

Many readers have requested a special focus on housing rights and on monitoring the large and possibly growing trend towards large-scale evictions in major cities. To follow up the paper on 'Evictions in Seoul, South Korea' in the April 1989 issue, the Editors invited Scott Leckie to write about how and in what form the concept of 'housing as a human right' is becoming part of national and international law; this paper is drawn from a longer and much more detailed report; see Notes at the end of the paper for more details. In our next issue, Jai Sen from Unnayan in Calcutta will be responding to this paper and also writing about the National Campaign for Housing Rights in India.

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Housing as a human right

Scott Leckie

"[C]ivilization can be judged, at least to some extent, by the minimum housing conditions which a society will tolerate for its members."

--Louis Wirth, 1947

I. INTRODUCTION

EVERYONE AGREES THAT adequate shelter is one of the most fundamental human needs. Most research and government policy decisions and actions concerning housing begin with this premise. Yet there are hundreds of millions of people who are homeless or who live in structures which could never be considered 'adequate shelter'. In many places, the severity of housing problems and the number of people affected is growing rapidly. In most Third World nations and in many nations in the richer First and Second World, governments are failing to ensure that housing needs are met; indeed, in many Third World nations, very large proportions of both rural and urban populations lack adequate shelter.⁽¹⁾

The consensus that adequate shelter is a universal need obscures the fact that there is far less agreement as to what constitutes 'adequate shelter', the means by which it should be provided and the role of the government in ensuring its provision.

There are various rationales as to why a government should become involved in housing. Perhaps the most common is humanitarian; in each society, there are homeless or inadequately housed people and government should ensure their housing needs are met. Another can be termed 'functionalist' since government action on housing is justified by

its role in helping guarantee a healthy, satisfied workforce to support economic growth. A third can be considered 'social control'; government action on housing is seen as a way of defusing social pressures and government-provided housing (and services like health care and education) are justified as the best means of preventing social and political strife. A fourth rationale is that adequate shelter is a human right and one of government's main tasks is to ensure this (and other rights) are met; it is this idea of 'housing as a human right' which is the focus of this paper.

'Meeting housing needs' is the justification that most Third World governments use for their housing policies. The debate within government (and within the wider political process) centres on who is in need of housing, what constitutes an 'adequate house', how best to ensure that those in need obtain an adequate house and how many government resources should be devoted to their fulfilment. In this debate, no citizen has a right to government help in finding or building adequate housing. Not surprisingly, government expenditures on housing are usually among the first to be cut in times of crisis; in addition, since government defines the people who are in need, they can direct their resources to benefit people from their own party or people whose political support they need.⁽²⁾

A focus on housing as a human right pro-

vides a more explicit justification for government action; here, state action is not humanitarian but part of its role as the representative of its citizens. Of course, there are still the questions as to what constitutes an 'adequate house' and the scale and nature of government action on housing. But the homeless and the inadequately housed now have a right to government help. Government action becomes a legal obligation.

Perhaps this is one reason why the issue of housing is increasingly being considered in the context of human rights. If pressure on governments to meet the housing needs of poorer citizens based on their evident need is not succeeding, then perhaps the establishment of their 'right to adequate housing' can prove more successful. Supporting this shift in emphasis is the growing importance of the right to housing within international human rights law, a realm which has remained outside the consideration of those involved in the housing and human settlements field.⁽³⁾

Various housing rights campaigns have become well-known around the world including the Housing Rights Campaign of Habitat International Coalition, the National Campaign for Housing Rights (NCHR) in India, the Housing Rights Campaign in the United Kingdom, the Coalition for the Homeless in the United States and the Asian Coalition for Housing Rights.⁽⁴⁾ At the inter-governmental level, various UN agencies are beginning to discuss and act upon housing rights with greater determination. In many nations and internationally, an emerging case law concerning housing rights is developing rapidly. A growing body of literature and research is focusing on the inherent links between human rights and housing. But these endeavours have yet to clarify a number of issues. The most important is whether emphasizing a legal norm concerning the right to housing has any utility in the struggle to improve shelter conditions throughout the world? What are housing rights and can we put them into an easily understood conceptual context and framework?

This article seeks to answer these questions. The intention is to provide an overview of the subject with some historical background and suggestions for practical uses of existing the law; this paper does not seek to suggest how the right to housing should be interpreted in strict legal terms. Section II is a short historical analysis of international human rights law, followed by a closer look at how housing

has figured in its overall development over the past forty years. Section III looks at some reasons why housing rights are rarely considered as a means to promote improved shelter conditions. Sections IV and V explore some of the benefits of emphasizing the housing rights approach and also discuss some of the current dilemmas facing housing rights. Sections VI and VII describe some of the more and less favourable recent developments in regard to housing rights. A concluding section discusses how housing rights can be used by housing advocates.

Overall, this paper does not deal in any detail with the actual problems of inadequate shelter or homelessness and their causes. No attempt will be made to legally define the right to housing, not only because this has been discussed elsewhere but also because ultimately the meaning and scope of housing rights must come from the people themselves: the beneficiaries and 'owners' of this right. This paper's central purpose is one of clarification and encouragement to outline the important role which exists for activists, professionals, teachers and researchers involved with human settlements, the environment, housing and anti-poverty efforts in the arena of human rights.

II. FROM HOUSING NEEDS TO HOUSING RIGHTS

THE NOTION OF 'housing needs' has a millennial history. In most historical periods and places it is intimately linked to the development of a monetary economy. The most common reason for people's housing needs not being met has been (and remains) their inability to afford housing which meets their needs. The notion of 'housing rights' is more recent and can be seen as one justification for actions by certain governments or philanthropic societies in the 19th Century. But it is only since the Second World War that the idea of 'housing rights' has been developed both in national and international law.

It is through the Universal Declaration of Human Rights (UDHR) of 1948 that housing entered the language and realm of human rights.⁽⁵⁾ At the time of its adoption, this Declaration was not seen as a legally binding agreement but as a common standard of achievement which should form the basis for both domestic and international human rights policies and protection. This new instrument was

Box 1:

The Different Kinds of International Human Rights Instruments

Covenants, Conventions and Treaties: these three instruments are the most important and legally powerful in international law. Once ratified by a state, these are legally binding upon that state. A state bound by a covenant, convention or treaty is usually obliged to prove that it is fully complying with its legal obligations to the organization concerned by regular, written reports. With covenants concerning civil and political rights, individuals can formally complain to the appropriate human rights body (if their state has accepted this procedure) when they allege their rights have been violated. If a state only signs a covenant, convention or treaty, this indicates an intention to ratify it and does not entail legally binding principles.

Declarations: generally, declarations are not legally binding, unless they have been incorporated into customary international law. Most human rights activists and lawyers would argue that the Universal Declaration on Human Rights is now an element of customary international law and that this possesses legally binding qualities.

Recommendations: these are suggested statements which states should strive to attain. Generally they are not legally binding.

Resolutions: these are usually adopted by the organs of international organizations such as the UN General Assembly or the UN Commission on Human Rights. They are rarely seen as unquestionably legally binding, but often signify the first step in the process of legally substantiating certain principles concerning human rights. By analyzing voting records of states on resolutions, one can obtain some idea of that state's attitudes towards detailed elements of human rights.

the first major international effort to create a legal structure whereby nation-states would be responsible to one another concerning the treatment of their own citizens. In a way, it symbolizes the long road towards legitimizing the role of external entities concerning human rights throughout the world. This Declaration made it more difficult to argue that a government's treatment of its own citizens was solely a domestic matter, as governments have done for centuries. The rights found within the Universal Declaration are the rights of all persons living on the earth and, as such, *everyone* has an interest in the respect given to human rights *everywhere*.

Since 1948 many other pieces of international law have enshrined formulations of the right to adequate housing. Among these are: Recommendation 115 of the International Labour Organization (ILO) Concerning Worker's Housing (1961); The Vancouver Declaration on Human Settlements (1976); the International Convention on the Elimination of Discrimination Against Women (1979); The International Convention on the Elimination of Racial Discrimination (1965); and the International Covenant on Economic, Social and Cultural Rights (1966). This list is ordered in terms of their importance, with the last mentioned covenant being the most important since

international covenants and conventions have more legal force than declarations and recommendations (see Box 1). The International Covenant on Economic, Social and Cultural Rights contains the most legally significant foundation of the right to housing at the international level.⁽⁶⁾ It acquired the force of law in 1976 when enough governments ratified it to make it legally binding and, at present, 92 of the world's nations have ratified this treaty, thereby accepting legally binding obligations to fulfil, among other things, the right to adequate housing.

Many other norms within human rights legislation directly relate to housing rights. Such rights can be useful as a legal basis from which to substantiate citizens' housing rights claims. It would be difficult to refute, whether legally, ideologically or politically, that rights such as the right to life, the right to privacy, the right to social security, the right to health, the right to work and indeed various civil and political rights do not contain elements of housing rights within them.⁽⁷⁾

Recent years have seen many resolutions specifically concerning the right to housing adopted by inter-governmental organizations. The United Nations General Assembly, the UN Commission on Human Rights, the International Labour Office and others have adopted

annual resolutions reaffirming the right to housing and urging governments to do their utmost to take all necessary measures to fulfil this right.⁽⁸⁾ Many domestic legal systems have also enshrined varying degrees of housing rights norms. Over 30 national constitutions include this right, while many statutory and other legal provisions tend in this direction.⁽⁹⁾

There are many other examples of housing and other rights within the legal systems of the world but these assist us only part of the way. Awareness of these legal sources is an important first step. Yet, before examining housing rights in their legal context, it is worth considering why they have received so little attention from most housing specialists and indeed most judges, lawyers, courts and organizations of the world? Why is this right and its application still so underdeveloped?

III. HOUSING RIGHTS: WHY ARE THEY GIVEN SO LITTLE ATTENTION?

THE FACT THAT individuals have housing rights has rarely been used as a means of demanding and obtaining action by governments and international agencies towards ensuring that those who are homeless or inadequately housed have their housing needs met. Various reasons can be put forward to explain this.

The first is the political implications of considering 'adequate housing' as a right. Housing rights are part of a category of rights called 'economic, social and cultural rights' and these have received much less attention and practical approval than another category of rights - 'civil and political rights'. For instance, the present administration of the United States does not even accept the idea that citizens can have economic, social and cultural rights. But civil and political rights take the form of norms which protect citizens - for instance from arbitrary arrest or torture. In effect, they set rules which society (and the government itself) must respect. Citizens whose civil or political rights are abused or threatened can use the judicial system to defend their rights.

Many social, economic and cultural rights are not norms so much as guarantees of citizens' rights to certain goods and services - for instance the right to a house (however defined) and education or health care. To ensure these rights are met, governments must usually

spend money (or on occasion redistribute assets which have monetary value). Governments must find the funds which usually means taxing other citizens or businesses. Of course some economic, social or cultural rights such as the right to form trade unions may not always imply financial obligations on government.

To ensure housing rights are met, governments might also need to appropriate some resources under the control of individuals and businesses - urban land being the most obvious example - within clearly defined mechanisms which decide on, and award, compensation. In most cities where land is privately owned, governments cannot hope to meet housing needs, and thus housing rights, without the capacity and willingness to limit private rights over land use and sale and limits on rewards from land speculation. Government action to guarantee social and economic rights is almost by definition redistributive. In the case of urban housing (and in the case of guaranteeing an adequate livelihood for rural dwellers) it often goes beyond redistribution of income to some redistribution of assets or at least limiting individuals' rights to freely buy, sell and use these assets. It is hardly surprising that such rights generate political controversy. Most civil and political rights are compatible with market-oriented economies and ideologies; many social and economic rights are not. By contrast, in many nations with centrally-planned economies, governments have given more attention to social and economic rights but far less to civil and political rights.

Although there are important distinctions between these two categories of rights, legally, economic, social and cultural rights are as much a valid claim as civil and political rights. International and domestic jurisprudence reveal that these two categories of rights are of equal value, interdependent and indivisible from one another. In addition, they have the following characteristics: they create legal obligations for states; they are capable of being violated and subject to legal remedies aimed at rectifying alleged violations; and are crucial guarantees which must be afforded to every individual for reasons of health, well-being and the fulfilment of other rights. For those people not involved with human rights issues on a daily basis, the term 'human rights' is not usually associated with housing but rather with issues such as freedom from unjust imprisonment or freedom of speech. Too few

people realize that housing is an integral part of the legal system concerned with human rights. The right to freedom of speech or freedom from unjust imprisonment (basic civil and political rights) have little meaning for those suffering serious health problems arising from malnourishment and very poor housing conditions.

A second reason for the little attention given to housing rights is that very few people realize that they, as individuals, families or communities possess housing rights. One could hazard a guess that less than a fifth of the world's population has ever heard of the Universal Declaration of Human Rights, let alone be familiar with its content and the implications for their own needs. Yet this is by far the most well-known and widespread international human rights instrument. The Covenant on Economic, Social and Cultural Rights is far less well-known. Of course, mere knowledge of one's human rights is no guarantee that they will be fulfilled. But such knowledge is a prerequisite for action and empowerment in many circumstances. The issue of housing rights cannot be left to lawyers alone. People must know their rights in order to demand them.

A third reason for so little attention being given to housing rights is the fact that most non-governmental organizations (NGOs) involved in human rights are preoccupied with civil and political rights. Only a small, albeit growing, number of NGOs focus specifically on economic, social and cultural rights. Because the issue of human rights is essentially legal in nature, many human rights advocates are those who feel comfortable with the law. Lawyers, judges and others are generally taught to use traditional legal means to promote respect for human rights. When they act, they want concrete legal results such as the decision of a court. Because this may not always be possible in the context of housing rights (at least at present), human rights NGOs continue to work on civil and political rights issues. Of course, the need to use the law as a means of justice and prevention against violations of such rights, particularly torture, disappearances and killings is self-evident. But homeless persons and those living in abject poverty suffer continually and every day. Their rights are just as important as those whose civil and political rights are abused. Far more people die or are seriously disabled as a result of officially tolerated poverty than by direct acts of brutality by the state. To give but one example, the

failure of national and local governments to meet their responsibilities for ensuring supplies of potable water are readily available to all houses, and that provision is made for the removal and safe disposal of human and household wastes, causes severe health problems for literally hundreds of millions of people every year and premature death for tens of millions (mostly infants and young children). Simply put, it is time that housing rights (and all rights related to freedom from impoverishment) were seen as inherent elements of the global struggle for human rights.

A fourth reason for housing rights being relatively unknown stems from a lack of emphasis placed on them by persons or organizations directly involved in shelter. Very few housing NGOs, whether action or research-based consistently use 'the right to housing' as a justification for demands on state resources or demands for changes in laws and procedures to ensure housing needs are met. Perhaps this is not surprising because laws are so often inappropriately defined and enforced. Existing laws are so often seen as a force to be fought against rather than a protection against exploitation and a force of empowerment. The legal system is viewed as one of the main means by which richer groups protect their rights, incomes and assets. Yet if housing rights are to become useful in promoting improvements in housing conditions for poorer groups, housing NGOs may need to incorporate demands for the fulfilment of housing rights into their work and to develop their expertise to do so on a consistent and continuous basis. The use of housing rights as a one-time initiative will rarely achieve the desired results. Housing rights movements will usually have a long and sustained struggle to promote a respect of this right within government, the legal system and the judiciary.

A fifth reason why housing rights are not widely used is because a comprehensively defined right to adequate shelter is not always subject to traditional means of legal enforcement and so it has remained outside mainstream consideration. Certain elements of housing rights such as rent levels, evictions or discrimination may be subject to various forms of judicial enforcement. These tend to be the elements which most closely mirror civil and political rights. Many other elements of housing rights may not be totally appropriate to this particular method of gaining its realization.

The final reason why housing rights are not

widely used is governments' deliberate avoidance of this issue. Governments have kept housing rights out of the courts by making the norms very difficult to enforce by standard legal means. This is true even if many governments accept their obligations to fulfil housing rights, whether internationally or nationally based. States have taken up a variety of legal obligations to fulfil housing rights, but in practice these assurances usually fail to make the jump from words into deeds. As such, housing rights in and of themselves, are not directly enforceable in the form of individual complaints at the international level of human rights monitoring machinery. Moreover, as they are now perceived, housing rights can rarely be the sole basis of a legal complaint before national courts. This imperfection in the system of human rights, in addition to being harmful to the overall fulfilment of this norm, also provides governments with arguments to support their lack of initiatives to realize this right for all citizens. In addition, it must be remembered that the international organizations which can assist greatly in enforcing human rights obligations are really no more than their member governments allow them to be.

These are not the only reasons why housing rights are only beginning to receive substantial attention, but in the context of human rights law, they are probably the most important. There are some exceptional circumstances where housing rights have been important and such exceptions are becoming more frequent.

IV. SOME BENEFITS OF THE HOUSING RIGHTS APPROACH

INTEGRATING THE CONCEPT of human rights into campaigns which put pressure on governments to change housing policies has advantages over a concentration only on citizens' housing needs. This is true at the individual, household, community, national and international levels. The following points outline the positive attributes of viewing and acting upon shelter needs in the context of housing rights.

a) An Emphasis on the Legal Obligations of the State

Approaching housing from the angle of citizens' rights shifts the basis for the housing

struggle more into the category of legitimate demands backed by the force of law. Even if solving housing problems is a government priority, unless a 'rights' approach is undertaken the reach of such action will not necessarily be broad enough to benefit all individuals and families in need. States which have ratified international human rights treaties containing the right to housing (or other relevant rights) voluntarily bind themselves, in a legal sense, to the obligation of realizing these norms. Most, if not all, states possess varying degrees of legal responsibility concerning this right. In other words, governments have made promises to their citizens (even if such citizens are unaware of these) as well as to other states which have ratified the same instrument(s) and to the international community as a whole that they will do everything possible to fully comply with their freely accepted legal duties. Thus, the human rights approach provides a method and a process of evaluating government policies and responses to housing problems and for demanding that all necessary measures be taken. Both individual and international duty as well as global solidarity is derived from international law.

Viewing housing as a right also helps remove (or at least decrease) the impact of ideological changes which can occur when one government replaces another. The power wielded by government in terms of housing legislation and policy is limited if housing rights obligations are taken seriously. Obligations assumed by a state are effective notwithstanding changes in government unless, of course, a government decides to denounce a particular treaty containing housing rights. Even if this happens, no government can escape a legal obligation to fulfil housing rights for its citizens because these rights occur so often in international law and because of the customary legal status of the Universal Declaration of Human Rights.⁽¹⁰⁾ Housing rights are also valuable not only for the legal guarantee they provide but also as a benchmark by which government's responsiveness to a basic human need can be judged.⁽¹¹⁾

b) Raising the Level of Demand

When a moral, ethical or social demand becomes a right, its level of importance is greatly enhanced. As Philip Alston has pointed out: "It is now widely accepted that the characterization of a specific goal as a human right elevates it above the rank and file of competing

societal goals, gives it a degree of immunity from challenge, and generally endows it with an aura of timelessness, absoluteness and universal validity.⁽¹²⁾ Many international and national legal systems have characterized housing in this manner. The obligations implied by accepting adequate housing as a right must, in legal terms, make it one of the tantamount priorities of any government accepting such responsibilities. At the same time, a stress on housing rights can bring ethical questions into an often technical debate. A demand for improved shelter, greater citizen access to finance, resources and services and so forth are justified in terms of needs, but also in legal terms. Governments often fail to fulfil campaign promises concerning housing. But it is more difficult to refute their *legal* obligations with regard to housing rights. Housing rights can serve to empower citizens and their communities when they realize that their demands have the force of law to back them up.

c) Provides Criteria for Judgements on State Action

The UN Committee on Economic, Social and Cultural Rights, the most important international human rights monitoring body concerned with housing rights, has consistently emphasized to states the necessity of establishing 'benchmarks' for each of the rights they are obliged to fulfil. The right to housing leads to the creation of both immediate and longer-term objectives and duties. This provides a means to measure governmental action and policy in both the short and long term. Once a state legally recognizes the right to housing, it implies actions on several fronts. First it must halt acts which infringe upon this right, such as illegal evictions, a completely uncontrolled housing market and existing discrimination in housing by reformulating building codes and regulations and by amending or repealing legislation which contradicts housing rights fulfilment. Longer-term objectives would concern elements of the right to housing which cannot always be achieved at once. These would include the allocation of unused or underutilized land within cities for low-income housing developments, support for both formal and informal housing finance systems which meet poorer groups' finance needs with flexible terms and minimum demands for collateral and a long-term programme to

greatly increase the capacity of city and local governments to improve standards and coverage for water supply, sanitation and garbage collection. Focusing on the right to housing provides a standard against which government actions can be compared. If social and political realities in a state conflict with the measurement devices or benchmarks inherent in housing rights, this right may have been violated under the terms of the law.⁽¹³⁾

d) Puts Other Rights into their Proper Perspective

Utilizing the right to housing as a legal tool can lead to judicial and other pronouncements as to the limitations which can reasonably be placed on rights, which if 'over-exercised', inhibit the full realization of housing rights. This would be particularly true of the so-called 'absolute' right to private property. The individual rights of landlords and large property owners and the right to unrestrained competition and limitless freedom of choice could also be included. In fact many human rights instruments which include property rights qualify this right in the public interest. For instance article 21 of the American Convention of Human Rights (OAS) states that "Everyone has the right to use and enjoyment of their property. *The law may subordinate such use and enjoyment to the interest of society.*"⁽¹⁴⁾ No one shall be deprived of their property except upon payment of just compensation, for reasons of public utility or social interest" (emphasis added). The American Declaration on the Rights and Duties of Man (OAS) also states that "Every person has a right to own such private property as meets the essential needs of decent living and helps maintain the dignity of the individual and their home."⁽¹⁵⁾ A housing rights perspective can lead to interpretations of other rights to discern where limitations may be needed so that existing visions of these rights do not harm the prospects of housing rights being fully implemented.

e) Shifts the Burden of Proof

One of the greatest benefits of the housing rights approach is that it shifts the burden of proof away from the poor and onto the state. It forces the state to prove that it cannot fully implement the guarantee. This can enhance the legal standing of the poor who more frequently experience the oppressive rather than

empowering functions of the law. In a way, those inadequately housed are not required to prove the need for governmental action, although this will always remain necessary within the borders of non-responsive countries. The burden of proof is upon the state to show that *all* available resources and measures are being utilized towards the eventual goal of meeting housing rights for all. Unless a state can clearly show this, it may be acting in non-conformity with freely accepted legal duties. Housing rights violations within any nation provide a basis for criticisms both internally and externally where it is clear that legally the state itself is at fault.

f) Indicates Policy Limitations

Because no two states have the same perspectives, problems or policies concerning housing, housing rights cannot always mean exactly the same thing. While *every* country has housing problems to one degree or another, the satisfaction of housing rights obligations will take diverging forms. Obviously, the nature of an obligation must be contingent upon the problems in need of rectification. While this is true, the existence of housing rights necessarily implies that there are limits to the actions available to states. When a state undertakes to comply with housing rights obligations, it tacitly recognizes that it no longer has complete freedom as far as housing and other related policies are concerned. If there are no legal limits, the entire system of human rights law would be meaningless. The nature of the specific contents of the right to housing, even though these are quite general, implies limitation of action. While this area of limitation remains wide, housing rights obligations can *encourage* constructive and positive responses to housing needs, and *discourage* actions, policies and legislation inconsistent with this legal guarantee.

g) Implies the Partial Erosion of Absolute Sovereignty

The acceptance by the state of housing rights acts to partially erode the notion of absolute state sovereignty by making the state accountable to the international community, its organizations and monitoring procedures. This accountability must be seen to entail the acceptance by states that any policy or legal decision concerning housing rights must be

consistent with internationally accepted principles and legal perceptions. This can also lead to the strengthening of the credibility of international organizations.

Now consideration has been given to some of the benefits that can be derived from moving housing considerations into the realm of human rights, we must discuss some of the dilemmas arising from such an emphasis. These should not be seen as justifications for avoiding such initiatives. They are raised to show where more work is needed to increase the effectiveness of emphasising the 'right to housing'.

V. SOME HOUSING RIGHTS DILEMMAS

THIS SECTION WILL focus on some components of the right to housing norm, including current imperfections. It is assumed that each of these imperfections will change in the years to come, especially if the historical lessons learnt from the field of human rights continue in the expected direction.

a) A Definition of Housing Rights

Although attempts are being made at all levels to give legal substance to the right to housing and thus to define its parameters, an internationally acceptable definition of housing rights has yet to emerge. None of the pronouncements made by the human rights or housing-related bodies of the U.N. have definitively outlined the *precise* contents of this norm. This is not to say that the basic principles cannot be defined but rather that the most important elements of this right have yet to be distinguished by the legal bodies concerned. An increasing number of NGOs and academics have formulated definitions of this right but these remain essentially without legal standing, at least at present.⁽¹⁶⁾

This definitional hurdle is not unexpected; indeed, *all* human rights are in a constant state of flux regarding their meaning and degree of applicability depending upon the societal circumstances involved. This is also the case with the more widely accepted civil and political rights. For instance, elements of the right to privacy and the right to freedom of expression are still being debated and modified depending upon the circumstances. The fact that no universally acceptable definition of housing

rights is presently available is no reason for dismay. This actually creates an opportunity for those involved with the housing struggle to try to ensure that their ideas are incorporated into any eventual determination of the components of the right in question. The state of the law regarding housing rights remains so undeveloped that it is not one which has to be reversed due to improper perceptions. Rather, it allows for concrete suggestions and demands to be made towards an adequate definition. Decisions can be made as to whether to focus on the 'obligations' side of housing rights, the 'contents' or 'entitlement' side or on the longer-term approach of setting 'benchmarks'. The obligations side of human rights entails those acts and omissions required of a state to allow the fulfilment of these rights while the contents side places emphasis on the actual guarantees of individual citizens and communities. Some would argue that it is easier and more reasonable to focus on obligations because contents will vary too much from nation to nation. Various approaches will be required to implement housing rights and this will affect any determination of this norm's contents. Policies and legislation designed to confront housing problems in Europe, for example, will differ markedly from those required in the poorer Third World nations. In the North, social housing, rent control, affordability issues, confronting and preventing discrimination in housing, zoning laws, tenant participation and others will be some of the central themes. In much of the South, land allocation and development for housing, security of tenure for squatters and tenants, citizens' access to building materials, finance and social services and their right to participate in the housing process will usually dominate the housing rights debate. But this divergence does not mean that no universal definition of housing rights can emerge. As stated above, obligations to fulfil this right must be consistent with the needs required. Even though needs vary immensely, there are universal principles which can be applied.

Perhaps the main difficulty in defining 'housing rights' is that people judge housing to be 'good' or 'adequate' more by what it does for them than by its dimensions and physical characteristics.⁽¹⁷⁾ This is especially the case for poorer groups. An 'adequate' house must be within reach of its inhabitants' jobs; poorer groups need to live within easy reach of their jobs to save time and money going to and from work. Even if many people with low incomes do

not work in 'registered' jobs, most work very long hours as street vendors, handicraft makers, shoeshiners, casual labourers on building sites and cannot afford long periods spent travelling to and from work. An adequate house must also be within reach of shops, schools, health centres and (for most people) family and friends; again, poorer groups want housing within walking distance or only a short bus ride away from such facilities since they lack the time and the funds to pay for longer journeys. Thus, the location of a house is a critical criterion as to whether it is 'adequate'.

When defining 'housing rights', there are obvious criteria relating to adequate quality such as a safe site and structure, basic infrastructure and services (water supply, sanitation, garbage disposal, site drains, all weather roads....), secure tenure and affordable cost. But there are also issues relating to location and the issue of 'participation' - people's right to influence developments in their homes and neighbourhoods.

It is clear that issues of service availability, accessibility, affordability, security, positive freedoms **to** things and freedoms **from** acts (say of governments or landlords) are applicable in every country of the world. The system of international human rights law is by its nature a universal one. Its principles and rights bind the international community of nations. Although not traditionally concerned with the issue of housing in the context of human rights, the UN Centre for Human Settlements (UNCHS) has emphasized the principle of universality in terms of housing and human settlements.⁽¹⁸⁾ It is in carrying out these principles and policies, being as they must, appropriate to the situation at hand, where the country-specific elements of housing rights should be addressed.

Thus, can we expect any definitive statement concerning the definition of housing rights in the near future? At the international level, tentatively at least, we can. At its next session the UN Committee on Economic, Social and Cultural Rights will hold what is called a 'general discussion' on the right to housing. This will be the first time such a detailed analysis has taken place concerning this right.⁽¹⁹⁾ Pending the results of this exercise in legal interpretation, a tentative definition could emerge in the form of another legal tool, a 'general comment'.⁽²⁰⁾ If the general comment offered by the Committee is comprehensive and adequate, those active in the struggle for

housing rights will be in a better legal position *vis-à-vis* demands centering on this right. In addition, the Economic and Social Council of the UN (ECOSOC) has included the issue of whether or not to adopt a Convention on Housing Rights on its agenda.⁽²¹⁾ If response is favourable, the norms found in such an instrument will also strengthen the legal obligations assumed with this right. At least one NGO concerned with housing rights, Habitat International Coalition will be present at both the next sessions of the ECOSOC and the Committee to encourage the emergence of proper perspectives.

Without an internationally acceptable definition of housing rights which emphasizes the equality and unity of all nations, but also recognizes each one's distinct cultural, historical, social and legal attributes, the universality of housing needs and rights is sacrificed somewhat. Finding the components of the right to housing will make it more difficult for states to feel they have absolute freedom over the determination of which actions, policies and visions are appropriate in fulfilling their legal obligations. The task of determining precisely whether a certain act, omission, law or policy is in full compliance and consistent with the general term 'a right to housing' is made much more difficult if there is no clear definition. This determination is virtually impossible in many contexts for all but the most severe and blatant acts such as forced evictions and the active denial of basic services.

b) The Question of Enforceability

The normal means of judicial enforcement do not always apply in the case of housing rights and people may be hesitant to invoke this right for fear of not obtaining direct and concrete results. Some opponents of economic, social and cultural rights use this point to support their view of the non-legal nature of entitlements. Judicial measures are not always applicable, but this does not imply that the housing rights approach will not yield positive results.

Action in court should be a last resort - where and when it is financially possible. The most obvious means of enforcing housing rights is through non-judicial actions, for instance ensuring these demands are incorporated into political and social struggles. Once inserted into such campaigns, housing rights and the

inherent governmental obligations they imply can augment these initiatives. Whether at the local or international level, such non-traditional means of enforcement can have impact.⁽²²⁾

One barrier to the use of housing rights is the lack of judicial sanctions in the classical sense of the term (and especially internationally). But this provides an impetus to housing advocates and organizations to creatively seek new means of securing the rights of the homeless and inadequately housed, *yet with a basis grounded in the law*. The old adage of human rights cynics is that "you can't put a government in prison". But the important point is that housing rights norms are legal obligations possessed by most (if not all) of the world's states. Public criticism, international embarrassment, complaints from other states, moves by opposition politicians, criticisms in national and international media, foreign governments demanding that housing rights are met as a condition for aid or some other good or service and many other non-traditional means of enforcement may yield more positive results than resorting to the courts.

In some instances, traditional judicial means can be appropriate, especially where there are obvious violations of housing rights. There are many legal cases in which the right to housing is utilized and the number is increasing every year. Many cases have been tried wherein reliance on other rights relevant to housing form the crux of the argument. The inclusion of international human rights obligations in such legal arguments is also occurring more frequently.

c) The Role of International Law within National Legal Systems

All states do not possess equal legal obligations concerning housing rights; as noted above, only 92 of the world's 180 countries have ratified the most important covenant containing this right.⁽²³⁾ Certain additional obligations are created with the ratification of other human rights treaties containing this right or directly relevant rights. For many states, the basis of housing rights' duties derive from less substantial legal sources. Nevertheless, if we assume that the Universal Declaration on Human Rights forms a part of 'customary international law' due to its universal acceptance and constant reaffirmation, at least some form of housing obligations are

present within every state of the world. This means that states which have not ratified the most important international treaties which include housing rights, are by their very existence as states, bound to fulfil, respect, protect and enforce this right.

The question of enforceability and the legal status and the question of whether the international legal obligation can be used as the basis of a formal complaint to the judiciary within the domestic legal framework must also be considered. In most countries economic, social and cultural human rights as found in international law are not subject to the same means of enforcement as civil and political rights. The key issue is the precise legal status of internationally accepted rights within domestic structures.

Most countries maintain 'dualist' legal systems so that the international treaties they ratify are not automatically binding. In dualist systems, a new law or act of their parliament is needed before the legal norms of a treaty achieve the status of internal enforceability. A minority of states maintain 'monist' legal systems where treaties are self-executing; this implies that all international obligations, once formally accepted or ratified, are automatically considered to be equal or, in some cases, even superior to domestic laws. This also applies to decisions made by international or regional human rights bodies.

But even in monist states, many social and economic rights have not been subject to the same measures of implementation as have civil and political rights. There are some encouraging developments in the direction of enhancing the legal stature of rights such as the right to housing, but there is still a long way to go. On the positive side, if legal arguments by a person or group trying to get their housing rights enforced include reference to international obligations regarding this right, the judicial body concerned must at least take these norms into account, and (arguably) should not exclude these from strict consideration.

d) The Rule of Law

For the right to housing (or any human right) to achieve a worthwhile legal standing, there must be respect by the state and its organs for the rule of law. Independent and impartial judges and lawyers must be firmly guaranteed if human rights are to be safeguarded. Moreover, political and eco-

nomic considerations must not infringe upon or restrict the proper functioning of a legal system. If there is no coherent and responsive legal system in place, the chances of housing rights having any major utility are diminished. Judicial decisions affecting human rights must be enforced, independent of the political climate present.

In political systems run by non-democratic governments, the possibility of the rule of law being fully guaranteed is dubious at best - as is the fulfillment of the right to housing. It is notable that many of the large-scale evictions of squatters and repression of community organizations have taken place under non-democratic governments. Examples include Chile, since 1973; Argentina, between 1976 and 1979; the Philippines, under the Marcos regime; Brazil from 1964 through the 1970s; and South Korea, since the 1960s.⁽²⁴⁾ As the retired Indian Supreme Court Justice Krishna Iyer has said "I know that there are communities which do not have it but I feel that the rule of law is essential even at times of revolutionary change. We need to define those rights of citizens which can be achieved through their tribunals and one of the most important of these, one which every person in this world has, is the right to a home. Housing justice should be seen as a facet of social justice."

e) External and Internal Factors

As the interdependence of the international community continues to develop, so too do external factors which can inhibit housing rights' realization. Meeting housing rights will, to some degree, require significant public expenditure. It will often require significant political changes - perhaps most notably the issue of land availability for housing in cities and the powers and resources available to city and municipal governments. But there are also external factors which inhibit governments realizing citizens' housing rights and which are beyond their control.

These include changes in the terms of trade which favour the North (for instance falling commodity prices but higher prices for northern manufactures and services). There is also the changes in interest rates in the North which helped precipitate and continues to exacerbate most Third World nations' debt problems. Linked to this are the externally imposed austerity or 'readjustment' conditions by the IMF, when governments request its help. Such

factors often severely limit governments' capacity to fulfil its duties in regard to housing rights. There is an obvious contradiction if IMF conditions force a government to renege on legal obligations to fulfil citizens' rights.

When considering housing rights, the role of these external forces should not be overemphasized for they are often used by governments to justify their lack of action. In legal terms, a state basing an argument on these themes would have great difficulty in justifying inaction concerning housing rights simply because such external forces do not affect many components of this norm. For instance, it is highly doubtful whether a government could reasonably justify forced evictions in this context.

Certain internal conditions may also affect the implementation of this right. Policies relating to rural development, the domestic economy, responses to natural and human induced disasters and other areas can affect the chances of housing rights becoming social realities.

f) Peoples' Laws vs. State Laws

Perhaps at least half of the world's poor, particularly those in poorer nations, regulate their own activities on custom, tradition and other exigencies appropriate to their culture and circumstances rather than state laws. Many laws are indeed imposed upon them from above without any consultation with the very people the law affects. This leads such people to a general feeling of mistrust and even contempt when faced with these laws, which are not only frequently inappropriate, but also harmful. Housing rights in their positive sense, being state based laws, will need to be incorporated within the existing visions of the law possessed by the majority of the world's poor and inadequately housed. Very rarely do governments consider these customary laws on a level equivalent to the statutory and other laws legislated by the state. Ideally, the 'right to housing' should draw on both, in interpretation and implementation.

g) Reconciling Human Rights with One Another

Emphasizing the housing **rights** approach will usually lead to major conflicts of interest within society. Whenever one path of legal or human rights action is prioritized by the state, some sectors of society will inevitably feel they

have been subjected to unfair treatment. The question of balancing rights and thus reconciling them with one another can be very difficult. Housing rights approaches must take these issues into account. For instance, the rights of property owners must be balanced against the rights of the poor to have access to land. The rights of tenants must be balanced against the claims of landlords. Obviously, in a state which possesses obligations concerning the right to housing, emphasis must be placed on the fulfillment of basic needs (including housing) over less fundamental needs such as individual profit.

VI. SOME FAVOURABLE DEVELOPMENTS

AT THE INTERNATIONAL level, various positive developments have taken place. Many resolutions have been adopted reaffirming the right to housing and emphasizing the importance of viewing housing in the context of rights. The UN Committee on Economic, Social and Cultural Rights has given more attention to housing rights at each of their successive sessions. Their intentions to hold a 'general discussion' and perhaps to adopt a 'general comment' on the right to adequate housing are certainly positive developments. This might lead to an internationally oriented legal statement delineating the most important components of the right to housing and the state obligations for their fulfilment. The direct involvement of the Habitat International Coalition (a body representing over 200 NGOs) at sessions of the Committee is also noteworthy because this can help such bodies to begin acting on housing rights. This Committee also encourages NGO activity to put pressure on states to respect housing rights.

The decision of the UN Sub-Commission to carry out a "Study on problems, policies and progressive measures in achieving the full realization of economic, social and cultural rights" is also important since this is likely to focus in part on the right to housing. International law *vis-à-vis* housing rights will be strengthened when the recently adopted Convention on the Rights of the Child enters into force since this convention contains one of the most clear legal obligations for states in the housing domain concerning the shelter needs of children. The inclusion of housing rights issues and concerns within the Global Strategy

for Shelter to the Year 2000, developed by the UN Centre for Human Settlements also represents a step forward. An item concerning the eventual adoption of an International Convention on Housing Rights may be on the agenda of the Economic and Social Council (ECOSOC) of the UN and, if carried out, could lead to very encouraging international prospects.

Certain judicial decisions within the last decade or two are also important. This is particularly true for two bodies where the legal basis of the cases considered did not rest upon legal foundations of housing rights *per se*, but on other rights with qualities directly pertinent to housing. Evictions, forced relocations and discrimination in the allocation of public housing have all been considered as violations of the rights to privacy and the right to freedom from discrimination by the European Commission on Human Rights and Fundamental Freedoms. The European Committee of Experts has considered several cases concerning migrant workers and housing within Europe, pronouncing the importance of both legal and *de facto* protections against discrimination for these groups. This same body has also declared that some residential qualifications for the provision of publicly financed accommodation is inconsistent with the European Social Charter.

While much can be done at the international level, especially in terms of universal interpretations and legislative measures concerning housing rights, it is at the national level where most direct actions have been undertaken. One trend at this level concerns constitutional sources of housing rights. Although precise statistics are unavailable, it is reasonable to state that most new constitutions adopted within the past few years and foreseeably into the future contain or will contain derivations of the right to housing. Examples include the constitutions of Bangladesh (1986), Haiti (1987), the Netherlands (1984), Nicaragua (1987) and the Philippines (1986), each with a right to housing.⁽²⁵⁾

Certain legal cases at the national level have also had some levels of success. Within India many legal battles have been fought aiming towards the legal recognition of a right to housing. The frequently discussed 'Bombay pavement dwellers case' led to positive judicial pronouncements by the Indian Supreme Court, including the interpretation that the right to livelihood and shelter could be assumed from the constitutionally based right to life. Cases in other Indian cities such as Delhi and Calcutta

have also been successful in increasing the prospects of an enforceable right to housing.⁽²⁶⁾ In Philadelphia, for example, a right to shelter was established when a judge ruled that the city "shall make available shelter to meet the needs of all homeless persons not otherwise provided for".⁽²⁷⁾ The right of the homeless or those living in shelters to vote was upheld in the courts of New York. Also in New York, the landmark case of *Callaghan vs. Carey* led to the decision that the city would agree to supply all applicants with shelter of a quality to be mandated by the courts. In Washington, DC a referendum was passed requiring the district government to provide overnight shelter to any resident who requested it. In Toronto, one housing activist group, the Centre for Equality Rights in Accommodation (CERA) consistently uses international sources of housing rights in their arguments on behalf of their clients.⁽²⁸⁾ In Canada, in the last five years, there have been over 70 major legal cases in which international human rights law has been referred to by judges making the final decisions.⁽²⁹⁾

Other positive developments include the increased use by NGOs of the concept of housing rights in fighting against evictions; the April 1989 issue of *Environment and Urbanization* included a description by the Asian Coalition for Housing Rights of the forced evictions in Seoul, South Korea. The Asian Coalition for Housing Rights is also active in promoting the housing rights of poorer groups and the homeless in other Asian nations. While the goals of such groups are similar to those of housing needs oriented groups, the use of the concept of 'housing rights' which all citizens have can enhance the status of the issue and prove more effective in promoting policy changes. It is worth noting that such campaigns are found in the South, the North and internationally. There is more international co-operation - for instance in the increasing use of fact-finding missions where national and foreign specialists form a team to investigate government policies and their impacts. Recent missions of this type have been carried out in Calcutta, Seoul and within the Dominican Republic.⁽³⁰⁾ Moreover, housing rights campaigns have also sponsored several international conferences concerning housing rights such as the Legal Aspects of the Shelter Question conference held in New Delhi in 1988, a conference entitled "The Right to Housing: An Enforceable Human Right or an Empty Political Slogan?" in Vancouver, Canada in Decem-

ber 1988 and the recent conference held in Cartagena, Colombia in April 1989 focusing on the possible development of a convention on housing rights. Finally, the literature concerning housing is also tending to emphasize more commonly the right to housing. This is true within housing and human rights periodicals. One example is the recently established publications series of the Centre for Human Settlements in Vancouver called "Human Settlements and Human Rights".⁽³¹⁾

VII. SOME LESS FAVOURABLE DEVELOPMENTS

INTERNATIONALLY, ONE OF the less positive developments has been the omission of housing rights from key documents; for instance, at its 1989 session the UN Commission did not adopt a resolution on the right to housing for the first time since 1985.

More significant is the omission of a right to housing within the African Charter on Human and Peoples' Rights (adopted in 1981 and entering into force in 1986) and the Additional Protocol on Economic, Social and Cultural Rights to the American Convention on Human Rights (adopted in 1988 and yet to enter into force). The first of these regional human rights instruments covers nations in Africa while the second covers nations in the Americas (OAS).⁽³²⁾ Each contains some rights of direct relevance to the right to housing, but neither includes an explicit right to housing. For the Organization of American States, this is puzzling for three reasons. First, many member nations already have the right to housing within their national constitutions.⁽³³⁾ Secondly, derivations of the right to housing already exist in at least two of its human rights instruments: the Organization's Charter; and the American Declaration on the Rights and Duties of Man. Thirdly, the right to housing **was** in the first two drafts of the Additional Protocol. Why this right was excluded from the final text is difficult to understand. Perhaps the financial and political power of the United States government within this organization and its refusal to accept the legitimacy of economic, social and cultural rights is relevant.

At the regional level of human rights litigation within Council of Europe countries, the European Commission on Human Rights and Fundamental Freedoms has consistently

decided that the right to privacy and respect for the home in no way includes the obligation of the state to provide housing.⁽³⁴⁾ Although many researchers and activists working in housing have long since moved away from the idea of the state itself being a major provider of housing, most still recognize that state actions are needed in other areas to guarantee poorer households access to housing which matches their needs. The state is not so much the 'provider' as the 'enabler', ensuring individuals and households have the means to obtain adequate housing.

The domestic level has also seen its share of unsuccessful cases concerning housing rights. The Bombay pavement dwellers comes to mind once again, for even though many positive judicial pronouncements did arise from this case, the pavement dwellers concerned were nevertheless evicted. Arguments by housing and human rights activists in countries such as South Korea, Israel, South Africa, India and the Dominican Republic focusing on housing rights have often not led to the renunciation of evictions as government policy.⁽³⁵⁾ In the United Kingdom, the Campaign for Housing Rights fell far short of its goal of getting the Government to adopt legislation formally enshrining housing rights. In many countries where housing rights have been incorporated into legal arguments within the courtroom, these have been ignored by judges and have subsequently not been accepted. To this we must add the fact that almost as many countries in the world have **not** ratified the International Covenant on Economic, Social and Cultural Rights as have done so. Even in those countries which have ratified this important treaty, many have yet to take those legislative and other actions necessary for the full realization of the right to housing. Finally, in spite of the fact that housing as a right has been accepted at the international level for over 40 years, hundreds of millions of persons remain homeless or inadequately housed.

VIII. ACTION, ACTION, ACTION

ALL AVAILABLE REMEDIES at the international level which can be used to promote the development and fulfilment of housing rights cannot be condensed or even summarized in a short article. At national level, no summary of the appropriate strategies to use for housing rights - whether drawing on national or international law - can be made since these will vary

too much, depending on local circumstances. Existing bases of action have been discussed elsewhere.⁽³⁶⁾

Still, several points are worth making. First, all the conventions and covenants which contain derivations of housing rights are subject to various forms of monitoring and enforcement. Treaties containing civil and political rights often allow for individual complaints to be forwarded to the monitoring or judicial body in question. Economic, social and cultural rights oriented documents, while not generally availing complaint mechanisms, do provide for other less traditional means of enforcement. Under the International Covenant on Economic, Social and Cultural Rights for example, each of the 92 countries bound by this treaty are required to submit written reports to the UN every five years outlining the legal and other measures they have taken to fulfil the rights contained in the covenant. These reports are open to criticism in both the domestic and international context; such criticisms can be made through formal procedures or through separate publications and critiques.

Human rights bodies within international organizations which accept housing rights within their legislation can offer resolutions about the human rights record in distinct countries. These can help encourage appropriate changes within certain regimes. Simply publicizing a state's international obligations concerning the right to housing can help both to empower the citizens and to let the state know that people are becoming aware that they possess distinct rights to adequate shelter. Community based organizations (for instance the residents or neighbourhood associations commonly formed by inhabitants within illegal settlements) and non-government organizations can help to prepare studies and reports concerning housing rights which, in turn, are utilized within international bodies. Although space is too limited to even list the various options, the key point is simply that housing rights obligations are not free from international or national judicial procedures. Yet these procedures must be used over and over again before housing rights gain the power and currency they should have.

IX. CONCLUDING REMARKS

THIS PAPER HAS sought to present some of the key issues concerning the definition and possible use of 'the right to housing'. It has minimized the use of technical legal language

since, all too often, overuse of technical terms makes papers discussing legal questions difficult for non-specialists to read. The concept of 'housing rights' will only have real utility if people like the readers of this Journal find it useful and effective to bring housing rights into larger realms of discussion, clarification and action. These are the people who can make housing rights work.

It is an exciting time for those involved in the issue of housing rights. Within the next few months we can expect the decision by the UN's Economic and Social Council as to whether or not to begin the process of adopting an International Convention on Housing Rights. In 1990 an important UN study on the problems concerning the full realization of economic, social and cultural rights will be completed, hopefully containing a detailed analysis of housing rights in this respect. The January 1990 session of the UN Committee on Economic, Social and Cultural Rights will also be interesting to watch should the planned 'general discussion' on housing rights occur and if a 'general comment' on this right is adopted. We can also anticipate the entering into force of the International Convention on the Rights of the Child and its housing rights obligations.

These few international examples suggest that the concept that each individual has inalienable *housing rights* is becoming more widely discussed and is beginning to receive the attention it deserves. But as this and other papers in this issue of *Environment and Urbanization* make clear, the need for more focused and appropriate government action to improve housing for poorer groups has never been greater. All those working in housing have to seek all possible means to promote such action. Developing the concept of housing rights, the means for its acceptance and the monitoring of state performance in this regard provides a perhaps unappreciated new focus for spurring such action. It remains the task of individual citizens, their community organizations, non-government organizations, professional bodies and other groups and networks to use all available means to persuade and encourage governments to accept and then implement their legal obligations concerning the right to housing. The need for such action was never more pressing.

NOTES AND REFERENCES

This paper draws on a much longer, more detailed report on this subject by Scott Leckie entitled *Shelter as a Need, Shelter as a Right: International Human Rights Law and the Right to Adequate Housing*, IIED Technical Report (1989) available from the Human Settlements Programme, IIED, 3 Endsleigh Street, London WC1H 0DD, United Kingdom. price (including postage) £6.50/US\$10 Third World orders; £10/US\$16 orders from elsewhere.

1. See *The Global Report on Human Settlements 1986*, United Nations Centre for Human Settlements, Oxford University Press, 1987.
2. *Squatter Citizen: Life in the Urban Third World*, Jorge E. Hardoy and David Satterthwaite, Earthscan Publications, London, 1989.

3. The right to housing has legal foundations in many of the texts of international and regional human rights law. It is thus a right which already exists in a legal form. The main problem, at least as far as these two levels are concerned, is implementation. Below are extracts from some of the legal documents where the right to adequate housing can be found. For more details, see Leckie (1989) mentioned at the beginning of Notes and References.

International Sources

a) Declarations and Recommendations

--The Universal Declaration of Human Rights (UDHR), adopted and proclaimed by the United Nations General Assembly (UNGA) Resolution 217A (III) of 10 December 1948 (December 10 has subsequently become known as International Human Rights Day). The full text can be found in UN Doc. A/810 (1948). Article 25(1) "Everyone has the right to a standard of living adequate for the health and well-being of himself [sic] 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 [sic] control." (emphasis and [sic] added);

--The Vancouver Declaration on Human Settlements, adopted by the United Nations Conference on Human Settlements in 1976. The full text can be found in UN Doc. A/CONF.70/15. Section III(8) "Adequate shelter and services are a basic human right which places an obligation on governments to ensure their attainment by all people, beginning with direct assistance to the least advantaged through guided programmes of self-help and community action. Governments should endeavour to remove all impediments hindering attainment of these goals. Of special importance is the elimination of social and racial segregation, *inter alia*, through the

creation of better balanced communities, which blend different social groups, occupations, housing and amenities."

b) Conventions and Covenants (i.e. once ratified these attain the force of law)

--The International Covenant on Economic, Social and Cultural Rights (CESCR), adopted and opened for signature, ratification and accession by UNGA Resolution 2200A(XXI) of 16 December 1966 and entering into force on 3 January 1976. The full text can be obtained in General Assembly Official Records, 20th Session, Supplement No. 16, p. 49. This is the most important international treaty containing housing rights, with currently 92 countries which have ratified it. Article 11(1) "The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and *housing* and to the *continuous improvement of living conditions*. The States Parties *will take appropriate steps to ensure the realization of this right*, recognizing to this effect the essential importance of international cooperation based on free consent." (emphasis added);

--The International Convention on the Elimination of Discrimination Against Women (CEDAW), adopted and opened for signature, ratification and accession by UNGA Resolution 34/180 of 18 December 1979 and entering into force on 3 September 1981. The full text can be obtained in UN Doc. A/RES/34/180. Currently 94 countries have ratified this instrument. Article 14(2) "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*." (emphasis added);

--The International Convention on the Rights of the Child (not yet adopted, but adoption is expected in December 1989). The full text can be obtained in SIM Newsletter, No. 20, December 1987, p. 85. (draft) Article 14(3) "The States Parties to the present Convention, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement the right to a standard of living adequate for the child's physical, spiritual, moral and social development and shall in the case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and *housing*."

Regional Sources

--The Charter of the Organization of American States (OAS), in Bogota on 30 April 1948. The full text can

be obtained from the OAS, Washington, DC 20006, USA. Article 31(k) "To accelerate their economic and social development, in accordance with their own methods and procedures and within the framework of the democratic principles and the institutions of the Inter-American System, the Member States agree to *dedicate every effort to achieve the following goals...*(k) *Adequate housing for all sectors of the population.*" (emphasis added);

--The American Declaration on the Rights and Duties of Man, adopted by the Ninth International Conference of American States at Bogota in 1948 by OAS Resolution (XXX). The full text can be obtained from the address listed above. Article XI "Every person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, *housing* and medical care to the extent permitted by public and community resources."(emphasis added)

4. These organizations can be contacted at the following addresses: Habitat International Coalition, Enrique Ortiz (General Secretary), Cordobanes 24, Col. San Jose Insurgentes, 03900 Mexico D.F., Mexico; The National Campaign for Housing Rights (India), c/o UNNAYAN, 36/1A Garcha Road, Calcutta 700 019, India; The Housing Rights Campaign (UK), 5 Crown Street, London WC1H 8IS, United Kingdom; and The Asian Coalition for Housing Rights, PO Box 24-74, Klongchan, Bangkok, Bangkok 10240, Thailand. (See Vol. 1, No.1 of *Environment and Urbanization*, pp. 89 for an article describing the nature of work carried out by the Asian Coalition).

5. See note 3.

6. See note 3.

7. On the issue of the permeability of rights concerning the right to housing, see Scott Leckie, *Shelter as a Need...*(op. cit.) section 5 "The Permeability of Rights". See also Craig Scott, "The Interdependence and Permeability of Human Rights Norms: Towards a Partial Fusion of the International Covenants on Human Rights" in *Osgood Hall Law Journal*, Vol. 26, No.4, 1988.

8. Among those adopted within the last few years are:

--United Nations General Assembly Resolution 41/146 of 4 December 1986 and UNGA resolution 42/146 of 7 December 1987 entitled "The Realization of the Right to Adequate Housing";

--UN Commission on Human Rights Resolutions: 1986/36, 1987/22 and 1988/24 all entitled "The Realization of the Right to Adequate Housing";

--ECOSOC Resolution 1987/37 on the International Year of Shelter for the Homeless and ECOSOC Resolutions 1986/41 and 1987/62 both entitled "The Realization of the Right to Adequate Housing" and

--ILO Resolution III "Concerning the International Year of Shelter for the Homeless and the Role of the ILO", adopted by the International Labour

Conference at its 73rd Session on 23 June 1987.

9. Among those countries whose Constitutions contain varying derivations of the right to housing are Bangladesh, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Equatorial Guinea, the German Democratic Republic, Greece, Guatemala, Guyana, Haiti, Honduras, Iran, Japan, Kampuchea, Mexico, North Korea, the Netherlands, Nicaragua, Pakistan, Panama, Paraguay, Peru, the Philippines, Poland, Portugal, Spain, Turkey, the USSR, Vietnam, Yemen PDR and Yugoslavia. See Leckie, *Shelter as a Need...*(op. cit.), appendix I for more details.

10. "Although the juridical status of the Universal Declaration cannot be said to be free from doubt, there are therefore today substantial grounds for saying that it now constitutes a binding obligation for Member States of the UN, and some grounds also for saying that it has now become part of customary international law, and so binds all states. (The relevance of these considerations is of course confined to those states which have not yet become parties to any of the later human rights treaties)." Paul Sieghart, *The International Law of Human Rights*, Clarendon Press, Oxford, 1984, pp. 54-55.

11. See Maria de Lourdes Pistasilgo, "The Right to Shelter and the Interdependence of Public Policies--the Portuguese Case" in *Homes Above All: Homelessness and the Misallocation of Global Resources*, the Building and Social Housing Foundation, Leicester, 1987.

12. Philip Alston, "The Nature of International Human Rights Discourse: The Case of the 'New' Human Rights", paper presented to a conference at Oxford University held 29-31 May 1987, entitled "An Interdisciplinary Inquiry into the Content and Value of the So-called 'New' Human Rights", p. 2.

13. On the issue of housing rights violations, see Scott Leckie, "Can Housing Rights be Violated?" in *Review of the International Commission of Jurists*, December 1989 (forthcoming).

14. See Note 3 for more details.

15. See Note 3 for more details.

16. Among publications which discuss this are: Frank I. Michelman, "The Advent of a Right to Housing: A Current Appraisal" in *Harvard Civil Rights-Civil Liberties Review*, Vol. 207, 1970, pp. 207-216; "A Peoples' Bill of Housing Rights" prepared by the National Campaign for Housing Rights in India; Scott Leckie, "The UN Committee on Economic, Social and Cultural Rights and the Right to Adequate Housing: Towards an Appropriate Approach" in *Human Rights Quarterly* Vol. 11(4), November 1989; and Leckie 1989, see note 7.

17. See John F.C. Turner, *Housing By People: Towards Autonomy in Building Environments*, Marion Boyars, London, 1976.

18. The Global Shelter Strategy to the Year 2000, adopted by the United Nations General Assembly discusses the issue of universality:

"A strategy for achieving the objective of adequate shelter for all is global by definition: first, because no single nation can claim to have fully reached this objective; secondly, because the extreme differences found between countries and the extremely grave shelter problems faced by the majority of them call for global responsibility and global commitment; thirdly, because many of the individual lessons learnt are universally valid, because the shelter sector reveals many trends common to different development and socio-economic contexts so that there is a common set of principles, criteria and approaches applicable to all national and sub-national contexts." A copy of the Global Strategy can be obtained from the Publications Office, UNCHS (Habitat), P. O. Box 30030, Nairobi, Kenya.

19. In 1989, a 'general discussion' within the Committee took place for the first time at its third session. This intended to focus on the entire scope of Article 11, but emphasis was really only placed on the right to food and little time was given to the right to housing. A full account of the first general discussion can be obtained in UN Doc. E/C.12/1989/CRP.1/Add.13 or in the final report of the Committee's third session, available from the UN Centre for Human Rights, Palais des Nations, 1211 Geneva, Switzerland. Because so little time was spent focusing on the right to housing, the Committee agreed to hold a more lengthy discussion on this right at its fourth session in 1990. However, the author was allowed by the Committee to make a short statement outlining some of the key elements of housing rights. See UN Doc. E/C.12/1989/SR.21 pp.12-14.

20. A 'general comment' is a judicial tool of legal interpretation utilized by various human rights treaty bodies, in particular the UN Human Rights Committee. More importantly for the issue of housing rights, the UN Committee on Economic, Social and Cultural Rights adopted its first general comment at its 1989 session and plans to adopt further ones in the future. A general comment either on the right to an adequate standard of living or the right to housing may be adopted at its 1990 session. The importance of these comments stems from their international significance in terms of a quasi-judicial interpretation of precisely what certain rights mean and the obligations they entail. A general comment on the right to housing, if offered and adopted, will yield far greater clarity as to the internationally accepted components of the right.

21. The idea of developing an International Convention on Housing Rights is an initiative of Habitat International Coalition's International Campaign for Housing Rights and Against Evictions.

22. On non-traditional means of enforcing housing rights see, for instance, "Legal Strategies for Gaining Housing

Rights: the Calcutta Context", available from UNNAYAN, 36/1A Garcha Road, Calcutta 700 019, India.

23. The states which have ratified the most important of these instruments, the International Covenant on Economic, Social and Cultural Rights (as of February 1989) are: Afghanistan, Argentina, Australia, Austria, Barbados, Belgium, Bolivia, Bulgaria, Byelorussian SSR, Cameroon, Canada, Central African Republic, Chile, Colombia, Congo, Costa Rica, Cyprus, Czechoslovakia, Democratic Peoples' Republic of Korea, Democratic Yemen, Denmark, the Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Finland, France, Gabon, Gambia, the German Democratic Republic, the Federal Republic of Germany, Greece, Guatemala, Guinea, Guyana, Honduras, Hungary, Iceland, India, Iran, Iraq, Italy, Jamaica, Japan, Jordan, Kenya, Lebanon, Libyan Arab Jamahiriya, Luxembourg, Madagascar, Mali, Mauritius, Mexico, Mongolia, Morocco, the Netherlands, New Zealand, Nicaragua, Niger, Norway, Panama, Peru, the Philippines, Poland, Portugal, Romania, Rwanda, St Vincent and the Grenadines, San Marino, Senegal, Solomon Islands, Spain, Surinam, Sweden, Syrian Arab Republic, Togo, Trinidad and Tobago, Tunisia, Uganda, Ukrainian SSR, USSR, the United Kingdom and Northern Ireland, the United Republic of Tanzania, Uruguay, Venezuela, Vietnam, Yugoslavia, Zaire and Zambia. See SIM Newsletter Vol. 6(2), 1988, p. 116.

24. Hardoy and Satterthwaite 1989, see note 2.

25. To give some examples:

Bangladesh: Article 15 "It shall be a fundamental responsibility of the state to attain, through planned economic growth, a constant increase of productive forces and a steady improvement in the material and cultural standard of living of the people, with a view to securing its citizens a) the provision of the basic necessities of life, including food, clothing, shelter, education and medical care..."

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

The Netherlands: Article 22(2) "It shall be the concern of the authorities to provide sufficient living accommodation..."

Nicaragua: Article 64 "Nicaraguans have the right to decent, comfortable and safe housing that guarantees familial privacy. The state shall promote the fulfilment of this right."

Philippines: Article 13 "(9) The state shall by law, and for the common good, undertake, in co-operation with the private sector, a continuing programme of urban land reform and housing which will make available at affordable cost decent housing and basic services to underprivileged and homeless citizens in urban

centres and resettlement areas. It shall also promote adequate employment opportunity to such citizens. In the implementation of such programmes the state shall respect the rights of small property owners.

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

26. Details of these cases can be obtained from UNNAYAN, 36/1A Garcha Road, Calcutta 700 019, India or from the Committee for the Right to Housing, 8, Ground Floor 33, L, Mughbat Cross Lane, Thakurdwar, Charni Road (East) Bombay 400 004, India.

27. This particular case is derived from Nora Richter Greer, "The Right to Shelter" in *The Search for Shelter*, The American Institute of Architects, Washington, DC, 1986, pp. 37-42. Some additional articles on case law within the US are: Mort, Geoffrey "Establishing a Right to Shelter for the Homeless" in *Brooklyn Law Review*, Vol. 50, 1984, pp. 939-994; Robitscher-Ladd, Christine "A Right to Shelter for the Homeless in New York State" in *New York University Law Review*, Vol. 61, May 1986, pp. 272-299; Hayes, Robert "Litigating on Behalf of Shelter for the Poor" in *Harvard Civil Rights-Civil Liberties Law Review*, Vol. 22:1, Winter 1987, pp. 79-89; Ciampi, Maria L. "Building a House of Legal Rights: A Plea for the Homeless" in *St. John's Law Review*, Vol. 59, 1985, pp. 530-557; Campaign for Human Development (US Catholic Conference) *Housing: The Third Human Right*, Washington, DC: Offices of Publishing and Promotion Services for the Campaign for Human Development, 1985 among others. On the right to housing within Canada see: Parkdale Community Legal Services, "Homelessness and the Right to Shelter: A View from Parkdale" in *Journal of Law and Social Policy*, Vol. 4, 1988, pp. 35-108.

28. For more details, contact Bruce Porter (Director), CERA, 229 College St. (308), Toronto, Ont. M5T 1R9, Canada.

29. See John Claydon, "The Use of International Human Rights Law to Interpret Canada's Charter of Rights and Freedoms" in *Connecticut Journal of International Law*, Vol. 2(2), Spring 1987, pp. 349-359.

30. Reports and information on these missions can be obtained by the Secretariat of Habitat International Coalition, address listed above in note 4.

31. For more details, write to David Hulchanski, Director, the Centre for Human Settlements, University of British Columbia, 2206 East Mall, Vancouver, BC, V6T 1W5, Canada.

32. For more details, write to Organization of African Unity, General Secretariat, P.O. Box 3243, Addis Ababa, Ethiopia and Organization of American States, General Secretariat, Washington, DC 20006, USA.

33. Member States of the OAS which possess derivations of the right to housing in their Constitutions are: Costa Rica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Haiti, Honduras, Nicaragua, Panama, Paraguay and Peru.

34. See case no.4560/75, Reports of the European Commission of Human Rights and Fundamental Freedoms. The Commission meets in Strasbourg, France at the Headquarters of the Council of Europe.

35. On evictions in these countries see, for example, the following: *Disposable People: Forced Evictions in South Korea*, Catholic Institute for International Relations (CIIR), 22 Coleman Fields, London N1 7AF, United Kingdom, 1988; *Demolition and Sealing of Houses as a Punitive Measure in the Israeli-Occupied West Bank*, Al-Haq-Law in the Service of Man (West Bank Affiliate of the International Commission of Jurists) 1987; Unterhalter, Elaine, *Forced Removal: The Division, Segregation and Control of the People of South Africa*, 1987, International Defence and Aid Fund for Southern Africa, Canon Collins House, 64 Essex Road, London N1 8LR, United Kingdom. On evictions in India see the work of the National Campaign for Housing Rights (see note 4) and Society for Promotion of Area Resource Centres (SPARC), PO Box 9389, Bombay - 400026, India and others.

36. For more details, see Scott Leckie 1989, mentioned at the beginning of Notes and References. The author is also compiling a handbook for use by CBOs, NGOs and their constituents as to what procedures are currently available at the international and regional levels which could be useful towards implementing housing rights.