obligation of the State concerned. At a minimum, national judiciaries should consider the relevant provisions of international and regional human rights law as an interpretive aide in formulating any decisions relating to violations of economic, social and cultural rights.

National institutions

25. Promotional and monitoring bodies such as national ombudsman institutions and human rights commissions, should address violations of economic, social and cultural rights as vigorously as they address violations of civil and political rights.

Domestic application of international instruments

26. The direct incorporation or application of international instruments recognizing economic, social and cultural rights within the domestic legal order can significantly enhance the scope and effectiveness of remedial measures and should be encouraged in all cases.

Impunity

27. States should develop effective measures to preclude the possibility of impunity of any violation of economic, social and cultural rights and to ensure that no person who may be responsible for violations of such rights has immunity from liability for their actions.

Role of the legal professions

28. In order to achieve effective judicial and other remedies for victims of violations of economic, social and cultural rights, lawyers, judges, adjudicators, bar associations and the legal community generally should pay far greater attention to these violations in the exercise of their

professions, as recommended by the International Commission of Jurists in the Bangalore Declaration and Plan of Action of 1995.³⁰

Special rapporteurs

29. In order to further strengthen international mechanisms with respect to preventing, early warning, monitoring and redressing violations of economic, social and cultural rights, the UN Commission on Human Rights should appoint thematic Special Rapporteurs in this field.

New standards

30. In order to further clarify the contents of States obligations to respect, protect and fulfil economic, social and cultural rights, States and appropriate international bodies should actively pursue the adoption of new standards on specific economic, social and cultural rights, in particular the right to work, to food, to housing and to health.

Optional protocols

31. The optional protocol providing for individual and group complaints in relation to the rights recognised in the Covenant should be adopted and ratified without delay. The proposed optional protocol to the Convention on the Elimination of All Forms of Discrimination Against Women should ensure that equal attention is paid to violations of economic, social and cultural rights. In addition, consideration should be given to the drafting of an optional complaints procedure under the Convention on the Rights of the Child.

Documenting and monitoring

32. Documenting and monitoring violations of economic, social and cultural rights should be carried out by all relevant actors, including NGOs, national governments and international organizations. It is indispensable that the relevant international organizations provide the support necessary for the implementation of international instruments in this field. The mandate of the United Nations High Commissioner for Human Rights includes the promotion of economic, social and cultural rights and it is essential that effective steps be taken urgently and that adequate staff and financial resources be devoted to this objective. Specialized agencies and other international organizations working in the economic and social spheres should also place appropriate emphasis upon economic, social and cultural rights as rights and, where they do not already do so, should contribute to efforts to respond to violations of these rights.

³⁰ Reproduced in: ICJ Review No. 55 (Dec. 1995), pp. 219-227.