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### **IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251 OF 15 MARCH 2006, ENTITLED “HUMAN RIGHTS COUNCIL”**

**Report of the Special Rapporteur on adequate housing as a component  
of the right to an adequate standard of living, Miloon Kothari\* \*\***

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\* The report and its annex I are circulated in all official languages. In view of the word limits, annex II is circulated in the language of submission only; annex III is circulated in the languages of submission (English, French and Spanish).

\*\* The present report is submitted after the deadline in order to reflect the most recent information.

## **Summary**

The present report, submitted in accordance with Human Rights Council decision 1/102, aims at providing practical and operational tools to promote, monitor and implement the human right to adequate housing. The report also identifies a normative gap - the non-recognition in international human rights law of the human right to land.

The conceptual work on human rights indicators has sufficiently progressed and there is currently a good basis for endorsing a list of indicators for monitoring the right to adequate housing. The Special Rapporteur urges Governments to test and adapt these to establish national benchmarks consistent with their human rights obligations, and to participate actively in piloting and validating them with the Office of the High Commissioner for Human Rights and the United Nations Human Settlements Programme (UN-HABITAT).

In its resolution 2002/49, the Commission on Human Rights entrusted the Special Rapporteur with the additional task of conducting a global study on women and adequate housing. He therefore integrated a gender perspective in every aspect of his mandate through the development of specific strategies for collecting information from States and civil society groups, including the elaboration of a questionnaire on women and housing that has become a useful tool for monitoring the realization of women's right to housing and land.

The Special Rapporteur has throughout his mandate cautioned against the practice of forced evictions. As a result of an International Workshop on Forced Evictions, basic principles and guidelines aimed at assisting States and the international community in significantly reducing the practice of forced evictions have been elaborated. The Special Rapporteur requests the Human Rights Council to ensure wide dissemination of the Basic principles and guidelines on development-based evictions and displacement annexed to this report and urges States to incorporate them into national laws and policies.

In addition, this report discusses the importance of, and proposes strategies to strengthen the legal framework to promote and implement the human right to land, an issue the Special Rapporteur believes is of particular significance for implementing the right to adequate housing.

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\* Circulated in the language of submission only.

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## **I. INTRODUCTION**

1. Throughout his mandate, the Special Rapporteur has favoured a constructive approach to promoting the human right to adequate housing. To this end, the Special Rapporteur uses several means. First, by using the indivisibility approach, he analyses the different components of the right to adequate housing and elements that promote or impede the realization of this right, and tries to identify existing gaps in international human rights law and national law and policy. Second, the Special Rapporteur engages in constructive dialogues with States and other actors, collects information, prepares communications<sup>1</sup> and undertakes country missions.<sup>2</sup> Third, the Special Rapporteur proposes practical tools and solutions to help States and civil societies in implementing the human right to adequate housing.

2. Based on this approach the present report is composed of two parts. The first part aims at providing practical tools to recognize, monitor and implement the right to adequate housing. The second part discusses the importance of strengthening the legal framework to promote and implement the human right to land, an issue the Special Rapporteur believes is of particular significance for implementing the right to adequate housing.

## **II. PRACTICAL TOOLS OF IMPLEMENTATION**

### **A. Indicators on the right to adequate housing**

3. The need for the elaboration of an operational framework for the realization of the right to adequate housing, including indicators and methods of monitoring, has become more pertinent with the emergence of the Millennium Development Goals (MDGs). Developing rights-based indicators and monitoring tools could contribute to more effective implementation of the MDGs and the realization of relevant human rights. The MDGs are important in the targets that they set for States and other actors working towards human development and improved human well-being. But the overriding human rights principles and their progressive realization must underlie the process of meeting the Goals. One of the targets of the MDGs (Goal 7) is relevant to the right to adequate housing pertains to slums: “By 2020 to have achieved a significant improvement in the lives of at least 100 million slum dwellers.” The realization of this target is to be monitored by: (a) the proportion of people with access to improved sanitation; and (b) the proportion of people with access to secure tenure. In a world where there are significant variations across countries on the definition of a “slum” and “secure tenure”, the reliance on these two indicators for monitoring the quality of life of slum dwellers could be restrictive or insufficient. Recognizing the challenge, the United Nations Human Settlements Programme

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<sup>1</sup> For a summary of communications during this reporting period see A/HRC/4/18/Add.1.

<sup>2</sup> During the current reporting period, the Special Rapporteur visited Australia (A/HRC/4/18/Add.2) and Spain (A/HRC/4/18/Add.3).

(UN-HABITAT) convened an expert group meeting on urban indicators in October 2002 to address some of these concerns, in which both the Special Rapporteur and the Office of the High Commissioner for Human Rights (OHCHR) participated.<sup>3</sup>

4. The Special Rapporteur addressed the issue of indicators and tools for monitoring the right to adequate housing in his reports in documents E/CN.4/2003/5 and E/CN.4/2004/48, wherein he outlined relevant issues and possible options for taking this work forward. Since then there has been some progress in this area, including the work undertaken by Paul Hunt, the Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health (see E/CN.4/2006/48), by UN-HABITAT<sup>4</sup> and by OHCHR in support of the ongoing reform of human rights treaty monitoring bodies and the reporting procedure.<sup>5</sup> There has also been considerable progress at the civil society level in refining indicators for monitoring the right to adequate housing.<sup>6</sup> The Special Rapporteur would like to draw attention to the expert consultation organized by OHCHR on 19 and 20 December 2006, where housing rights indicators were discussed and to which he actively contributed.

5. After reviewing these developments, the Special Rapporteur believes that the conceptual work on human rights indicators has sufficiently progressed and provides a basis for endorsing an illustrative list of indicators for monitoring the right to adequate housing. While presenting such a list in annex II, based on discussions at the expert meeting in December 2006, the Special Rapporteur would like to draw attention to issues critical to understanding and applying the suggested framework at the national and subnational levels.

6. The first issue relates to the imperative of disaggregated data for monitoring human rights. Identification of vulnerable groups has to be the starting point for seeking specific information for monitoring the enjoyment of those rights. Thus, for the right to adequate housing, there is, in most instances, a need to have data disaggregated by sex, major population age groups, regions (including rural and urban) and, where possible, in relation to other groups, including racial, ethnic or religious groups, minorities, indigenous peoples, refugees, internally displaced persons and migrants. Moreover, while some data may be presented at the individual level and some at the household level, often there may be a case for further disaggregation by household types, including by female-headed households. Human rights monitoring in addition also requires indicators that reflect the substantive standards of the right, which incorporate human rights principles, including gender equality, non-discrimination and participation.

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<sup>3</sup> See *Guide to Monitoring MDG Target II*, UN-HABITAT, 2003, p. 6, which provides the definition of a slum.

<sup>4</sup> Report of the Expert Meeting on Housing Rights Monitoring, organized by the United Nations Housing Rights Programme (UN-HABITAT and OHCHR) in Geneva in November 2003, available at [www.unhabitat.org/programmes/housingrights/expert\\_group\\_meeting.asp](http://www.unhabitat.org/programmes/housingrights/expert_group_meeting.asp).

<sup>5</sup> Document HRI/MC/2006/7.

<sup>6</sup> See for example the work done by the Housing and Land Rights Network (HLRN), <http://toolkit.hlrn.org>.

7. Second, for indicators to be useful in monitoring the implementation of human rights, it is important that they be explicitly and precisely defined, based on an acceptable and participatory methodology of data collection and presentation, and available on a regular basis.

8. Third, it is essential that the approach used for identifying indicators be simple, systematic and comprehensive. At the same time, it should be flexible in order to reflect, in the selection of specific indicators, contextual concerns at the national and subnational levels. Finally, the framework adopted to assess the implementation of human rights has to capture, through the selection of suitable indicators, both the effort being made by States parties in implementing particular human rights standards and the outcome of those efforts.

9. Taking these concerns into account, the focus in this report is on identifying from the available data, to the extent feasible, illustrative indicators that as a starting point translate the narrative on the legal standard of the right (such as article 11 (1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and general comments No. 4 and No. 7 of the Committee on Economic, Social and Cultural Rights) into a specific number of characteristic attributes that facilitate the identification of indicators for monitoring the implementation of the right. Thus, for instance, the annexed list identifies four attributes (essential elements) of the right to adequate housing: habitability, accessibility to services, housing affordability, and security of tenure. Having identified the attributes of the right in a mutually exhaustive manner, the next step is to identify a configuration of structural-process-outcome indicators.

10. **Structural indicators.** These are indicators that reflect the ratification/adoption of legal instruments and the existence of basic institutional mechanisms deemed necessary for facilitating realization of the particular human right. Among the structural indicators, which are likely to be qualitative in nature rather than quantitative, one could consider indicators such as “time frame and coverage of national housing policy statements/strategies for the progressive implementation of measures for the right to adequate housing at different levels of Government, as applicable”.

11. **Process indicators.** These relate State policy instruments with milestones, which in turn cumulate into outcome indicators that could be more directly related to realization of human rights. Such indicators contribute to assessing an important aspect of the notion of accountability. Unlike outcome indicators, process indicators are more sensitive to changes, and are thus better at reflecting progressive realization of the right and States parties’ efforts in protecting the rights, including their obligation as stated in article 2 of ICESCR.<sup>7</sup> Thus, indicators like “share of public development budget spent on social/community housing” capture the effort of the State party in meeting its obligation to protect and promote the right to adequate housing.

12. **Outcome indicators.** These capture attainments, individual and collective, that reflect the status of realization of a human right in a given context. Outcome indicators have two important features. First, as mentioned, they are more directly related to the realization of the

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<sup>7</sup> “Each State Party to the present Covenant undertakes to take steps ... to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means ... .”

corresponding right and second, a number of processes could contribute to the attainment of a single outcome. In such a case, it becomes useful to make a distinction between process and outcome indicators. An example of an outcome indicator would be “proportion of households with legally enforceable, contractual, statutory or other protection providing security of tenure”.

13. The suggested framework has emerged from the ongoing work on developing indicators for States parties’ compliance with international human rights instruments. The configuration of the structural, process and outcome indicators should be seen as a framework to systematically cover all aspects of the realization of a right - from the perspective of duty holders and their obligations, as well as of the right holder and his/her rights. Working with such an approach simplifies the selection of indicators and encourages the use of contextually relevant information. Though it addresses a range of issues in building an adequate approach to human rights assessment, a few areas still require further work. One such area relates to the need for specific indicators to monitor the process of implementing a given human right for its adherence to human rights principles. It is important, for such a monitoring process, to identify the vulnerable groups in a country, the information provider and information user, and those individuals and communities whose human rights are at stake.

14. Further work is also required in building capacity for collecting and using disaggregated data. There is also scope to devise additional gender-sensitive indicators (see annex II) on some of the attributes identified in the proposed framework. Moreover, there is a need for detailed meta-sheets on each indicator, elaborating, for instance, information on definition of the indicators, rationale for selection of the indicator, possible disaggregation and contextual formulation, and availability and periodicity of data. Thus, for example, to disaggregate the outcome indicator of “proportion of homeless population using shelters” one could include indicators that ask for specific information, such as “number of shelters per thousand homeless women”. Finally, the suggested indicators need to be validated through piloting at the country level before they can provide the basis for a standardized approach to monitor the right to adequate housing at the international and national levels.

15. The Special Rapporteur will continue to work on the development of such indicators. The next step will consist of refining the indicators, in consultation with OHCHR and UN-HABITAT. The Special Rapporteur will make further use of the indicators in his work, including during country missions. He will also encourage States and civil society to use the data generated by these indicators to monitor the implementation of the right to adequate housing.

## **B. Monitoring women’s rights to adequate housing and land**

16. In its resolution 2002/49 entitled “Women’s equal ownership of access to and control over land and the equal rights to own property and to adequate housing”, the Commission on Human Rights entrusted the Special Rapporteur with the additional task of conducting a global study on women and adequate housing.

17. The Special Rapporteur thus strengthened the focus on women's rights through the development of specific strategies for collecting information from States and civil society groups, including the elaboration of a questionnaire on women and adequate housing and conducting regional consultations with grass-roots and civil society groups.<sup>8</sup>

18. The questionnaire draws from experience gained during the study on women and housing, especially through regional consultations and testimonies received from women during country missions. It makes explicit the elements of women's right to adequate housing. Using the indivisibility of rights approach, this questionnaire demonstrates the connections between various civil and political rights and economic, social and cultural rights in relation to women's adequate housing, land and inheritance, including an emphasis on the close link between violence against women and the right to adequate housing.

19. Part I of the questionnaire solicits information on the legal and policy framework for realizing women's adequate housing. Part II focuses on how different elements of adequate housing affect women. The questionnaire is structured around the expanded definition of the right to adequate housing provided by the Special Rapporteur which enables greater elaboration of the elements of "adequacy" as related to women's lives and experiences.

20. The Special Rapporteur believes in the timeliness of presenting this questionnaire to the Human Rights Council as a tool with multiple uses. The questionnaire can be used to: derive indicators that would result in the collection of disaggregated data to monitor the realization and violations of women's right to adequate housing; to collate information on the right to adequate housing for women with disabilities, particularly in relation to access issues - as recognized in the recently adopted (December 2006) Convention on the Rights of Persons with Disabilities; by States and civil society for human rights education, thereby strengthening communities' capacity to analyse and present violations within the human rights framework, including the capacity to access available monitoring mechanisms and international legal mechanisms for redress; to draft model questions for monitoring by the Committee on the Elimination of Discrimination against Women (CEDAW) as a basis for a general recommendation on women and land and housing.

### **C. Basic principles and guidelines on development-based evictions and displacement**

21. From the start of his mandate, the Special Rapporteur has witnessed and increasingly received reports on forced evictions and displacement around the world.<sup>9</sup> As recognized by several human rights bodies, forced evictions constitute *prima facie* violations of a wide range of internationally recognized human rights and can only be carried out under exceptional circumstances and in full accordance with international human rights law. As a result of forced

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<sup>8</sup> See, as one result of the global study, the three reports to the Commission on Human Rights and reports of seven regional consultations, at: [www.ohchr.org/english/issues/housing/women.htm](http://www.ohchr.org/english/issues/housing/women.htm).

<sup>9</sup> The Special Rapporteur's report (E/CN.4/2004/48) focused on forced evictions and included a recommendation to hold an expert seminar to elaborate guidelines.

evictions, people are often left homeless and destitute, without means of earning a livelihood and, in practice, with no effective access to legal or other remedies. Forced evictions are often associated with physical and psychological injuries to those affected, with a particular impact on women and on persons already living in extreme poverty, children, indigenous peoples, minorities and other vulnerable groups.

22. In collaboration with the German Federal Foreign Office and the German Institute for Human Rights, the Special Rapporteur co-organized an International Workshop on Forced Evictions in Berlin in June 2005, for the purpose of elaborating guidelines aimed at assisting States and the international community in developing policies and legislation to address forced evictions. The attached Basic principles and guidelines on development-based evictions and displacement (annex I) are the result of this workshop and subsequent consultations.

23. While acknowledging existing standards on forced evictions, the Special Rapporteur believed that these could be further strengthened and put forward in more operational terms. These basic principles and guidelines offer several new prescriptions, based on experiences gathered worldwide since 1997. In particular, they:

- Define the practice of forced evictions (paras. 4-8);
- Lay down stringent criteria under which displacement can occur in “exceptional circumstances”, with “full justification” and procedural guarantees (para. 21);
- Enumerate detailed steps to be taken by States to protect human rights prior to, during, and after evictions (paras. 37-58);
- Call for comprehensive “eviction-impact assessments” to be carried out prior to displacement (paras. 32, 33);
- Call for provision of compensation, restitution and adequate rehabilitation consistent with human rights standards (paras. 42, 60-63);
- Provide useful guidance on other phenomena that lead to displacement such as disasters (paras. 52, 55);
- Establish a “right to resettle” consistent with the right to adequate housing for displaced communities living in adverse conditions (paras. 16, 52-56);
- Call on States, in pursuance of an “immediate obligation” to guarantee security of tenure to all those currently lacking titles to home and land (paras. 23, 25);
- Provide a strong gender perspective, including protection and entitlements to women (paras. 7, 15, 26, 29, 33, 34, 38, 39, 47, 50, 53, 54, 57 and 58);
- Call for States to take intervening measures to ensure that market forces do not increase the vulnerability of low-income and marginalized groups to forced eviction (paras. 8, 30).

24. The Special Rapporteur is encouraged by the many positive comments he has received on these guidelines from States during the interactive dialogue at the second session of the Human Rights Council. The Special Rapporteur is also encouraged by the use of these guidelines by national and international civil society organizations. Several delegations and civil society organizations have asked for the translation of these guidelines into the United Nations languages. The Special Rapporteur has also found these guidelines useful in his missions. The guidelines are also now routinely mentioned in communications (both of his own and those written jointly with other mandate holders). The Special Rapporteur is of the view that these guidelines need to be endorsed by the Human Rights Council. For all these reasons he is attaching the guidelines as an annex to this report.

### **III. IDENTIFYING NORMATIVE GAPS: THE HUMAN RIGHT TO LAND**

25. Throughout his work, the Special Rapporteur has tried to identify elements that positively or negatively affect the realization of the right to adequate housing. Land as an entitlement is often an essential element necessary to understand the degree of violation and the extent of realization of the right to adequate housing.

26. In several previous reports and statements, the Special Rapporteur has stressed that land is a critical element of the human right to housing. Inadequate housing is often the consequence of being barred access to land and common property resources. Inequitable land ownership patterns and the phenomenon of landlessness give rise to interrelated problems that range from inadequate housing, lack of livelihood options, poor health, hunger and food insecurity, to acute poverty.

27. In country visits, the Special Rapporteur is very often confronted with the problem of adequate housing in relation to land and land rights.<sup>10</sup>

28. The question of land has particular effects on groups such as indigenous peoples, communities that have historically been discriminated against, minorities, internally displaced persons and returning refugees. It is of crucial importance to women when it comes to the question of inheritance and issues of access, tenure and livelihood.

29. Without the adequate legal recognition of individual as well as collective land rights, the right to adequate housing, in many instances, cannot be effectively realized. The right to land, however, is not just linked to the right to adequate housing but is integrally related to the human rights to food, livelihood, work, self-determination, and security of the person and home and the sustenance of common property resources. The guarantee of the right to land is thus critical for the majority of the world's population who depend on land and land-based resources for their lives and livelihoods. In the urban context legal recognition of land rights is often critical to protecting the right to adequate housing, including access to essential services and livelihoods, especially for the urban poor.

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<sup>10</sup> See for instance the Special Rapporteur's country mission reports to Afghanistan, Australia, Brazil, the Islamic Republic of Iran, Kenya, the Occupied Palestinian Territories and Peru.

30. The indicators on the right to adequate housing (annex II) include references to land. The questionnaire on women and housing (annex III) demonstrates that land is an important entitlement for realizing the full scope of women's right to housing. It is also clear that in identifying the importance of protecting the right to adequate housing throughout the process of evictions, the Basic principles and guidelines (annex I) comprise numerous aspects of the right to land.

31. The Special Rapporteur strongly believes that the Human Rights Council should consider devoting attention to the question of the human right to land and should conduct studies in this regard which build on the work of organized peasant and indigenous peoples' movements. The Council is ideally placed to ensure the recognition in international human rights law of land as a human right. Land as a cross-cutting issue could also be the subject of a joint analysis by concerned mandate holders, including on the rights of indigenous peoples, violence against women, food and housing.

#### **IV. CONCLUSIONS AND RECOMMENDATIONS**

32. **In pursuance of the constructive manner in which the Special Rapporteur has attempted to carry out his mandate, this report provides standards and tools that could be utilized and further developed by States and other parties to promote the defence and realization of the human right to adequate housing. In this context, he would like to make the following recommendations to the Human Rights Council, which should be read alongside the recommendations contained in his last two reports to the Commission on Human Rights.<sup>11</sup>**

33. **In particular, the Special Rapporteur requests the Council to:**

- (a) Urge Governments to test and adapt the indicators presented on adequate housing (annex II), to establish national benchmarks consistent with their human rights obligation, and to participate actively in piloting and validation of these indicators with OHCHR;**
- (b) Revisit the recommendations contained in document E/CN.4/2006/118, with a view to institutionalizing women's human rights to housing, land, property and inheritance within the work of the Council and relevant special procedures;**
- (c) Ensure wide dissemination of the Basic principles and guidelines on development-based evictions and displacement (annex I) and inclusion of the issue of development and market-induced evictions in the elaboration of mandates of relevant special procedures of the Council, in particular on the rights of indigenous peoples, food, violence against women and adequate housing;**
- (d) Urge States to incorporate these guidelines into national laws and policies governing housing and land issues, including resettlement policies;**

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<sup>11</sup> E/CN.4/2006/41 and E/CN.4/2006/118.

(e) **Recognize the right to land as a human right and strengthen its protection in international human rights law. Given the magnitude of homelessness and landlessness across the world such recognition would promote the right to adequate housing, including protection against forced evictions;**

(f) **Urge States to give priority to agrarian reform, and to land and wealth redistribution. Legislation should be enacted and implemented to check forced evictions and segregation, growth of the land mafia and cartels, and uncontrolled property speculation;**

(g) **Consider holding an expert seminar to develop strategies for the legal recognition of land as a human right, including the protection of land rights of indigenous peoples, peasants, the landless and other groups that are dependent on and derive their identity and livelihood from land and land-based resources;**

(h) **Consider, in its review of the mandate on adequate housing, to make more explicit, consistent with the work of United Nations treaty bodies and the Special Rapporteur, the recognition of adequate housing as a distinct human right.**

## ANNEXES

### Annex 1

#### **BASIC PRINCIPLES AND GUIDELINES ON DEVELOPMENT-BASED EVICTIONS AND DISPLACEMENT**

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## I. SCOPE AND NATURE

1. The obligation of States to refrain from, and protect against, forced evictions from home(s) and land arises from several international legal instruments that protect the human right to adequate housing and other related human rights. These include the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights (art. 11, para. 1), the Convention on the Rights of the Child (art. 27, para. 3), the non-discrimination provisions found in article 14, paragraph 2 (h), of the Convention on the Elimination of All Forms of Discrimination against Women, and article 5 (e) of the International Convention on the Elimination of All Forms of Racial Discrimination.

2. In addition, and consistent with the indivisibility of a human rights approach, article 17 of the International Covenant on Civil and Political Rights states that “[n]o one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence”, and further that “[e]veryone has the right to the protection of the law against such interference or attacks”. Article 16, paragraph 1, of the Convention on the Rights of the Child contains a similar provision. Other references in international law include article 21 of the 1951 Convention relating to the Status of Refugees; article 16 of International Labour Organization (ILO) Convention No. 169 concerning indigenous and tribal peoples in independent countries (1989); and article 49 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 (Fourth Geneva Convention).

3. The present guidelines address the human rights implications of development-linked evictions and related displacement in urban and/or rural areas. These guidelines represent a further development of the Comprehensive human rights guidelines on development-based displacement (E/CN.4/Sub.2/1997/7, annex). They are based on international human rights law, and are consistent with general comment No. 4 (1991) and general comment No. 7 (1997) of the Committee on Economic, Social and Cultural Rights, the Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2), the Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by the General Assembly in its resolution 60/147, and the Principles on housing and property restitution for refugees and displaced persons (see E/CN.4/Sub.2/2005/17 and Add.1).

4. Having due regard for all relevant definitions of the practice of “forced evictions” in the context of international human rights standards, the present guidelines apply to acts and/or omissions involving the coerced or involuntary displacement of individuals, groups and communities from homes and/or lands and common property resources that were occupied or depended upon, thus eliminating or limiting the ability of an individual, group or community to reside or work in a particular dwelling, residence or location, without the provision of, and access to, appropriate forms of legal or other protection.<sup>a</sup>

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<sup>a</sup> The prohibition of forced evictions does not apply to evictions carried out both in accordance with the law and in conformity with the provisions of international human rights treaties.

5. Forced evictions constitute a distinct phenomenon under international law, and are often linked to the absence of legally secure tenure, which constitutes an essential element of the right to adequate housing. Forced evictions share many consequences similar to those resulting from arbitrary displacement,<sup>b</sup> including population transfer, mass expulsions, mass exodus, ethnic cleansing and other practices involving the coerced and involuntary displacement of people from their homes, lands and communities.

6. Forced evictions constitute gross violations of a range of internationally recognized human rights, including the human rights to adequate housing, food, water, health, education, work, security of the person, security of the home, freedom from cruel, inhuman and degrading treatment, and freedom of movement. Evictions must be carried out lawfully, only in exceptional circumstances, and in full accordance with relevant provisions of international human rights and humanitarian law.

7. Forced evictions intensify inequality, social conflict, segregation and “ghettoization”, and invariably affect the poorest, most socially and economically vulnerable and marginalized sectors of society, especially women, children, minorities and indigenous peoples.

8. In the context of the present guidelines, development-based evictions include evictions often planned or conducted under the pretext of serving the “public good”, such as those linked to development and infrastructure projects (including large dams, large-scale industrial or energy projects, or mining and other extractive industries); land-acquisition measures associated with urban renewal, slum upgrades, housing renovation, city beautification, or other land-use programmes (including for agricultural purposes); property, real estate and land disputes; unbridled land speculation; major international business or sporting events; and, ostensibly, environmental purposes. Such activities also include those supported by international development assistance.

9. Displacement resulting from environmental destruction or degradation, evictions or evacuations resulting from public disturbances, natural or human-induced disasters, tension or unrest, internal, international or mixed conflict (having domestic and international dimensions) and public emergencies, domestic violence, and certain cultural and traditional practices often take place without regard for existing human rights and humanitarian standards, including the right to adequate housing. Such situations may, however, involve an additional set of considerations that the present guidelines do not explicitly address, though they can also provide useful guidance in those contexts. Attention is drawn to the Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, the Guiding Principles on Internal Displacement, and the Principles on housing and property restitution for refugees and displaced persons.

10. While recognizing the wide range of contexts in which forced evictions take place, the present guidelines focus on providing guidance to States on measures and procedures to be adopted in order to ensure that development-based evictions are not undertaken in contravention

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<sup>b</sup> Consistent with Principle 6 of the Guiding Principles on Internal Displacement.

of existing international human rights standards and do not thus constitute “forced evictions”. These guidelines aim at providing a practical tool to assist States and agencies in developing policies, legislation, procedures and preventive measures to ensure that forced evictions do not take place, and to provide effective remedies to those whose human rights have been violated, should prevention fail.

## **II. GENERAL OBLIGATIONS**

### **A. Duty bearers and nature of obligations**

11. While a variety of distinct actors may carry out, sanction, demand, propose, initiate, condone or acquiesce to forced evictions, States bear the principal obligation for applying human rights and humanitarian norms, in order to ensure respect for the rights enshrined in binding treaties and general principles of international public law, as reflected in the present guidelines. This does not, however, absolve other parties, including project managers and personnel, international financial and other institutions or organizations, transnational and other corporations, and individual parties, including private landlords and landowners, of all responsibility.

12. Under international law, the obligations of States include the respect, protection and fulfilment of all human rights and fundamental freedoms. This means that States shall: refrain from violating human rights domestically and extraterritorially; ensure that other parties within the State’s jurisdiction and effective control do not violate the human rights of others; and take preventive and remedial steps to uphold human rights and provide assistance to those whose rights have been violated. These obligations are continuous and simultaneous, and are not suggestive of a hierarchy of measures.

### **B. Basic human rights principles**

13. According to international human rights law, everyone has the right to adequate housing as a component of the right to an adequate standard of living. The right to adequate housing includes, *inter alia*, the right to protection against arbitrary or unlawful interference with privacy, family, home, and to legal security of tenure.

14. According to international law, States must ensure that protection against forced evictions, and the human right to adequate housing and secure tenure, are guaranteed without discrimination of any kind on the basis of race, colour, sex, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, birth or other status.

15. States must ensure the equal right of women and men to protection from forced evictions and the equal enjoyment of the human right to adequate housing and security of tenure, as reflected in the present guidelines.

16. All persons, groups and communities have the right to resettlement, which includes the right to alternative land of better or equal quality and housing that must satisfy the following criteria for adequacy: accessibility, affordability, habitability, security of tenure, cultural adequacy, suitability of location, and access to essential services such as health and education.<sup>c</sup>

17. States must ensure that adequate and effective legal or other appropriate remedies are available to any person claiming that his/her right to protection against forced evictions has been violated or is under threat of violation.

18. States must refrain from introducing any deliberately retrogressive measures with respect to de jure or de facto protection against forced evictions.

19. States must recognize that the prohibition of forced evictions includes arbitrary displacement that results in altering the ethnic, religious or racial composition of the affected population.

20. States must formulate and conduct their international policies and activities in compliance with their human rights obligations, including through both the pursuit and provision of international development assistance.

### **C. Implementation of State obligations**

21. States shall ensure that evictions only occur in exceptional circumstances. Evictions require full justification given their adverse impact on a wide range of internationally recognized human rights. Any eviction must be (a) authorized by law; (b) carried out in accordance with international human rights law; (c) undertaken solely for the purpose of promoting the general welfare;<sup>d</sup> (d) reasonable and proportional; (e) regulated so as to ensure full and fair compensation and rehabilitation; and (f) carried out in accordance with the present guidelines. The protection provided by these procedural requirements applies to all vulnerable persons and affected groups, irrespective of whether they hold title to home and property under domestic law.

22. States must adopt legislative and policy measures prohibiting the execution of evictions that are not in conformity with their international human rights obligations. States should refrain, to the maximum extent possible, from claiming or confiscating housing or land, and in particular when such action does not contribute to the enjoyment of human rights. For instance, an eviction may be considered justified if measures of land reform or redistribution, especially for the benefit of vulnerable or deprived persons, groups or communities are involved. States should apply appropriate civil or criminal penalties against any public or private person or entity within its jurisdiction that carries out evictions in a manner not fully consistent with applicable

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<sup>c</sup> See general comment No. 4 on the right to adequate housing, adopted by the Committee on Economic, Social and Cultural Rights in 1991.

<sup>d</sup> In the present guidelines, the promotion of the general welfare refers to steps taken by States consistent with their international human rights obligations, in particular the need to ensure the human rights of the most vulnerable.

law and international human rights standards. States must ensure that adequate and effective legal or other appropriate remedies are available to all those who undergo, remain vulnerable to, or defend against forced evictions.

23. States shall take steps, to the maximum of their available resources, to ensure the equal enjoyment of the right to adequate housing by all. The obligation of States to adopt appropriate legislative and policy measures to ensure the protection of individuals, groups and communities from evictions that are not in conformity with existing international human rights standards is immediate.<sup>e</sup>

24. In order to ensure that no form of discrimination, statutory or otherwise, adversely affects the enjoyment of the human right to adequate housing, States should carry out comprehensive reviews of relevant national legislation and policy with a view to ensuring their conformity with international human rights provisions. Such comprehensive review should also ensure that existing legislation, regulation and policy address the privatization of public services, inheritance and cultural practices, so as not to lead to, or facilitate forced evictions.<sup>f</sup>

25. In order to secure a maximum degree of effective legal protection against the practice of forced evictions for all persons under their jurisdiction, States should take immediate measures aimed at conferring legal security of tenure upon those persons, households and communities currently lacking such protection, including all those who do not have formal titles to home and land.

26. States must ensure the equal enjoyment of the right to adequate housing by women and men. This requires States to adopt and implement special measures to protect women from forced evictions. Such measures should ensure that titles to housing and land are conferred on all women.

27. States should ensure that binding human rights standards are integrated in their international relations, including through trade and investment, development assistance and participation in multilateral forums and organizations. States should implement their human rights obligations with regard to international cooperation,<sup>g</sup> whether as donors or as

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<sup>e</sup> See general comment No. 3 on the nature of States parties' obligations, adopted in 1990 by the Committee on Economic, Social and Cultural Rights.

<sup>f</sup> See the guidelines on housing and discrimination contained in the 2002 report of the Commission on Human Rights Special Rapporteur on adequate housing as a component of the right to an adequate standard of living (E/CN.4/2002/59).

<sup>g</sup> As set forth in article 22, Universal Declaration of Human Rights; Articles 55 and 56 of the Charter of the United Nations; articles 2, paragraph 1, 11, 15, 22 and 23, International Covenant on Economic, Social and Cultural Rights; articles 23, paragraph 4, and 28, paragraph 3, Convention on the Rights of the Child.

beneficiaries. States should ensure that international organizations in which they are represented refrain from sponsoring or implementing any project, programme or policy that may involve forced evictions, that is, evictions not in full conformity with international law, and as specified in the present guidelines.

#### **D. Preventive strategies, policies and programmes**

28. States should adopt, to the maximum of their available resources, appropriate strategies, policies and programmes to ensure effective protection of individuals, groups and communities against forced eviction and its consequences.

29. States should carry out comprehensive reviews of relevant strategies, policies and programmes, with a view to ensuring their compatibility with international human rights norms. In this regard, such reviews must strive to remove provisions that contribute to sustaining or exacerbating existing inequalities that adversely affect women and marginalized and vulnerable groups. Governments must take special measures to ensure that policies and programmes are not formulated or implemented in a discriminatory manner, and do not further marginalize those living in poverty, whether in urban or rural areas.

30. States should take specific preventive measures to avoid and/or eliminate underlying causes of forced evictions, such as speculation in land and real estate. States should review the operation and regulation of the housing and tenancy markets and, when necessary, intervene to ensure that market forces do not increase the vulnerability of low-income and other marginalized groups to forced eviction. In the event of an increase in housing or land prices, States should also ensure sufficient protection against physical or economic pressures on residents to leave or be deprived of adequate housing or land.

31. Priority in housing and land allocation should be ensured to disadvantaged groups such as the elderly, children and persons with disabilities.

32. States must give priority to exploring strategies that minimize displacement. Comprehensive and holistic impact assessments should be carried out prior to the initiation of any project that could result in development-based eviction and displacement, with a view to securing fully the human rights of all potentially affected persons, groups and communities, including their protection against forced evictions. “Eviction-impact” assessment should also include exploration of alternatives and strategies for minimizing harm.

33. Impact assessments must take into account the differential impacts of forced evictions on women, children, the elderly, and marginalized sectors of society. All such assessments should be based on the collection of disaggregated data, such that all differential impacts can be appropriately identified and addressed.

34. Adequate training in applying international human rights norms should be required and provided for relevant professionals, including lawyers, law enforcement officials, urban and regional planners and other personnel involved in the design, management and implementation of development projects. This must include training on women’s rights, with an emphasis on women’s particular concerns and requirements pertaining to housing and land.

35. States should ensure the dissemination of adequate information on human rights and laws and policies relating to protection against forced evictions. Specific attention should be given to the dissemination of timely and appropriate information to groups particularly vulnerable to evictions, through culturally appropriate channels and methods.

36. States must ensure that individuals, groups and communities are protected from eviction during the period that their particular case is being examined before a national, regional or international legal body.

### **III. PRIOR TO EVICTIONS**

37. Urban or rural planning and development processes should involve all those likely to be affected and should include the following elements: (a) appropriate notice to all potentially affected persons that eviction is being considered and that there will be public hearings on the proposed plans and alternatives; (b) effective dissemination by the authorities of relevant information in advance, including land records and proposed comprehensive resettlement plans specifically addressing efforts to protect vulnerable groups; (c) a reasonable time period for public review of, comment on, and/or objection to the proposed plan; (d) opportunities and efforts to facilitate the provision of legal, technical and other advice to affected persons about their rights and options; and (e) holding of public hearing(s) that provide(s) affected persons and their advocates with opportunities to challenge the eviction decision and/or to present alternative proposals and to articulate their demands and development priorities.

38. States should explore fully all possible alternatives to evictions. All potentially affected groups and persons, including women, indigenous peoples and persons with disabilities, as well as others working on behalf of the affected, have the right to relevant information, full consultation and participation throughout the entire process, and to propose alternatives that authorities should duly consider. In the event that agreement cannot be reached on a proposed alternative among concerned parties, an independent body having constitutional authority, such as a court of law, tribunal or ombudsperson should mediate, arbitrate or adjudicate as appropriate.

39. During planning processes, opportunities for dialogue and consultation must be extended effectively to the full spectrum of affected persons, including women and vulnerable and marginalized groups, and, when necessary, through the adoption of special measures or procedures.

40. Prior to any decision to initiate an eviction, authorities must demonstrate that the eviction is unavoidable and consistent with international human rights commitments protective of the general welfare.

41. Any decision relating to evictions should be announced in writing in the local language to all individuals concerned, sufficiently in advance. The eviction notice should contain a detailed justification for the decision, including on: (a) absence of reasonable alternatives; (b) the full details of the proposed alternative; and (c) where no alternatives exist, all measures taken and foreseen to minimize the adverse effects of evictions. All final decisions should be subject to administrative and judicial review. Affected parties must also be guaranteed timely access to legal counsel, without payment if necessary.

42. Due eviction notice should allow and enable those subject to eviction to take an inventory in order to assess the values of their properties, investments and other material goods that may be damaged. Those subject to eviction should also be given the opportunity to assess and document non-monetary losses to be compensated.

43. Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. The State must make provision for the adoption of all appropriate measures, to the maximum of its available resources, especially for those who are unable to provide for themselves, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available and provided. Alternative housing should be situated as close as possible to the original place of residence and source of livelihood of those evicted.

44. All resettlement measures, such as construction of homes, provision of water, electricity, sanitation, schools, access roads and allocation of land and sites, must be consistent with the present guidelines and internationally recognized human rights principles, and completed before those who are to be evicted are moved from their original areas of dwelling.<sup>h</sup>

#### **IV. DURING EVICTIONS**

45. The procedural requirements for ensuring respect for human rights standards include the mandatory presence of governmental officials or their representatives on site during evictions. The governmental officials, their representatives and persons implementing the eviction must identify themselves to the persons being evicted and present formal authorization for the eviction action.

46. Neutral observers, including regional and international observers, should be allowed access upon request, to ensure transparency and compliance with international human rights principles during the carrying out of any eviction.

47. Evictions shall not be carried out in a manner that violates the dignity and human rights to life and security of those affected. States must also take steps to ensure that women are not subject to gender-based violence and discrimination in the course of evictions, and that the human rights of children are protected.

48. Any legal use of force must respect the principles of necessity and proportionality, as well as the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and any national or local code of conduct consistent with international law enforcement and human rights standards.

49. Evictions must not take place in inclement weather, at night, during festivals or religious holidays, prior to elections, or during or just prior to school examinations.

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<sup>h</sup> See section V of the present guidelines.

50. States and their agents must take steps to ensure that no one is subject to direct or indiscriminate attacks or other acts of violence, especially against women and children, or arbitrarily deprived of property or possessions as a result of demolition, arson and other forms of deliberate destruction, negligence or any form of collective punishment. Property and possessions left behind involuntarily should be protected against destruction and arbitrary and illegal appropriation, occupation or use.

51. Authorities and their agents should never require or force those evicted to demolish their own dwellings or other structures. The option to do so must be provided to affected persons, however, as this would facilitate salvaging of possessions and building material.

## **V. AFTER AN EVICTION: IMMEDIATE RELIEF AND RELOCATION**

52. The Government and any other parties responsible for providing just compensation and sufficient alternative accommodation, or restitution when feasible, must do so immediately upon the eviction, except in cases of force majeure. At a minimum, regardless of the circumstances and without discrimination, competent authorities shall ensure that evicted persons or groups, especially those who are unable to provide for themselves, have safe and secure access to: (a) essential food, potable water and sanitation; (b) basic shelter and housing; (c) appropriate clothing; (d) essential medical services; (e) livelihood sources; (f) fodder for livestock and access to common property resources previously depended upon; and (g) education for children and childcare facilities. States should also ensure that members of the same extended family or community are not separated as a result of evictions.

53. Special efforts should be made to ensure equal participation of women in all planning processes and in the distribution of basic services and supplies.

54. In order to ensure the protection of the human right to the highest attainable standard of physical and mental health, all evicted persons who are wounded and sick, as well as those with disabilities, should receive the medical care and attention they require to the fullest extent practicable and with the least possible delay, without distinction on any non-medically relevant grounds. When necessary, evicted persons should have access to psychological and social services. Special attention should be paid to: (a) the health needs of women and children, including access to female health-care providers where necessary, and to services such as reproductive health care and appropriate counselling for victims of sexual and other abuses; (b) ensuring that ongoing medical treatment is not disrupted as a result of eviction or relocation; and (c) the prevention of contagious and infectious diseases, including HIV/AIDS, at relocation sites.

55. Identified relocation sites must fulfil the criteria for adequate housing according to international human rights law. These include:<sup>i</sup> (a) security of tenure; (b) services, materials, facilities and infrastructure such as potable water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and

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<sup>i</sup> See general comment No. 4 on adequate housing adopted by the Committee on Economic, Social and Cultural Rights in 1991.

emergency services, and to natural and common resources, where appropriate; (c) affordable housing; (d) habitable housing providing inhabitants with adequate space, protection from cold, damp, heat, rain, wind or other threats to health, structural hazards and disease vectors, and ensuring the physical safety of occupants; (e) accessibility for disadvantaged groups; (f) access to employment options, health-care services, schools, childcare centres and other social facilities, whether in urban or rural areas; and (g) culturally appropriate housing. In order to ensure security of the home, adequate housing should also include the following essential elements: privacy and security; participation in decision-making; freedom from violence; and access to remedies for any violations suffered.

56. In determining the compatibility of resettlement with the present guidelines, States should ensure that in the context of any case of resettlement the following criteria are adhered to:

(a) No resettlement shall take place until such time as a comprehensive resettlement policy consistent with the present guidelines and internationally recognized human rights principles is in place;

(b) Resettlement must ensure that the human rights of women, children, indigenous peoples and other vulnerable groups are equally protected, including their right to property ownership and access to resources;

(c) The actor proposing and/or carrying out the resettlement shall be required by law to pay for any associated costs, including all resettlement costs;

(d) No affected persons, groups or communities shall suffer detriment as far as their human rights are concerned, nor shall their right to the continuous improvement of living conditions be subject to infringement. This applies equally to host communities at resettlement sites, and affected persons, groups and communities subjected to forced eviction;

(e) The right of affected persons, groups and communities to full and prior informed consent regarding relocation must be guaranteed. The State shall provide all necessary amenities, services and economic opportunities at the proposed site;

(f) The time and financial cost required for travel to and from the place of work or to access essential services should not place excessive demands upon the budgets of low-income households;

(g) Relocation sites must not be situated on polluted land or in immediate proximity to pollution sources that threaten the right to the highest attainable standards of mental and physical health of the inhabitants;

(h) Sufficient information shall be provided to the affected persons, groups and communities on all State projects and planning and implementation processes relating to the concerned resettlement, including information on the purported use of the eviction dwelling or site and its proposed beneficiaries. Particular attention must be paid to ensuring that indigenous peoples, minorities, the landless, women and children are represented and included in this process;

(i) The entire resettlement process should be carried out with full participation by and with affected persons, groups and communities. States should, in particular, take into account all alternative plans proposed by the affected persons, groups and communities;

(j) If, after a full and fair public hearing, it is found that there still exists a need to proceed with the resettlement, then the affected persons, groups and communities shall be given at least 90 days' notice prior to the date of the resettlement; and

(k) Local government officials and neutral observers, properly identified, shall be present during the resettlement so as to ensure that no force, violence or intimidation is involved.

57. Rehabilitation policies must include programmes designed for women and marginalized and vulnerable groups to ensure their equal enjoyment of the human rights to housing, food, water, health, education, work, security of the person, security of the home, freedom from cruel, inhuman or degrading treatment, and freedom of movement.

58. Persons, groups or communities affected by an eviction should not suffer detriment to their human rights, including their right to the progressive realization of the right to adequate housing. This applies equally to host communities at relocation sites.

## **VI. REMEDIES FOR FORCED EVICTIONS**

59. All persons threatened with or subject to forced evictions have the right of access to timely remedy. Appropriate remedies include a fair hearing, access to legal counsel, legal aid, return, restitution, resettlement, rehabilitation and compensation, and should comply, as applicable, with the Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

### **A. Compensation**

60. When eviction is unavoidable, and necessary for the promotion of the general welfare, the State must provide or ensure fair and just compensation for any losses of personal, real or other property or goods, including rights or interests in property. Compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, such as: loss of life or limb; physical or mental harm; lost opportunities, including employment, education and social benefits; material damages and loss of earnings, including loss of earning potential; moral damage; and costs required for legal or expert assistance, medicine and medical services, and psychological and social services. Cash compensation should under no circumstances replace real compensation in the form of land and common property resources. Where land has been taken, the evicted should be compensated with land commensurate in quality, size and value, or better.

61. All those evicted, irrespective of whether they hold title to their property, should be entitled to compensation for the loss, salvage and transport of their properties affected, including the original dwelling and land lost or damaged in the process. Consideration of the circumstances of each case shall allow for the provision of compensation for losses related to informal property, such as slum dwellings.

62. Women and men must be co-beneficiaries of all compensation packages. Single women and widows should be entitled to their own compensation.

63. To the extent not covered by assistance for relocation, the assessment of economic damage should take into consideration losses and costs, for example, of land plots and house structures; contents; infrastructure; mortgage or other debt penalties; interim housing; bureaucratic and legal fees; alternative housing; lost wages and incomes; lost educational opportunities; health and medical care; resettlement and transportation costs (especially in the case of relocation far from the source of livelihood). Where the home and land also provide a source of livelihood for the evicted inhabitants, impact and loss assessment must account for the value of business losses, equipment/inventory, livestock, land, trees/crops, and lost/decreased wages/income.

## **B. Restitution and return**

64. The circumstances of forced evictions linked to development and infrastructure projects (including those mentioned in paragraph 8 above) seldom allow for restitution and return. Nevertheless, when circumstances allow, States should prioritize these rights of all persons, groups and communities subjected to forced evictions. Persons, groups and communities shall not, however, be forced against their will to return to their homes, lands or places of origin.

65. When return is possible or adequate resettlement in conformity with these guidelines is not provided, the competent authorities should establish conditions and provide the means, including financial, for voluntary return in safety and security, and with dignity, to homes or places of habitual residence. Responsible authorities should facilitate the reintegration of returned persons and exert efforts to ensure the full participation of affected persons, groups and communities in the planning and management of return processes. Special measures may be required to ensure women's equal and effective participation in return or restitution processes in order to overcome existing household, community, institutional, administrative, legal or other gender biases that contribute to marginalization or exclusion of women.

66. Competent authorities have the duty and responsibility to assist returning persons, groups or communities to recover, to the maximum extent possible, the property and possessions that they left behind or were dispossessed of upon their eviction.

67. When return to one's place of residence and recovery of property and possessions is not possible, competent authorities must provide victims of forced evictions, or assist them in obtaining, appropriate compensation or other forms of just reparation.

## **C. Resettlement and rehabilitation**

68. While all parties must give priority to the right of return, certain circumstances (including for the promotion of general welfare, or where the safety, health or enjoyment of human rights so demands) may necessitate the resettlement of particular persons, groups and communities due to development-based evictions. Such resettlement must occur in a just and equitable manner and in full accordance with international human rights law as elaborated in section V of these guidelines.

## **VII. MONITORING, EVALUATION AND FOLLOW-UP**

69. States should actively monitor and carry out quantitative and qualitative evaluations to determine the number, type and long-term consequences of evictions, including forced evictions, that occur within their jurisdiction and territory of effective control. Monitoring reports and findings should be made available to the public and concerned international parties in order to promote the development of best practices and problem-solving experiences based on lessons learned.

70. States should entrust an independent national body, such as a national human rights institution, to monitor and investigate forced evictions and State compliance with these guidelines and international human rights law.

## **VIII. ROLE OF THE INTERNATIONAL COMMUNITY, INCLUDING INTERNATIONAL ORGANIZATIONS**

71. The international community bears an obligation to promote, protect and fulfil the human right to housing, land and property. International financial, trade, development and other related institutions and agencies, including member or donor States that have voting rights within such bodies, should take fully into account the prohibition on forced evictions under international human rights law and related standards.

72. International organizations should establish or accede to complaint mechanisms for cases of forced evictions that result from their own practices and policies. Legal remedies should be provided to victims in accordance with those stipulated in these guidelines.

73. Transnational corporations and other business enterprises must respect the human right to adequate housing, including the prohibition on forced evictions, within their respective spheres of activity and influence.

## **IX. INTERPRETATION**

74. These guidelines on development-based evictions and displacement shall not be interpreted as limiting, altering or otherwise prejudicing the rights recognized under international human rights, refugee, criminal or humanitarian law and related standards, or rights consistent with these laws and standards as recognized under any national law.

## Annex II

### LIST OF ILLUSTRATIVE INDICATORS ON THE RIGHT TO ADEQUATE HOUSING (art. 11 (1) ICESCR;\* MDG indicators)

Type of indicator	Habitability	Accessibility to services	Housing affordability	Security of tenure
Structural	<ul style="list-style-type: none"> <li>• International human rights instruments, relevant to the right to adequate housing, ratified by the State</li> <li>• Date of entry into force and coverage of the right to adequate housing in Supreme Law/Constitution/Bill of Rights</li> <li>• Date of entry into force and coverage of domestic laws relevant to the implementation of the right to adequate housing</li> <li>• Number of registered/operational civil society organizations involved in the promotion and protection of the right to adequate housing</li> </ul>			
	<ul style="list-style-type: none"> <li>• Time frame and coverage of national housing policy statement/strategy for the progressive implementation of measures for the right to adequate housing at different levels of Government, as applicable</li> <li>• Time frame and coverage of national policy on rehabilitation and resettlement</li> </ul>	<ul style="list-style-type: none"> <li>• Date of entry into force and coverage of legislation on security of tenure, equal inheritance and protection against forced eviction</li> </ul>		
Process	<ul style="list-style-type: none"> <li>• Number of complaints on the right to adequate housing received, investigated and adjudicated by the national human rights institution/human rights ombudsperson/specialized institution and other administrative mechanisms (created to protect the interests of specific populations groups) in the reporting period</li> <li>• Public expenditure on reconstruction and rehabilitation of displaced persons as a proportion of public development budget</li> <li>• Net ODA for housing received/provided as proportion of public expenditure on housing/gross national income*</li> </ul>			

## Annex II (continued)

Type of indicator	Habitability	Accessibility to services	Housing affordability	Security of tenure
Process (cont'd)	<ul style="list-style-type: none"> <li>Proportions of habitations (cities, towns and villages) covered under provisions of building codes and by-laws</li> <li>Share of public development budget spent on social/community housing</li> <li>Increase in habitable area effected through reclamation, including of hazardous sites and change in land use pattern</li> <li>Addition to habitable area earmarked for social/community housing during the reporting period</li> </ul>	<ul style="list-style-type: none"> <li>Proportion of household budget spent on access to utilities, including water supply, sanitation, electricity and garbage disposal</li> <li>Proportion of vulnerable households dependent on private sources for water supply</li> <li>Share of public development budget spent on provision and maintenance of sanitation, water supply, electricity and physical connectivity of habitations</li> </ul>	<ul style="list-style-type: none"> <li>Proportion of households that receive public housing assistance, including those living in subsidized rented housing and households subsidized for ownership</li> <li>Proportion of households in self-owned, publicly provided housing and squatter settlements</li> <li>Average rent of bottom three income deciles as a proportion of the top three</li> </ul>	<ul style="list-style-type: none"> <li>Average time taken to settle disputes related to housing and land rights in courts and tribunals</li> <li>Number of legal appeals aimed at preventing planned evictions/ demolitions through the issuance of court-ordered injunctions over the reporting period</li> <li>Number of legal procedures seeking compensation following evictions over the reporting period</li> <li>Proportion of displaced or evicted persons rehabilitated/resettled annually over the reporting period</li> </ul>
Outcome	<ul style="list-style-type: none"> <li>Proportion of population (persons per room or rooms per household) with sufficient living space/ average number of persons per room among targeted households</li> <li>Proportion of households living in permanent structures in compliance with building codes and by-laws</li> <li>Proportion of habitations/households living near hazardous sites</li> </ul>	<ul style="list-style-type: none"> <li>Proportion of urban population living in slums</li> <li>Proportion of (rural and urban) population with sustainable access to an improved water source*</li> <li>Proportion of (rural and urban) population with access to improved sanitation*</li> </ul>	<ul style="list-style-type: none"> <li>Proportion of households spending more than “x” % of their monthly income/expenditure on housing</li> <li>Annual average of homeless persons per 100,000 population</li> <li>Proportion of homeless population using public and community-based shelters</li> </ul> <p>“x” being defined normatively for the country context</p>	<ul style="list-style-type: none"> <li>Reported cases of “forced evictions” per 100,000 population (e.g. as reported to United Nations special procedures) over the reporting period</li> <li>Proportion of households with legally enforceable, contractual, statutory or other protection providing security of tenure/proportion of households with access to secure tenure*</li> <li>Proportion of women among individuals with titles to land/house</li> </ul>

### Annex III

## QUESTIONNAIRE ON WOMEN AND ADEQUATE HOUSING

### Questions on general legal and policy framework

- Q1. Please provide information on relevant national legislation with regard to housing and related services. Please also specify whether the right to adequate housing (RAH) is recognized in the Constitution or guaranteed in specific legislation.*
- In addition, please specify whether women's equality is recognized in the Constitution or guaranteed in specific legislation.*
- Q2. Does the Constitution provide that the International Covenant on Economic, Social and Cultural Rights, the Convention on All Forms of Discrimination against Women or other international human rights treaties which guarantee the right to housing form a part of national law and have domestic applicability? Is there an effective judicial review process to ensure consistency of legislation with relevant provisions of the international human rights treaties, particularly those which specifically protect women's right to adequate housing?*
- Q3. How do laws, policies and practices, through existing institutions (both formal and customary and traditional norms and practices), budgets and programmes, ensure substantive gender equality in the various entitlements of the right to adequate housing, including land, access to finance, civic services and information and freedom from violence against women (VAW)?*
- Q3.b. Do other laws (e.g. personal laws, family laws, domestic violence legislation, inheritance laws) ensure equal right to adequate housing for women?*
- Q4. What is your assessment of the housing situation of women belonging to particularly vulnerable groups, such as female-headed households, indigenous and tribal women, women with HIV/AIDS, women with disability, rural women living on subsistent farming, women victims of forced evictions, women victims of violence including domestic violence, refugees, migrants, migrant workers, domestic workers, internally displaced women and women of different sexual orientation? Do they have access to justice and legal remedies? Please share case studies and testimonies where available.*
- Q5. What are the historical, traditional, cultural, religious and other factors affecting the equal access of women to housing, land and related services?*
- Q6. How have the policies and processes of globalization such as trade, finance, investment and debt affected women's right to adequate housing and access to related services? How do these make women more vulnerable to VAW?*
- Q7. How have women's rights to adequate housing and access to related services been addressed in poverty reduction strategies and programmes in your country?*

- Q8. How have women's rights to adequate housing and access to related services been addressed in violence against women legislation and programmes in your country?*
- Q9. Please share positive examples or "best practices" whereby Governments and civil society have endeavoured, separately or jointly, to protect and promote women's equal right to adequate housing.*
- Q10. Please provide gender-disaggregated statistics on housing (urban/rural, forms of ownership, female-headed households, homelessness, access to basic services, etc.).*

#### **Questions on specific elements of the right to adequate housing**

(a) Legal security of tenure. The legal right to secure tenure, whether freehold, leasehold, or other form of individual and collective rights to housing, involves protection from forced eviction, harassment and other threats. It also effectively guarantees access to, use of and control over land, property and housing resources.

- Q11. Do women and men enjoy equal tenure and property rights regardless of their civil or other status? Has lack of secure tenure contributed to situations of VAW? How does the Government guarantee such security of tenure to women? What measures have been adopted to give full protection against forced eviction, based upon effective participation, consultation and negotiation with affected persons or groups?*

(b) Access to public goods and services. The right to adequate housing cannot be effectively realized without access to public goods and services, including water, health care, transport, fuel, sanitation, lighting and electricity, sewerage and waste disposal, childcare and communications.

- Q12. What policies and measures have been adopted by the Government to provide or regulate such services to meet the needs of the community? Do women and female-headed households enjoy equal access to such services? Are the basic services privatized? If so, are there subsidies and/or different pricing mechanisms designed to ensure affordable access by the poor?*

(c) Access to land, water and other natural resources. Every community must have access to natural resources necessary for its survival and livelihood, including, *inter alia*, fuel, fodder, water and building materials.

- Q13. What are the laws, policies and measures adopted to ensure equitable distribution of land with emphasis on gender equality and provision of necessary resources for poor households and other marginalized and vulnerable groups? Have land reforms, both urban and rural, been implemented to ensure its fair distribution as a public good? What steps have been taken to respect the housing rights of land-based indigenous and tribal peoples in general and women within these groups in particular?*

- Q14. Do women and female-headed households have equal access to natural resources sufficient to their needs, including those necessary for their survival and livelihood, including, inter alia, land, water, building materials, fuel and fodder? What measures have been adopted by the State to effectively regulate distribution and ensure the accessibility and affordability of such resources for women and female-headed households, including through subsidies?*
- Q15. What measures have been adopted to ensure that clean and safe water is reliably accessible and provided in adequate supply for individual, family and community use? Do women enjoy equal access to safe drinking water and to water for agricultural or other domestic use?*
- (d) **Affordability.** Individuals and communities should have access to affordable housing and must have the corresponding right to livelihood so as to be able to afford decent housing.
- Q16. Do women enjoy equal access to housing finance? What policies and measures have been adopted by the State, including through subsidies, tax incentives or market regulation, to ensure affordability of housing particularly for women and female-headed households? Is there a national definition of “affordability” of housing (e.g. a maximum of one third of any household income should be sufficient to obtain adequate housing)? How does unaffordability of housing contribute to women’s vulnerability to VAW, e.g. preventing women from leaving situations of domestic violence?*
- (e) **Habitability.** Adequate housing must provide needed space to live in dignity and peace. It must also provide protection from natural elements, structural hazards and disease vectors that are threats to physical well-being. The physical conditions of the home can affect the realization of other rights, including the highest attainable standard of mental and physical health, as well as education, and the absence of adequate conditions is not conducive to learning (especially for children).
- Q17. How do laws and policies that regulate the habitability of housing or define the habitability aspect of adequate housing take into consideration special needs of women?*
- Q18. What laws and policies have been adopted to regulate environmental degradation and to guarantee the right to a safe environment?*
- (f) **Physical accessibility.** Disadvantaged communities and groups, which often include women and female-headed households, must be allowed full and sustainable access to adequate housing and resources, including land, infrastructure and sources of livelihood, and the State must take account of special housing needs.
- Q19. What measures and policies have been adopted to guarantee equality of access to adequate housing for women and female-headed households and other disadvantaged groups within communities (e.g. battered women, women with HIV/AIDS, women with disability, indigenous women, refugees and internally displaced)?*

(g) Location. Adequate housing must be in a place that enables access to employment, primary health care, education and other social services and civic amenities. The financial and temporal cost of transport must not place excessive financial and other demands on the household. In addition, both rural and urban housing must be in a location that is safe, particularly from environmental hazards and pollutants.

*Q20. Do women face any particular constraints in accessing services and resources necessary for livelihood because of where they live? What policies and measures are adopted to alleviate them?*

(h) Cultural adequacy. Housing configuration, spatial design and site/community organization should be determined locally and in harmony with a community's cultural preferences and attributes.

*Q21. Are women from all cultural, ethnic, religious or other backgrounds enabled to express cultural diversity, participate in the planning process (also see questions 23 and 24 below) and have the right to self-determination in relation to housing? Please share such cases and examples.*

(i) Freedom from dispossession, damage and destruction. Each individual and community has a right to a place to live without threat of dispossession from land, all forms of their property, their homes and resources, as well as all individual and collective holdings required to sustain livelihood.

*Q22. Does the State effectively safeguard the right not to be subjected to arbitrary interference with home, person and privacy, including dispossession? What are the policies and measures adopted to protect women, including female-headed households, and compensate, resettle or provide for restitution where dispossession takes place?*

(j) Access to information. Individuals and communities must have access to appropriate data, documents and intellectual resources that impact upon their right to obtain adequate housing. Having access to appropriate data means being informed about potential industrial and natural hazards, infrastructure, planning design, availability of services and natural resources and other factors that affect the right.

*Q23. What laws and policies exist to facilitate access to information that impacts upon the right to adequate housing, including information about potential industrial and natural hazards, infrastructure, planning design, availability of services and natural resources? Are women regularly accessing such information and benefiting from it?*

(k) Participation. Effective participation in decision-making is essential to the fulfilment of all other rights, as well as the elements of the right to housing. At all levels of the decision-making process in respect of the provision of and right to adequate housing, individuals and communities must be able to express and share their views; they must be consulted and be able to contribute substantively to such processes that affect housing, including, *inter alia*, location, spatial dimensions, links to community, social capital and livelihood, housing

configuration and other practical features. The State must ensure that building and housing laws and policies do not preclude free expression, including cultural and religious diversity.

*Q24. What policies and measures have been adopted to ensure/encourage popular participation in the decision-making process with regard to housing policies and planning? Are women sufficiently represented in the process?*

*Q25. Do the housing laws and policies expressly protect, promote and fulfil the right to freedom of expression to ensure harmonious and effective design, implementation and maintenance of the community?*

(l) Resettlement, restitution, compensation, non-refoulement and return. Resettlement may be essential to survival in the case of natural or human-made disasters, including in conflict and post-conflict situations. Therefore, the congruent right to freedom of movement can be essential to the fulfilment of all other rights. Any resettlement arrangement, whatever the cause, must be consensual, fair and adequate to meet individual and collective needs.

*Q26. Are there special measures adopted in resettlement processes that recognize the need of women and female-headed households to sufficient access to the sources of livelihood, productive land, infrastructure, social services and civic amenities, as well as fair and adequate restitution and/or compensation for losses?*

(m) Privacy and security. Every woman, man, youth and child has the right to live and conduct her/his private life in a secure place and be protected from threats or acts that compromise her/his mental and/or physical well-being or integrity inside or outside the home.

*Q27. What measures have been adopted to ensure physical and mental security and personal privacy of women, including preventing domestic violence?*

(n) Access to remedies. Provision of domestic legal and other remedies is an important part of protecting the right to adequate housing. Individuals and groups must be protected from abuse by landlords, property developers, landowners or any other third party capable of abusing their rights. Where such infringements do occur, public authorities should act to preclude further deprivations as well as guaranteeing access to judicial redress including legal and equitable remedies for any infringement caused.

*Q28. Are there remedies and legal aid available for women? What measures have been adopted to ensure equal access of women to judicial processes and remedies? What are other innovative mechanisms such as self-help groups and women's collectives that can facilitate women's access to housing and livelihood?*

(o) Education and empowerment. Individuals and communities should have access to technical assistance and other means to enable them to improve their living standards and fully realize their economic, cultural and social rights and development potential. The State, for its part, should endeavour to promote and provide for catalysts and mechanisms for the same, including efforts to ensure that all citizens are aware of procedural measures available for defending and realizing her/his right to adequate housing. Human rights education is a key part of such an empowerment strategy.

*Q29. What has been achieved in terms of building capacities and awareness on the right to adequate housing among women in your country? What is your assessment of remaining needs and challenges?*

(p) **Freedom from violence against women.** The State must prevent all forms of violence against women committed by either State or non-State actors to ensure women's RAH. The definition of VAW as per the United Nations Declaration on the Elimination of Violence against Women (1993) is, "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life". Further, the State is responsible for addressing both individual and structural forms of violence, in the family, the community and by the State, and for ensuring that there is legal redress for any acts or threats of VAW.

*Q30. What forms of VAW and what threats of VAW occur as a result of housing violations, such as rape, domestic violence, assault, trafficking, family abuse, forced marriage, dowry deaths and others? How do housing violations make women more vulnerable to VAW?*

*Q31. Who are the perpetrators? What kinds of housing violations do victims of VAW face, e.g. battered women, rape survivors? Show information where realization of RAH has led to less VAW.*

*Q32. What strategies/best practices have been used to address VAW related to housing rights violations, e.g. are there adequate shelters for victims of domestic violence?*

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