

PROGRAMMATIC GUIDANCE NOTE FOR UN-Habitat STAFF

PROMOTION AND PROTECTION OF HUMAN RIGHTS



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PROMOTION AND PROTECTION OF HUMAN RIGHTS

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PROGRAMMATIC GUIDANCE
NOTE FOR UN-Habitat
STAFF

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AUGUST, 2015



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Foreword



Human rights are at the heart of the work of the United Nations. Most recently, the UN Secretary-General has re-affirmed this commitment in his Human Rights Up Front initiative, and UN-Habitat is fully engaged in and committed to its implementation.

Under my leadership, UN-Habitat has reinvigorated its thinking on how the promotion, protection and respect for human rights inextricably intertwine with its mandate on sustainable urban development. In 2013, I was met with full support from our Governing Council when I decided to elevate human rights to become a cross-cutting issue for all our substantive thematic areas, to be integrated in every policy, planning and project cycle of UN-Habitat. My appreciation goes to the UN Office for the High Commissioner of Human Rights whose support at the highest levels has been instrumental in the development of our strong human rights policy. The then UN Special Rapporteur on the Right to Adequate Housing, Ms Raquel Rolnik, also deserves special mention as do a range of human rights experts.

The necessity of increasingly engaging in sustainable urban development from a human rights perspective is evident in every city where UN-Habitat currently engages. From the drawing boards of the new master plans, over the mu-

nicipal planning offices, to the urban residents themselves, it is clear that if we want to reverse the alarming trend of urbanization equating increasing inequalities, we must strengthen the engagement of urban residents in shaping the future of our cities.

We will need to innovate and think afresh in many cities where we work and throughout the many projects in which we are engaged. The emphasis on Human Rights-Based sustainable urban development requires UN-Habitat staff to familiarize themselves with the international human rights protection system in general and those human rights most relevant to UN-Habitat in particular. I hope that this Guidance Note on the Promotion and Protection of Human Rights provides staff of UN-Habitat and its partners with exactly such an overview. I am sure it will lead to an increased awareness of the importance of the Human Rights-Based Approach to sustainable urban development, and more importantly, see it reflected in all of our work.



*Dr Joan Clos
Executive Director, UN-Habitat*



Every human being is entitled to freedom; to equality and dignity; to an adequate standard of living, including housing, clean water, sanitation and health-care; to self-expression, participation and development. Our inalienable human rights are valid in every context: in homes, schools, workplaces and neighbourhoods; in villages and cities; in nations and communities – throughout the multiple and concentric circles in which we live.

As more people move to cities, and the powerful drive of urbanization continues to change the face of our planet, we face demographic, environmental, economic, social, political, cultural and development-related challenges that have tremendous impact on human rights. They include inequalities in access to services that are fundamental to the public good; urban violence, including violence against women; insecurity of land tenure; and political marginalization.

Cities do not have to be places of misery or fear. Their residents have a right to voice their needs and hopes, to participate in decision-making,

and to enjoy the full range of civil, political, economic, social and cultural rights, as well as the right to development.

UN-Habitat has made a strong commitment to ensuring that our homes, neighbourhoods, and cities are places where the dignity and inalienable rights of all people are upheld. This manual is an important demonstration of how human rights principles can be incorporated into the work of ensuring sustainable and equitable urban development.

*Mr Zeid Ra'ad Al Hussein
UN High Commissioner for Human Rights*



EXECUTIVE SUMMARY

The purpose of this Programmatic Guidance Note is to provide assistance to UN-Habitat staff for the promotion and protection of human rights. The objectives of the Note are to:

1. Provide a clear description of human rights and the Human Rights-Based Approach (HRBA) and highlight the relevance to the work of UN-Habitat.
2. Define clearly the responsibilities of UN-Habitat with respect to human rights, based on the UN-Habitat mandate.
3. Provide guidance on how a HRBA should be integrated into the UN-Habitat programming.

The Guidance Note will outline the core principles of Human Rights and the Human Rights-Based Approach. It will then explain this in the context of UN-Habitat work and certain rights that are particularly applicable.

The Guidance Note contains the following substantive Chapters:

1. The Concept of Human Rights
2. Human Rights and UN-Habitat
3. Human Rights of particular relevance to UN-Habitat
4. Monitoring of Human Rights
5. Background: United Nations and Human Rights
6. The Important Role of Equality in a Human Rights-Based Approach To Development

Human rights are universal legal guarantees of a civil, cultural, economic, political and social nature, protecting individuals and groups, against actions and omissions that interfere with fundamental freedoms, entitlements and human dignity. Furthermore, human rights are inalienable, indivisible, interdependent and interrelated, reflecting specific human rights principles that can be

found in international human rights treaties, regional instruments and domestic law.

In 2003, UN agencies reached a Common Understanding of a Human Rights-Based Approach to Development Cooperation:

1. All programmes of development co-operation, policies and technical assistance should further the realization of human rights as laid down in the Universal Declaration of Human Rights and other human rights instruments.
2. Human rights standards contained in, and principles derived from, the Universal Declaration of Human Rights and other international human rights instruments should guide all development cooperation and programming in all sectors and in all phases of the programming process.
3. Development cooperation should contribute to the development of capacities of 'claim-holders' to claim their rights and of 'duty-bearers' to meet their obligations.

The Common Understanding was later endorsed by the UNDG Programme Group and many bilateral development agencies.

In addition to the three principles defined above, the Common Understanding also specified four more practical but necessary key characteristics that are specific, unique and very useful in learning how a HRBA should be used in practice. These are:

1. Assessment and analysis should identify the human rights claims of right-holders and the corresponding human rights obligations of duty-bearers as well as the immediate, underlying, and structural causes of the non-realization of rights.



2. Programmes should assess the capacity gaps of right-holders to claim their rights and the capacity gaps of duty-bearers to meet their duties. Then, strategies and programmes/projects should be developed to reduce or eliminate these capacity gaps.
3. Programmes should monitor and evaluate both outcomes and processes guided by human rights standards and principles.
4. Programming should be informed by the recommendations of international human rights bodies and mechanisms.

During the last decade, UN-Habitat has gradually broadened the conceptualization of its mandate, in departing from a focus on the right to adequate housing to addressing both the whole city as an outcome of actions, and urbanization as the process leading to this outcome. While the focus in the beginning of the 2000s was primarily on the outcome (the city), increasingly the focus has shifted to the process of urbanization, together with continued attention to the city as such. These paradigm shifts included the concepts of Inclusive Cities, “Right to the City”, Urban Prosperity and Sustainable Urban Development, and increasingly Human Rights-Based Urbanization.

Much of UN-Habitat’s work programme derives from the Habitat Agenda, adopted by the United Nations Conference on Human Settlements (Habitat II) in Istanbul 1996. The goals of the Agenda were then defined as ‘Adequate Shelter for All’, and ‘sustainable human settlements development

in an urbanizing world’. Increasingly sustainable urban development had become the key mission, which should be achieved through “expanding equitable access to land, housing, basic services and infrastructure.” With such a broad mandate, the adoption of a Human Rights-Based Approach to human settlements needs to consider a large number of recognized human rights. Thus far, emphasis has been given to the progressive realization of the right to adequate housing and the right to water and sanitation.

An important implication of a ‘human rights perspective’ is the need to give equal attention to the achievement of desirable outcomes and to the quality of process leading to these outcomes (chapter 3.2.1). The UN Common Understanding of a Human Rights-Based Approach recommends that, “Programmes should monitor and evaluate both outcomes and processes guided by human rights standards and principles” (chapter 3.2.2). However, most current development practice is usually focusing on the monitoring of desirable outcomes only, and seldom pays any significant attention to the quality of the processes. The equal attention to monitoring both outcome and process is a fundamental premise in human rights monitoring.

It is hoped that this Guidance Note on the Promotion and Protection of Human Rights provides staff of UN-Habitat and its partners with exactly such an overview in order to foster an increased awareness of why the Human Rights-Based Approach to sustainable urban development matter. Why, in the words of the Secretary-General in November 2013, with the Rights Up Front initiative, we renew our commitment to “We the peoples” of the UN Charter.



CHAPTER SUMMARIES

1: Introduction

The United Nations Charter places the realization of human rights, together with peace, justice and freedoms, at the foundation of the work of the United Nations and its agencies. The 1997 United Nations reform initiated a “rediscovery” of the United Nations Charter, which strengthened the commitment to human rights. Consequently, United Nations (UN) agencies began solidifying the process of incorporating human rights into their operations and most UN agencies have now reached a consensus on the meaning of a Human Rights-Based Approach (HRBA), the adoption of which is stipulated in the current United Nations Development Action Framework (UNDAF) Guidelines. In December 2013, the UN Secretary-General Ban Ki-Moon launched his *Rights Up Front* initiative in response to appraisals made by the UN’s Internal Review Board of past situations of grave human rights situations

UN-Habitat adopted the Human Rights-Based Approach (HRBA) in its policies and programmes in 2013 through its inclusion in current and future policy and strategic frameworks, through the elevation of human rights to become a cross-cutting issue affecting all areas of the work of the organization, and through dedicated staff to ensure that such cross-cutting inclusion remain meaningful and progressive. UN-Habitat subscribes, as a member of the United Nations Development Group (UNDG), to the Common Understanding of HRBA because experience has demonstrated that the HRBA is the way forward to deliver increasingly effective development interventions in meaningful partnership with all relevant stakeholders. The HRBA is a powerful holistic approach to design projects that are sustainable at long term and bring real changes. A better understanding of the role and added value of UN-Habitat and HRBA will also assist in solving implementation challenges particularly at field level.

2: Purpose

The purpose of this Programmatic Guidance Note is to provide assistance to UN-Habitat staff for the promotion and protection of human rights. The objectives of the Note are to:

1. Provide a clear description of human rights and the Human Rights-Based Approach (HRBA) including in particular the relevance to the work of UN-Habitat.
2. Define clearly the responsibilities of UN-Habitat with respect to human rights, based on the UN-Habitat mandate.
3. Provide guidance on how a HRBA should be integrated into the UN-Habitat programming.

3: The Concept of Human Rights

The codification of human rights in its current form is primarily the result of the creation and work of the United Nations. At the birth of the UN in San Francisco (1945) a plan was agreed upon that included the establishment of a new international organization that could secure peace, justice, freedoms and human rights. The Universal Declaration of Human Rights, adopted by the UN General Assembly in 1948 asserted this clearly.

International Human Rights Law refers to the body of international law designed to promote and protect human rights at the national, regional and international levels. International human rights law is predominantly comprised of treaties or agreements between states and is intended to have binding legal effect between the parties in agreement.



In International Human Rights Law, four types of duties or obligations are recognized:

- *The Duty/Obligation to Respect* requires the duty-bearer to refrain from interfering directly or indirectly with the enjoyment of the right.
- *The Duty/Obligation to Protect* requires the duty-bearer to take measures that prevent third parties from interfering with the enjoyment of the right.
- *The Duty/Obligation to Fulfil* (Facilitate) requires duty-bearers to adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures towards the full realization of the right.
- *The Duty/Obligation to Fulfil* (Provide) requires duty-bearers to directly provide assistance or services for the realization of the right.

While civil and political rights are seen as rights that must be realized without any delay, economic, social and cultural rights may be realized ‘progressively’ depending on the availability of resources (see section 7.2.4 for a full discussion).

The Human Rights-Based Approach

Since the mid-1990s, the exploration of the linkages between human rights and development has been apparent amongst practitioners in development with the aim of augmenting a human rights perspective of development planning and programming. Following the launch of the UN Reform in 1997, all UN agencies were encouraged to operationalize a HRBA to development, ultimately resulting in an agreement amongst UN agencies about a Common Understanding of a HRBA in 2003.

A pivotal implication of a ‘human rights perspective’ is the need to give equal attention to the achievement of desirable outcomes and to the quality of process leading to these outcomes. The outcome/process construct is central to a

Human Rights-Based Approach to development, in which human rights standards and human rights principles are crucially important.

The UN Common Understanding on HRBA recommends that the human rights relationship among individuals and groups be determined in order to identify rights-holders and duty-bearers. It identifies claim-holders (and their claims or entitlements) and duty-bearers (and their correlative duties or obligations) and works towards strengthening the capacities of claim-holders to make their valid claims, and of duty-bearers to meet their duties.

It is paramount that there is an agreement amongst stakeholders regarding which of the existing problems should be addressed first. The methodology consists of six consecutive steps: (1) Causality Analysis; (2) Pattern Analysis; (3) Capacity Gap Analysis; (4) Identification of Priority Actions; (5) Assessment of selected processes; and (6) Programme Design.

4: Human Rights and UN-Habitat

The United Nations Housing Rights Programme (UNHRP) was launched in April 2002, as a joint initiative by UN-Habitat and the Office of the United Nations High Commissioner for Human Rights (OHCHR). The substantive focus of the programme is grounded in the Habitat Agenda, particularly paragraph 61, which states: “Within the overall context of an enabling approach, Governments should take appropriate action in order to promote, protect and ensure the full and progressive realization of the right to adequate housing.”

The development objective of the UNHRP is to assist States and other stakeholders with the implementation of their commitments in the Habitat Agenda to ensure the full and progressive realization of the right to adequate housing as provided for in international instruments. To



Chapter Summaries *continued*

this end, UNHRP pursues documenting of standards and guidelines for housing rights as derived from the existing international legal instruments (such as the UN-Habitat/OHCHR Fact Sheet on the Right to Adequate Housing, Urban Indigenous Peoples and Migration). The UNHRP has been instrumental in contributing to the analysis of the housing rights policy, through review and documentation of national and international housing rights legislations and case law concerning housing rights.

During the last decade, UN-Habitat has gradually broadened the conceptualization of its mandate, in departing from a focus on the right to adequate housing to addressing both the whole city as an outcome of actions, and urbanization as the process leading to this outcome. While the focus in the beginning of the 2000s was primarily on the outcome (the city), increasingly the focus has shifted to the process of urbanization, together with continued attention to the city as such. These paradigm shifts included the concepts of Inclusive Cities, “Right to the City”, Urban Prosperity and Sustainable Urban Development, and increasingly Human Rights-Based Urbanization.

Currently UN-Habitat focuses on Sustainable Urbanization at All Levels of Human Settlements. There must be a change in the attitude to ‘urbanization; a shift from regarding urbanization as something undesirable to seeing urbanization as a powerful tool for development. It is clear that in the current globalizing world cities have changed from engines of growth to agents of change.

Urbanization has for a long time created increased inequalities among urban inhabitants, often even resulting in slums. A Human Rights-Based Approach to urbanization, promoting and ensuring equality and non-discrimination, participation and inclusion; and the rule of law and accountability, would prevent the exacerbating of disparities and the establishment of slums.

In this work, UN-Habitat promotes the adoption of three fundamental principles:

1. Effective political commitment to urban planning: This requires a democracy in order to ensure political legitimacy and the adherence to the rule of law.
2. Adequate governance capacity: Planned urbanization requires institutional capacity at all levels of society.
3. Adequate planning capacity: This includes the capacity to develop and manage all human settlements.

5: Human Rights of Particular Relevance to UN-Habitat

Much of UN-Habitat’s work programme derives from the Habitat Agenda, adopted by the United Nations Conference on Human Settlements (Habitat II) in Istanbul 1996. The goals of the Agenda were then defined as ‘Adequate Shelter for All’, and ‘sustainable human settlements development in an urbanizing world’. Increasingly sustainable urban development had become the key mission, which should be achieved through “expanding equitable access to land, housing, basic services and infrastructure.”

With such a broad mandate, the adoption of a Human Rights-Based Approach to human settlements needs to consider a large number of recognized human rights. Thus far, emphasis has been given to the progressive realization of the right to adequate housing and the right to water and sanitation. This Chapter presents the following human rights of importance for the work of UN-Habitat:

- The Right to Adequate Housing
- The Right to Hold Property
- Land Rights
- The Right to Water and Sanitation
- The Right to Food



Chapter Summaries *continued*

- The Right to Health
- The Right to Education
- The Rights of Women
- The Rights of Children
- Youth and Human Rights
- The Rights of Migrant Workers and Members of Their Families
- The Rights of Persons with Disabilities

6: Monitoring of Human Rights

There are several reasons for identifying and using indicators. The principal reason is that an indicator “provides a way of measuring and presenting information that reveals whether standards are being met”, which means that information systems work more effectively and efficiently. Therefore, the question is what the reasons are for developing, establishing and using information systems. The main reason is to improve decisions about policies, strategies and programmes. In addition, if the indicators are generic or universal, comparisons among different countries can be made.

Thus, information is only useful if it is used for improved decision making. Hence, it is important to know who receives the information and the extent to which the receiver of the information has the capacity (e.g. authority and resources) to decide. An information management system must therefore be clearly linked or integrated with the appropriate decision making systems.

According to the OHCHR, monitoring in a human rights approach has two major objectives: (1) to help identify, on an ongoing basis, the areas on which duty-bearers may Programmatic guidance note for UN-Habitat staff need to concentrate, or to which it may need to redirect its attention if its targets for the realization of human rights are to be attained in the most expeditious and effective

manner; and (2) to enable a right-holder to hold the duty-bearer accountable for its failure to discharge its duties.

In a broader sense, the purpose for using indicators in monitoring include: (1) assessing the progressive realization of specific human rights; (2) identifying the degree to which duty-bearers have met their duties, in particular the extent to which governments have met their obligations, in order to exercise accountability; (3) identifying unintended human rights impact of laws, policies and programmes; (4) improving laws, policies, strategies and programmes; and (5) exposing issues that have been neglected or silenced.

7: United Nations and Human Rights

The International Covenant on Civil and Political Rights (ICCPRs) and the International Covenant of Economic, Social and Cultural Rights (ICESCR) were both adopted by the General Assembly in 1966 and entered into force in 1976.

The ICCPR includes right to Life; freedom from slavery, servitude, forced or compulsory labour; freedom from torture; right to a fair trial; freedom of assembly and association; freedom of thought, conscience and religion; freedom of expression; right to an effective remedy; and the right to vote and be elected .

The question of which rights exactly fall into the category of economic, social and cultural rights (ESCR) has not always received a uniform answer. Generally, the rights that are considered to belong to this group are the ones set out in the ICESCR. These include: labour rights (right to work and to just and favorable conditions at work, right to join trade unions, etc.); right to health; right to education; right to family life; right to an adequate standard of living; right to social security; right to participate in cultural



life; right to partake of the benefits of scientific progress; minority rights, and the right to self-determination. More recently, the right to water and sanitation has been recognized as an ESCR.

The United Nations human rights machinery operates through two different types of mechanisms: (1) bodies that are based on the UN Charter (charter-based bodies); and (2) bodies that are based on UN human rights treaties (treaty-based bodies).

The charter-based bodies are created as a result of the UN Charter, of which the Human Rights Council plays a prominent role. The Universal Periodic Review and the Special Procedures are two of the most important functions of the Human Rights Council.

The treaty-based bodies include the Human Rights Treaty Bodies, composed of independent experts who monitor the implementation of the nine core human rights treaties.

The Treaty Bodies are responsible for preparing both country specific Concluding Observations and General Comments.

8: The Important Role of Equality in a Human Rights-Based Approach to Development

Equality and equity are important concepts used in describing societies; unfortunately, they are often used interchangeably, without the due recognition of their important differences. Equality has both ancient and modern philosophical origins and is now a recognized human rights principle that is defined as ‘the same’, although there are multiple accepted forms of ‘equality’. Equity is a justice concept meaning ‘fairness’, originally as a means of addressing unfairness that could result from the formal application of law.



CHAPTER

01

Adequate housing is a human right.
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INTRODUCTION

1.1 United Nations and Human Rights: A Brief History

The United Nations Charter places the realization of human rights, together with peace, justice and freedoms, at the foundation of the work of the United Nations and its agencies. Most recently, the *Triennial Comprehensive Policy Review* reaffirmed that peace and security, development, and human rights are the three interlinked pillars of the United Nations.¹

Today, the Universal Declaration of Human Rights (UDHR) is recognized as customary international law. Many of the provisions of the UDHR were elaborated by the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR), which are both legally binding treaties that have been ratified by the vast majority of United Nations Member States. The 1997 United Nations reform initiated a “rediscovery” of the United Nations Charter, which strengthened the commitment to human rights:

“As Secretary-General of the UN I have made human rights a priority in every programme the United Nations launches

and in every mission we embark on. I have done so because the promotion and defense of human rights is at the heart of every aspect of our work and in every article of our Charter.”
- Kofi Annan

Consequently, United Nations (UN) agencies began solidifying the process of incorporating human rights into their operations and most UN agencies have now reached a consensus on the meaning of a Human Rights-Based Approach (HRBA), the adoption of which is stipulated in the current United Nations Development Action Framework (UNDAF)² Guidelines.³

During the *World Summit* in 2005, the UN commitment to human rights was reaffirmed in clear terms:⁴

“We reaffirm the resolve made at the World Summit to integrate the promotion and protection of human rights into national policies and to support the further mainstreaming of human rights throughout the United Nations system.”

The 2010 *Millennium Development Goals (MDG) Review Summit* emphasized, “human rights are an integral part of effective work towards achieving the MDGs”. The most



Introduction *continued*

consistent message that has emerged from the post-2015 global consultations so far are people’s “demand that this new agenda be built on human rights, and universal values of equality, justice and security”. UNDG (2013), « A Million Voices », p.2.⁵

Most recently, in December 2013, the UN Secretary-General Ban Ki-Moon launched his *Rights Up Front* initiative in response to appraisals made by the UN’s Internal Review Board of past situations of grave human rights situations: “People, who are at risk of suffering massive and widespread violations of their human rights, look to the UN for action to protect their rights. They must know and be assured that the UN System is doing everything in its power to assist them and to mobilize the efforts of those who can protect them.”⁶ The recommendations of the Internal Review Board focus on the following six actions:

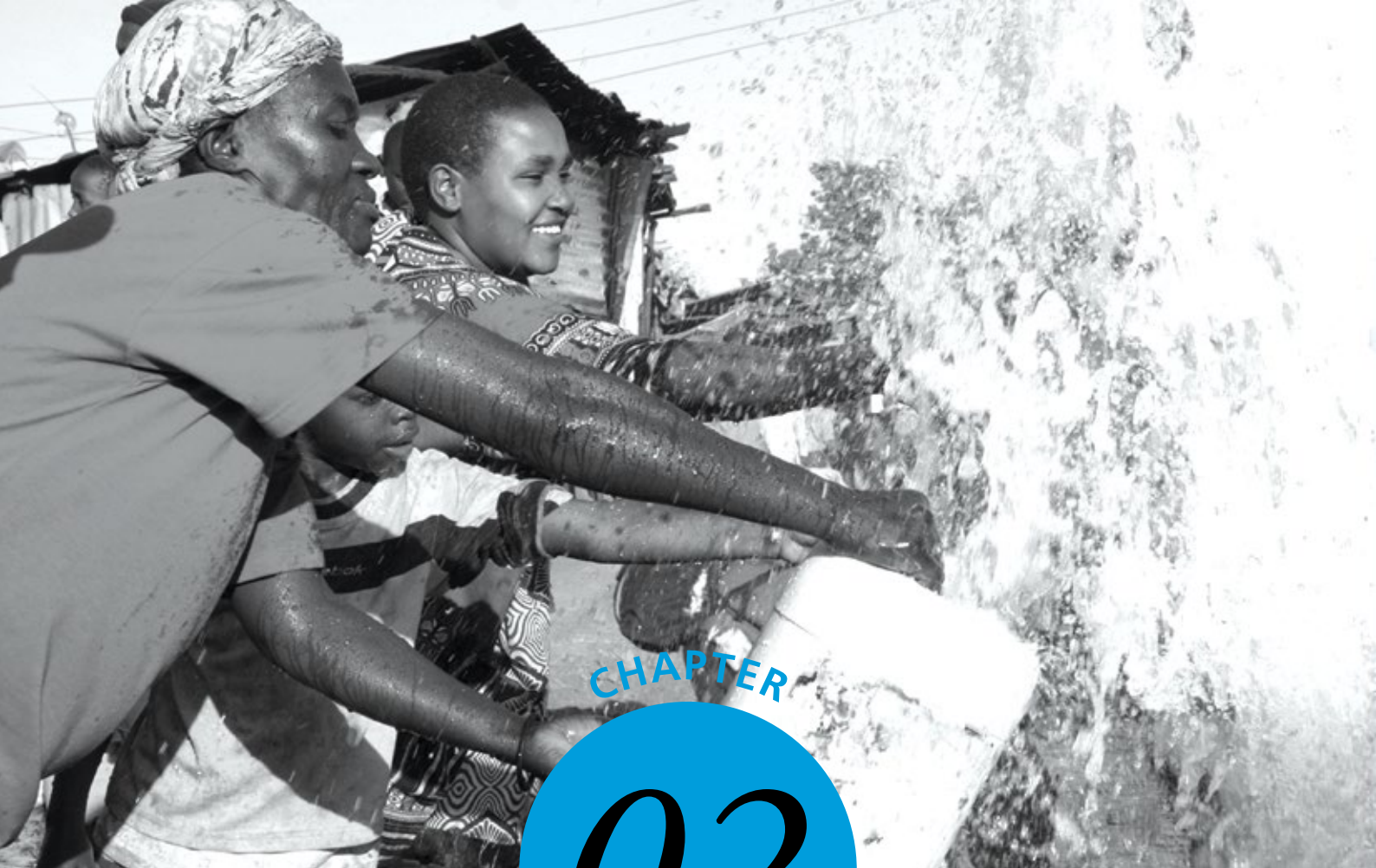
- Action 1: Integrating human rights into the lifeblood of staff so that they understand what the UN’s mandates and commitments to human rights mean for their Department, Agency, Fund or Programme and for them personally.
- Action 2: Providing Member States with candid information with respect to peoples at risk of, or subject to, serious violations of international human rights or humanitarian law.
- Action 3: Ensuring coherent strategies of action on the ground and leveraging the UN System’s capacities in a concerted manner.
- Action 4: Adopting at Headquarters a “One-UN approach” to facilitate early coordinated action.
- Action 5: Achieving, through better analysis, greater impact in the UN’s human rights protection work.
- Action 6: Supporting all these activities through an improved system of information management on serious violations of human rights and humanitarian law.⁷

1.2 UN-Habitat’s Commitment to the Human Rights-Based Approach

The United Nations Human Settlements Programme (UN-Habitat) is mandated by the UN General Assembly to promote socially and environmentally sustainable towns and cities with the goal of providing “Adequate Shelter for All”. The 1996 Habitat Agenda clearly demanded UN-Habitat’s strengthened attention to human rights in carrying out its mandate on sustainable urban development and adequate shelter for all. Since then, UN-Habitat’s transformation to adopting a HRBA has been gradually culminating with its adoption in 2013 by the Governing Council following staunch support by the Executive Director and senior staff in UN-Habitat.

UN-Habitat adopted the Human Rights-Based Approach (HRBA) in its policies and programmes in 2013 through its inclusion in current and future policy and strategic frameworks, through the elevation of human rights to become a cross-cutting issue affecting all areas of the work of the organization, and through dedicated staff to ensure that such cross-cutting inclusion remain meaningful and progressive. UN-Habitat subscribes, as a member of the United Nations Development Group (UNDG), to the Common Understanding of HRBA because experience has demonstrated that the HRBA is the way forward to deliver increasingly effective development interventions in meaningful partnership with all relevant stakeholders. The HRBA is a powerful holistic approach to design projects that are sustainable at long term and bring real changes. A better understanding of the role and added-value of UN-Habitat and HRBA will also assist in solving implementation challenges particularly at field level.

UN-Habitat has also eagerly observed the last decade of increased interest in human rights among most UN agencies, the new emphasis on ‘One UN’ (the policy and programmatic framework for the UN to “deliver as one”), as well as the strong adoption of a HRBA in the preparation of the UN Development Assistance Framework (UNDAF) at country level.



CHAPTER

02

Residents of Mathare slum in Nairobi collect water from a burst pipe after staying for one week without water in Mathare © UN-Habitat

PURPOSE

The purpose of this Programmatic Guidance Note is to provide assistance to UN-Habitat staff for the promotion and protection of human rights. The objectives of the Note are to:

1. Provide a clear description of human rights and the Human Rights-Based Approach (HRBA) including in particular the relevance to the work of UN-Habitat.
2. Define clearly the responsibilities of UN-Habitat with respect to human rights, based on the UN-Habitat mandate.
3. Provide guidance on how a HRBA should be integrated into the UN-Habitat programming.



Reconstruction of a house in Bagh, Pakistan.
© UN-Habitat



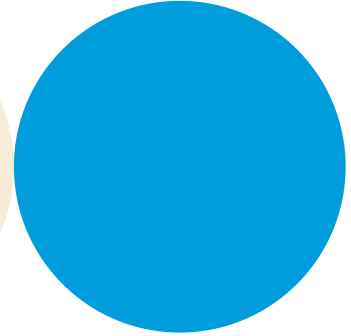
CHAPTER

03

Boys fetching water from a communal water pond in Patpel Village in Bogale Township.
© Lynn Maung/IRIN

THE CONCEPT OF HUMAN RIGHTS

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3.1 The Origin and the Meaning of Human Rights

Human rights, as we know them today have a *moral* and a *legal* content. This needs to be appreciated both when we discuss the *origin* and the *meaning* of human rights.

3.1.1 The Origin of Human Rights

Human rights are based upon and reflect values that are found in major cultures and religions in the world, including the protection of life, dignity, equality, security, and happiness.

The codification of human rights in its current form is primarily the result of the creation and work of the United Nations. At the birth of the UN in San Francisco (1945) a plan was agreed upon that included the establishment of a new international organization that could secure *peace, justice, freedoms and human rights*. The Universal Declaration of Human Rights, adopted by the UN General Assembly in 1948 asserted this clearly.

3.1.2 The Meaning of Human Rights

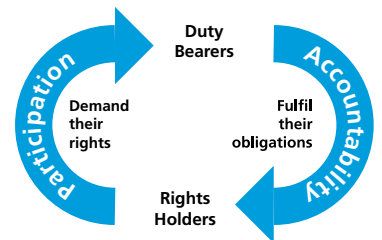
Human rights entail both rights and obligations. Under international law, States assume obligations and duties to respect, protect and fulfil human rights. The obligation to respect means that States must refrain from interfering with, or curtailing the enjoyment of human rights. The obligation to protect compels States to protect individuals and groups of people against human rights abuses. The obligation to fulfil requires that States must take positive ac-

tion to facilitate the enjoyment of basic human rights. At the individual level, while we are entitled to our human rights, we should also respect the human rights of others.⁸

Human rights are universal legal guarantees of a civil, cultural, economic, political and social nature, protecting individuals and groups, against actions and omissions that interfere with fundamental freedoms, entitlements and human dignity. Furthermore, human rights are inalienable, indivisible, interdependent and interrelated, reflecting specific human rights principles that can be found in international human rights treaties, regional instruments and domestic law.

A human right may be understood as a relationship between an individual (or a group of individuals) who has a right and another individual (or group of individuals) who has a correlative duty or obligation. The first individual enters into the role of a *right-holder* (or the subject of the right) and the second individual enters into the role of a *duty-bearer* (or the object of the right). The relationships are illustrated below.

“
The recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world.”
”



A HRBA is a move from charitable or technocratic models in favour of a rights-based model that ensures the **accountability** of duty-bearers and the entitlements of rights-holders

3.1.3 Duties or Obligations in Relation to Human Rights

International Human Rights Law refers to the body of international law designed to promote and protect human rights at the national, regional and international levels. International human rights law is predominantly comprised of treaties or agreements between states and is intended to have binding legal effect between the parties in agreement.

In International Human Rights Law, four types of duties or obligations are recognized:

- *The Duty/Obligation to Respect* requires the duty-bearer to refrain from interfering directly or indirectly with the enjoyment of the right.
- *The Duty/Obligation to Protect* requires the duty-bearer to take measures that prevent third parties from interfering with the enjoyment of the right.
- *The Duty/Obligation to Fulfill* (Facilitate) requires duty-bearers to adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures towards the full realization of the right.
- *The Duty/Obligation to Fulfill* (Provide) requires duty-bearers to directly provide assistance or services for the realization of the right.

The last two are often seen together as the *obligation to fulfill*. Examples of what these obligations mean in practice in relation to different human rights of importance for UN-Habitat are given in relevant chapters of this Note.

While civil and political rights are seen as rights that must be realized without any delay, economic, social and cultural rights may be realized ‘progressively’ depending on the availability of resources (see section 7.2.4 for a full discussion).

3.1.4 Non-State Duty-Bearers

While the State party has obligations to respect, protect and fulfill the rights codified in a ratified treaty, UN agencies often confer about their obligation to *promote and protect* human rights in the country where they are working. Sometimes the duty to *respect* is also acknowledged, however, the duty to *fulfill* is perceived as a duty of the country only.

Another important categorization of duties is that a duty is either a *duty of commission* or a *duty of omission*. The former means a duty to act; for example, the State has an obligation to release legislation obliging a landlord to provide access to water. The latter means a duty *not* to act; for example, a landlord has a duty not to interfere with the private life of the tenant.

The existence and important role of *non-state duty-bearers* is increasingly recognized⁹. As a matter of fact this was already recognized in the Preamble of both the ICCPR and the ICESCR, as shown below.

“*Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant*”

- *Preamble of both Covenants, 1976*

3.1.5 Basic Needs vs. Human Rights

Needs and rights are different concepts and it is important to understand their similarities as well as differences. Essentially, most human rights reflect specific basic human needs, while far from all human needs are codified as human rights. The most notable differences are shown in the table below.



NEEDS	RIGHTS
Needs are met or satisfied	Rights are realized
Needs imply goals, including partial goals	Rights imply goals that are to be achieved 100 %
Needs do not necessarily imply duties	Rights always imply correlative duties
Needs can be met by goal or outcome strategies	Human rights can be realized only by attention to both outcome and process
Needs are not necessarily universal	Rights are always universal
Needs can be met by charity and benevolence	Privileges are insufficient to achieving the goals of development in the absence of rights
Needs can be ranked a priori in a hierarchy	Rights cannot be ranked a priori in a hierarchy
Needs are often associated with promises	Rights are always associated with obligations

As depicted in the table above, one of the significant differences between ‘needs’ and ‘rights’ is that needs can be prioritized *a priori*, while human rights cannot. ‘Needs’ can be organized in a *hierarchy*¹⁰, with the ‘basic rights’ at the bottom, however, this cannot be done with human rights because human rights are *a priori* of equal importance. Generally, one cannot say that the right to adequate housing is more important than the right to education. However, in any specific context, for example planning a programme, different human rights must be given different attention and priority, due to obvious budget constraints.

3.2 A Human Rights-Based Approach (HRBA)

Since the mid-1990s, the exploration of the linkages between human rights and development has been apparent amongst practitioners in development with the aim of augmenting a human rights perspective of development planning and programming.¹¹

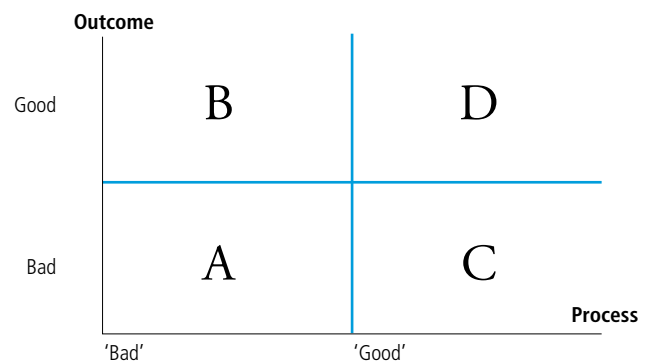
Following the launch of the UN Reform in 1997, all UN agencies were encouraged to operationalize a HRBA to development, ultimately resulting in an agreement amongst UN agencies about a Common Understanding of a HRBA in 2003.

3.2.1 Development as Outcome and Process

The explanation of a HRBA to Development commences with a re-construction of *development*. In any given definition of ‘development’, it requires the satisfaction of at least

two conditions: the achievement of a desirable outcome *and* the establishment of an adequate process to achieve this outcome. For example, most of the goals reflected in the MDGs, (for instance health, education, etc.) represent specific, desirable outcomes. Progressive human development also demands a high-quality process to achieve such outcomes. In economic development approaches, emphasis has been given to cost-efficiency, cost-effectiveness and sustainability. Increasingly, development processes are designed to abide by the Paris Declaration criteria of *aid-effectiveness* (ownership, alignment, harmonization, managing for results, and mutual accountability).¹² Some approaches include participation, local ownership, and empowerment as essential characteristics of a high-quality process in achieving development goals. More recently, the need to ensure that development processes do not result in increased in-equities or in-equalities have been emphasized.¹³

Level of outcome and quality of process define a two-dimensional space for social action, as illustrated below.





An over view of Mathare slum in Nairobi, Kenya. © UN-Habitat

3.2.2 Human Rights Principles and Standards

A pivotal implication of a ‘human rights perspective’ is the need to give equal attention to the achievement of desirable outcomes *and* to the quality of process leading to these outcomes. The outcome/process construct is central to a *Human Rights-Based Approach to development*, in which *human rights standards* and *human rights principles* are crucially important.

A *Human Rights Standard* represents the desirable goal or outcome of the realization of a specific human right. These standards are codified in human rights treaties, for example adequate housing, health, education, food, etc. There are many different ways of achieving a desirable outcome, or more precisely, there are different *processes* that can be used to reach a certain outcome. In a HRBA the processes should meet the criteria of *Human Rights Principles* (look below in this section), in addition to relevant efficiency and effectiveness criteria, unless these compromise human rights.

While human rights standards only relate to the desirable outcome, human rights principles, in addition to being criteria for an acceptable process, are also important for

the outcomes. For example in the efforts to progressively realize the right to adequate housing, the human rights principle of *participation* in the process chosen is very important, but the same principle of participation is also important for the *quality* of the outcome. The right to adequate housing does not only require that we all have a roof above our heads, it also requires us to understand – through participatory processes – how adequate housing become more than just a roof above our heads.

Human Rights Principles

Human rights principles should guide programming in all phases of the programming process, including assessment and analysis, programme planning and design (including setting of goals, objectives and strategies), implementation, monitoring and evaluation. Key human rights principles are enumerated below:

Universality and Inalienability: Human rights are *universal* and *inalienable*. *All people everywhere* in the world are entitled to them. The universality of human rights is encompassed in Article 1 of the *Universal Declaration of Human Rights*: “All human beings are born free and equal in dignity and rights”.



Indivisibility: Human rights are *indivisible*. Whether they relate to civil, cultural, economic, political or social issues, human rights are inherent to the dignity of every human person. Consequently, all human rights are equal - denial of one right invariably impedes enjoyment of other rights. Thus, the right of everyone to an adequate standard of living cannot be realized at the expense of other rights, such as the right to health or the right to education.

Interdependence and Interrelatedness: Human rights are *interdependent* and *interrelated*. Each right contributes to the realization of a person's human dignity through the satisfaction of his or her developmental, physical, psychological and spiritual needs. The fulfillment of one right often depends, wholly or in part, upon the fulfillment of others. For instance, fulfillment of the right to health may depend, in certain circumstances, on the fulfillment of the right to education.

Equality: All individuals are equal as human beings by virtue of the inherent dignity of each human person. Equality is therefore the right of every individual in order to receive the same treatment. It is a situation where all persons within a society enjoy equal (the same) access to the available goods and services that are necessary to fulfill basic human needs.

Non-discrimination: All human beings are entitled to their human rights without discrimination of any kind such as race, religion, political or other opinion, national or social origin, disability, property, birth or other status. Non-discrimination implies that States must recognize and provide for the differences and specific needs of groups that generally face particular challenges and disadvantages.

Participation: Women and men, girls and boys must be given the opportunity to participate in, and influence, the decision-making processes that affect them. Many development actors view participation as a way or method of satisfying the project objectives, and ensuring sustainable results.

Transparency: Transparency requires that those individuals affected by administrative decisions, business transactions or other work are allowed and encouraged to know not only the basic facts and figures, but also the mechanisms and processes behind such administrative transactions. It is the duty of civil servants, managers and trustees to act visibly, predictably and understandably. The right to information is a condition for meaningful participation in the different functions of society.

Accountability: People must be able to hold decision-makers accountable. The human rights framework imposes unambiguous obligations on ratifying States. Accountability requires that State obligations to fulfill human rights commitments are reviewed and monitored. There must also be judicial methods of complaining against government failures to fulfill their obligations. In cases of decentralization, the local and municipal decision-making bodies are part of the State structure, and must therefore satisfy the obligations made by the state/country regarding human rights.

The Rule of Law: The Rule of law is a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards.

Human Rights Standards

Human rights standards define the core content of human rights (housing, education, water, food, etc.). In dealing with economic, social and cultural rights, it is common to qualify the human rights standard by referring to four key dimensions, often referred to as AAAQ:

Availability: Facilities, goods and services need to be available in sufficient quantities and equipped with the necessities required to function.

Accessibility: Facilities, goods and services need to be accessible for all sections of the population, especially vulnera-

ble or marginalized groups, such as ethnic minorities and indigenous peoples, women, children, adolescents, older persons or persons with disabilities.

Affordability: Facilities, goods and services must be affordable and expenses must not disproportionately burden poorer households. This also requires the removal of administrative barriers that can prevent the poor from accessing facilities, goods and services.

Quality: Facilities, goods and services need to be relevant, culturally appropriate and of acceptable quality.

3.2.3 The UN Common Understanding of a Human Rights-Based Approach to Development Cooperation

In 2003, UN agencies assembled at Stamford, reached a *Common Understanding of a Human Rights-Based Approach to Development Cooperation*.¹⁴

1. All programmes of development co-operation, policies and technical assistance should further the realization of human rights as laid down in the Universal Declaration of Human Rights and other human rights instruments.
2. Human rights standards contained in, and principles derived from, the Universal Declaration of Human Rights and other international human rights instruments should guide all development cooperation and programming in all sectors and in all phases of the programming process.
3. Development cooperation should contribute to the development of capacities of 'claim-holders' to claim their rights and of 'duty-bearers to meet their obligations.

The Common Understanding was later endorsed by the UNDG Programme Group and many bilateral development agencies.

In addition to the three principles defined above, the Common Understanding also specified four more practical but necessary key characteristics that are specific, unique and

very useful in learning how a HRBA should be used in practice. These are:

1. Assessment and analysis should identify the human rights claims of right-holders and the corresponding human rights obligations of duty-bearers as well as the immediate, underlying, and structural causes of the non-realization of rights.
2. Programmes should assess the capacity gaps of right-holders to claim their rights and the capacity gaps of duty-bearers to meet their duties. Then, strategies and programmes/projects should be developed to reduce or eliminate these capacity gaps.
3. Programmes should monitor and evaluate both outcomes and processes guided by human rights standards and principles.
4. Programming should be informed by the recommendations of international human rights bodies and mechanisms.

During the development of the theoretical and practical basis of HRBA, it is clear that in applying this approach the ubiquitous 'good programming practices' are necessitated, and are not merely optional or desirable. Simultaneously, it is important to appreciate that the application of 'good programming practices' does not, in and by itself, constitute a HRBA. They are necessary, but not sufficient, conditions.

It is also important to appreciate that the full adoption of a HRBA is not just any type of 'add on' to a development approach. It is a 'transformation' with a new way of seeking to understand and to change reality.

Based on the UN Common Understanding of a HRBA, the overall meaning and purpose of a HRBA was well formulated in the latest UNDG's Guidance Note for programming within UNDAF.¹⁵



“Further the realization of human rights and ensure that human rights standards and principles guide all development cooperation and programming in all sectors and in all phases of the programming process. It focuses on the development of the capacities of ‘duty-bearers’ to meet their obligations and/or of ‘rights-holders’ to claim their rights”. (p.23)

3.3 A Human Rights-Based Approach to Programming (HRBAP)

3.3.1 Introduction to the HRBAP Methodology

The UN Common Understanding on HRBA recommends that the human rights relationship among individuals and groups be determined in order to identify rights-holders and duty-bearers. It identifies *claim-holders* (and their claims or entitlements) and *duty-bearers* (and their correlative duties or obligations) and works towards strengthening the capacities of claim-holders to make their valid claims, and of duty-bearers to meet their duties.

The HRBAP methodology presented below has been adapted to varying degrees by most UN agencies, several bilateral agencies and international NGOs. The UNDG Guidance Note for UNDAF preparation also includes the same approach, combined with the two additional normative principles of gender equality and environmental sustainability.¹⁶ Moreover, the training package used by the UN Staff Training College in Turin is also based on the HRBAP.¹⁷

Prior to the commencement of any causality analysis, the key problems that reflect non-realization of human rights must be identified. This inaugurates with a listing of all human rights treaties ratified by the government in question. This is important because it is only subsequent to ratification that right-holders become *claim-holders*, with valid claims on correlative duty-bearers. Problems are most often seen and identified as *manifestations of the problem*, for example hungry and malnourished individuals, out of school children, homeless people etc. A critical source of informa-

Good Programming Principles

- 01 People are recognized as key actors in their own development, rather than passive recipients of commodities and services.
- 02 Participation is both a means and a goal. Strategies are empowering, not disempowering.
- 03 Both outcomes and processes are monitored and evaluated.
- 04 Analysis includes all stakeholders.
- 05 Programmes prioritize marginalized, disadvantaged, and excluded groups.
- 06 The development process is locally owned.
- 07 Programmes aim to reduce disparity.
- 08 Both top-down and bottom-up approaches are used in synergy.
- 09 Situation analysis is used to identify immediate, underlying and basic causes of development problems.
- 10 Measurable goals and targets are important in programming.
- 11 Strategic partnerships are developed and sustained.
- 12 Programmes support accountability to all stakeholders.

tion about problems reflecting non-realization of human rights are the reports and documents issued by the UN human rights machinery, including Concluding Observations, reports by Special Rapporteurs, Universal Periodic Reviews and reports by National Human Rights Institutions.

It is paramount that there is an agreement amongst stakeholders regarding which of the existing problems should be addressed first. The methodology consists of six consecutive steps: (1) Causality Analysis; (2) Pattern Analysis; (3) Capacity Gap Analysis; (4) Identification of Priority Actions; (5) Assessment of selected processes; and (6) Programme Design. These steps are described below.

In most cases, using examples from the area most relevant to the stakeholders strengthens the guidance in development. In order to maximize the *understanding* of how a HRBAP can and should be used, the human right most familiar amongst UN-Habitat staff has been selected – the right to adequate housing.

3.3.2 Step 1: Causality Analysis

The causality analysis described below assumes that adequate awareness of a particular problem exists at the level of society where actions to address the major causes of the problems can and should be addressed.

Once awareness exists, the first step is to identify the causes of the problem. Without a reasonable consensus on causality, there is unlikely to be any consensus on solutions. Identification and analysis of the causes of a problem is largely facilitated by the use of an explicit *conceptual framework of causality*.

A conceptual framework is an analytical model developed through scientific evidence, global research, local knowledge and lessons learned from evaluations that establish a structured way of looking at a problem. A conceptual framework of causality helps to organize and cluster the multiple causes into a pattern of relationship, and to identify the immediate, underlying or basic causes; to ask the right questions, so that all main contributing factors are

identified; and to convince partners to explore specific underlying or basic causes that they earlier may have been reluctant to discuss.

A hypothetical conceptual framework is illustrated below, often called a ‘Causality Tree’.



When all major causes (immediate, underlying, and basic) of the problem have been identified, the state of each variable is assessed (measured or estimated). It then becomes possible to analyze the qualitative and quantitative relationships among these variables. Analysis should start from the ultimate outcome (the top of the conceptual framework) and continue down the hierarchy of causes. This analysis therefore looks first at the relationships between the *ultimate outcome* and the *immediate causes* of this outcome; second at the causes of the immediate causes, i.e. *the underlying causes*; and third at the relationships between the identified key underlying causes and *the basic causes*. Such a *focused analysis* will help to limit the analysis to the causes that actually influence the selected outcome in the situation at hand and will, therefore, not include all possible determinants and processes in society. This is essential in order to make the exercise manageable.

Reaching consensus regarding the main factors and processes, which affect the realization of a specific human right, offers enormously improved opportunities to achieve a more systematic and logical integration of pro-



Public works in Sixth Avenue, zona 1, beside the National Palace, Guatemala City, Guatemala. © Maria Fleischmann/World Bank

gramming for development. This is particularly important if the problem requires coordinated actions by many partners at different administrative levels. It also forms a basis for identifying *accountabilities*.

Causality analysis using the conceptual framework provides an opportunity to build consensus on the causes of a problem. Experience in applying the conceptual framework has indicated that while the causes of a problem may differ at the immediate and underlying levels, the *basic causes* are often surprisingly similar.

The identification of the immediate and underlying causes is relatively straightforward, however, the analysis of the basic causes is a more challenging exercise.

These *root* or *structural causes* can be divided into two categories:

1. The potential of society, social organization and relations

Capacity, including the availability and control of human, economic, and organizational resources at any given point in time, result from historical processes. Different forms of disparities and inequalities are constantly reproduced in society. Every society has potential and a form of organizing its social relations. This is where the analysis of the basic causes should start. The *potential* of a given society includes: (1) ecology, including climate and soil, and other natural resources; (2) people with knowledge and skills;

(3) technology and ownership of the means of production; (4) gender relationships and power relationships; (5) other political factors, including political power, and legal systems and other rules; and (6) other ideological factors, such as culture, religion, habits, and traditions.

2. The social processes and the generation of capacity.

In all societies, the potential, social organization and relations constantly interact and change. The results of these interactions are transmitted through social, economic, political, and cultural processes, and manifest themselves in a variety of societal trends including the generation of capacity. Most of these trends can be observed and measured. Some of the more important trends reflect the following dimensions: (1) production/ distribution; (2) employment/unemployment; (3) exploitation/non-exploitation; (4) inclusion/exclusion; (5) discrimination/non-discrimination; (6) alienation/social cohesion; (7) corruption/transparency and accountability; (8) empowerment/disempowerment; (9) democracy/dictatorship; and (10) peace/conflict.

Most of these trends are interrelated, often in a synergistic way. For example, unemployment often correlated with exclusion, discrimination and alienation; inclusion promotes empowerment, and so on. Many of these trends reflect society's degree of human security (in the broader sense) and social integration, two of the goals identified during the 1995 World Summit for Social Development.¹⁸

These social trends ultimately determine the *capacity* of individuals, households, communities, and other actors at prominent levels of society. The societal processes reproduce inequalities and inequities embodied in social structures and relations, including the availability and control of resources. These trends are occasionally predictable, meanwhile unpredictable (complex) at other times, and may therefore contribute to evolution and change in society.

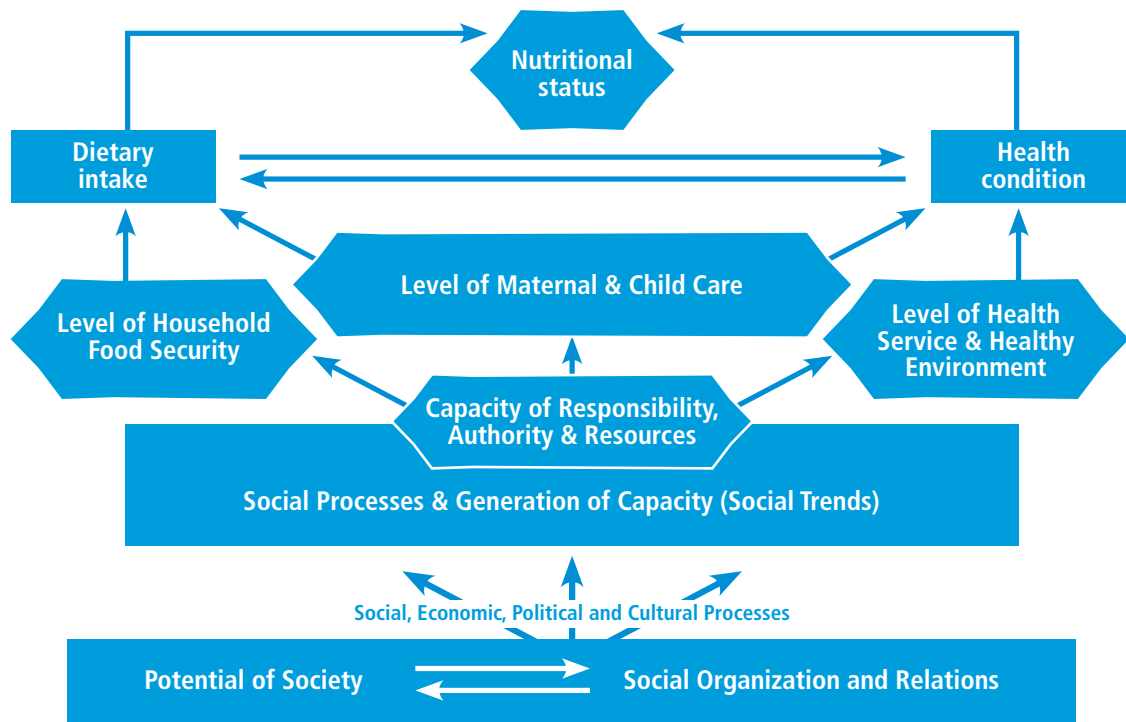
It is important to recognize that the capability to assess, analyze, and act—together with improved connectivity among actors—will not only influence the underlying and immediate determinants of development, but may also influence the resource arrangement itself. A change in responsibility, authority and resources may further affect the societal trends and the basic determinants.

The implication is that addressing the basic causes of any of the problems is likely to result in creating enabling conditions for solving a number of other problems simultaneously. Such approaches are also likely to increase the sustainability of the Habitat-supported programmes. Basic causes, however, are the most difficult to address in country programming. This implies that greater efforts should be devoted to equipping Habitat staff with the necessary understanding to address the basic causes more systematically.

Who should perform causality analysis? Ideally, actors at all levels of society should participate. National-level analyses will, naturally, deal with more aggregated data than analyses at the community level. It is important to recall that people at all levels of society already assess and analyze their situation. Existing assessments and analyses can often be improved by the introduction of an explicit conceptual framework as a clear conceptual framework helps to identify what to look for.¹⁹

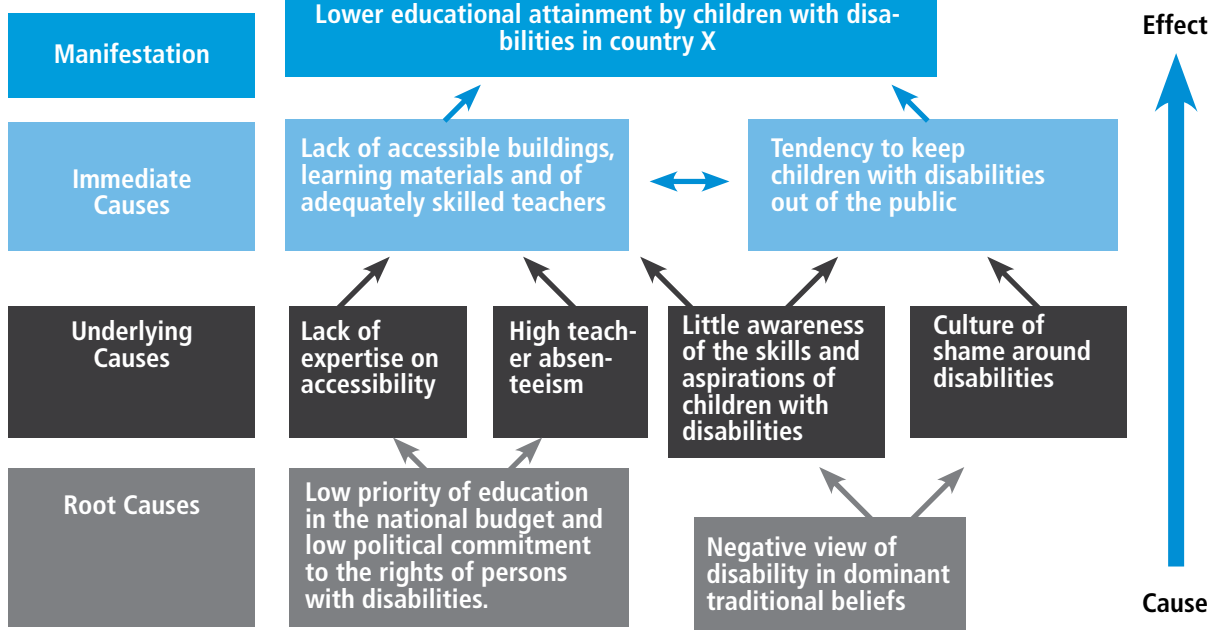
The causality analysis will result in *a list of rights that are either being violated or at risk of being violated*, together with the major causes of these violations. Additionally, this analysis will identify likely claim-holders and duty-bearers for each selected right.

Two examples of Causality Conceptual Frameworks are shown below. The first is the UNICEF Conceptual Framework of Causality of young child malnutrition, proposed in 1990,²⁰ and since then adopted by most agencies dealing with child nutrition.

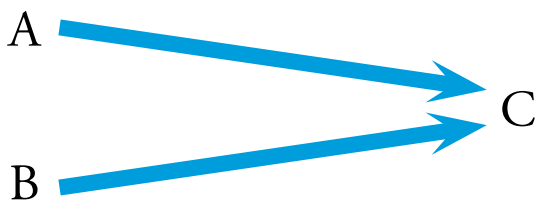


The second framework is an example from the recent Guidance Note by UNDP.²¹

Problem Tree



In both cases, a *hierarchy* of causes is reflected from the root or basic causes to the manifestation. In such a hierarchy of causes, it is important to appreciate and understand the logical concept of *necessary and sufficient conditions*. The figure below shows an assumed causal relationship between A and B, and C.



In simple language we say that A and B cause (or are causes of) C, or, that C is caused by A and B. We may often have a situation where A is a cause, a *necessary cause* of C, but not a *sufficient cause* of C. In other words, C would not happen with just A taking place. We may further find that it is the same with the relationship between B and C; that B is a *necessary cause* of C, but not a sufficient cause. However, if we find that C always happens when A and B happen, we say that A and B together are not only the necessary causes, but also *sufficient* causes of C.

In the first framework on the causes of young child malnutrition, for example, adequate food, health *and* care are all required for ensuring good nutrition. In other words, each of food, health and care is necessary, but alone or with two together are not sufficient conditions for adequate nutrition, although each of them represents a necessary condition.

3.3.3 Step 2: Pattern Analysis

Pattern analysis is a means to understanding the relationships between claim-holders and duty-bearers. As discussed earlier, human rights represent relationships between claim-holders (subjects) and duty-bearers (objects) in a specific claim-duty relationship. Duty-bearers often cannot meet their obligations because some of their own rights are being violated; for example, parents with-

out resources cannot be held accountable for not being able to pay costly school fees. The relationships between claim-holders and duty-bearers form a *pattern* that links individuals and communities to each other and to higher levels of society.

Causality analysis should result in the identification of individuals or groups of individuals in their roles as claim-holders and duty-bearers at all levels of society. For example, insecure tenure for a tenant can be caused by lack of houses or excessive rents, which in turn may be a result of unequal allocation of funds to a particular area or a policy of imposing very high service fees. These resource and policy decisions are themselves a result of other basic causes. Pursuing this type of analysis will help to identify claim-holder/duty-bearer relationships at different levels of society. Focusing on specific, priority problems will help to reduce the Pattern Analysis to a limited set of claim-duty relationships likely to be most relevant to the situation at hand. If the focus is not limited, the analysis runs the risk of resulting in a vast array of claim-duty relationships and actors who cannot all be involved or supported in programme planning, implementation, and monitoring.

Example from a tenant – landlord relationship

Tenants are the prime or first-level claim-holders in the pattern of claim-duty relationships within the right to adequate housing. Landlords are the immediate duty-bearers. However, many other individuals at higher levels of society have duties in relation to tenants' rights, such as the municipality and the government, who are often seen as the 'ultimate duty-bearer'. The municipality, for example, may have a duty to ensure availability of water, sanitation and electricity for the municipality; and the national government may have a duty to legislate against unlawful forced evictions, tenant protection laws, etc.

The Pattern Analysis should involve as many as possible of the likely claim-holders and duty-bearers. Outside agencies often think that pattern analysis is being carried out in a participatory manner when, in fact, many key actors are not involved. As a result, programme designers too often



take it for granted that certain actors are of prime concern for addressing certain problems.

In community-centered capacity development, Pattern Analysis will be refined by the actors themselves and become a learning process; a discovery of why certain actors perform the roles that they currently do and what mechanisms need to be put in place to start sharing some of these roles. This should be a process, in which communities and structures within, start to appreciate their perceived and real roles.

Pattern Analysis can become very complicated, and thus demands a clear focus and setting of priorities. The analysis should begin by focusing on one right at a time. Duty-bearers at different levels of society should be identified, and their duties grouped according to categories of claim-holders. District authorities, for example, may have duties directly to the key claim-holders.

For each right chosen, a list of claim-holders and duty-bearers should be prepared. As becomes clear from the tenant – landlord example from the right to adequate housing sketched out in the tables below, most people are at the same time duty-bearers in relation to somebody else's right *and* claim-holders in relation to somebody else's duty. A list of duties (with duty-bearers) will therefore easily translate into another list of claims and claim-holders. This is important when capacity gaps for claiming rights are being assessed and analyzed, as will be discussed in Step 3. The table below shows some examples of specific claim-duty relationships regarding tenants' right to adequate housing. It is important to note that anybody's claim is identical to somebody else's (correlative) duty.

3.3.4 Step 3: Capacity Gap Analysis

After the key claim-duty relationships for a specific right have been identified, the next step is to analyze why the right is not realized or at risk of not being realized. A basic assumption underlying the approach is that rights are not realized because claim-holders lack the capacity to claim the right, or duty-bearers lack the capacity to meet their duties.

The analysis of capacity gaps is called *Capacity Gap Analysis*.

Capacity development is relevant for individuals, households, communities, organisations, formal and non-formal institutions, governments and government institutions, NGOs, and society as a whole. When considering whose capacities need to be developed: In a human rights approach, most individuals have both rights and duties. Most individuals, therefore, need capacity to both claim their rights and fulfil their duties. 'Capacity' includes the following components:

Responsibility/motivation/commitment/leadership:

This refers to the acknowledgement by an individual (or organization) that he/she should do something about a specific problem. It means acceptance and internalization of a duty, and is often justified in legal or moral terms.

Authority/Power:

This refers to the legitimacy of an action; when an individual or group feels or knows that they *may* take action; that it is permissible to take action. Laws, formal and informal norms and rules, tradition, and culture largely determine what is and what is not permissible. The structure of authority in a society reflects existing power relations.

Access and Control of Resources:

If an individual accepts that he/she *should* do something and also *may* do it, it may still be impossible to act because the person lacks the required resources. Capacity must therefore also mean that the person or organization is in a position to act, or *can* act. It is only when a person accepts that he or she should act, may act and can act, that the person can be held accountable for not acting.

An assessment should therefore be made of the human, economic and organizational resources available to, and controlled by the claim-holders to claim their rights, and of the duty-bearers to meet their obligations.

Human resources include time and skills to address the problem at hand, and are closely related to the capacity to

TABLE: PATTERN ANALYSIS OF TENANT'S RIGHT TO ADEQUATE HOUSING

Claim-Holder Duty-Bearer	Tenant	Landlord	Municipality	National Government
Tenant		Rent paid on time No damage on property and if so, paid by the tenant No disturbing noise	Register name and address	
Landlord	Access to water, sanitation, electricity and garbage collection Repair due to ordinary wear and tear Non-discrimination for any reason Pay insurance for the building		Pay taxes on income of rent Keep area in question clean and lit	Pay taxes of income of rent
Municipality	Provide housing subsidies for people who are poor Establish a complaints mechanism	Provide public access to electricity, water, sanitation and garbage collection		Accountable to the Government
National Government	Prepare, implement and monitor a National Housing Policy Legislate to include the right to adequate housing	Allow tax deduction for cost of repair	Budget support for municipality housing subsidies Serve municipality with electricity	

recognize and understand the problem, as discussed further below.

Economic resources are normally the first type of resources that comes to mind, particularly when working in resource-poor communities and families/households. Assisting such communities and households to find long-term solutions for improving their economic resource base should always be part of capacity development, although direct transfers may not be feasible or even the best solution. Economic resources include land, natural resources, means of production - such as tools or equipment), technology, income, and credit.

Organizational resources are often overlooked in resource analysis. Lack of economic resources can often be compensated for by the existence of formal or informal structures that can assist in individual crises. Access to 'networks', especially informal ones, tends to be a decisive factor in determining coping capacity. Organizational resources include formal and non-formal organizations such as family, extended family, clan, community-based organi-

zations (CBOs), non-governmental organization (NGOs), administrative structures, institutions, etc. Organizational resources also include formal and informal rules that structure certain patterns of interaction.²²

Capability for Rational Decision-making and Learning: Rational decision-making requires evidence-based assessment and a logical analysis of the causes of the problem. Actions should be based on decisions informed by the analysis. After action has been taken, a re-assessment of the result and impact will lead to improved analysis and better action in the next round. Such interactive *learning-by-doing* relies heavily on the capability to communicate. This planning approach has been developed in many different forms, including 'Learning by Doing'; 'Self-Evaluation'; and 'Assessment-Analysis-Action-Reassessment- etc. (AAA). Most of them reflect the thinking of Paolo Freire.²³

Learning how decisions are made in a society or in a community requires good local knowledge and a high degree of dialogue, which is key to revealing the strengths and weaknesses of existing, relevant 'learning-by-doing' processes. If



the process involves more than one actor, dialogue and understanding among actors becomes more critical, because if they do not agree on the problem and its causes, it will be difficult to agree on, and effectively jointly pursue, coordinated actions. This is why communication is pivotal.

Communication Capability: Being able to access information and participate in communication systems is crucial for people and organizations as they carry out their individual and collective learning-by-doing cycles. Communication enables people to agree that there is a problem, agree on major causes and pull their resources together to address the causes. Taken to the re-assessment/re-analysis stages, communication provides the feedback (communication loop) that permits learning, experience sharing and construction of a body of best practices that inform new actions.

Participation in Capacity Analysis is perhaps even more important than in other aspects of problem analysis. At times, it is only through dialogue among the actors themselves that the real constraints will emerge in a proper perspective. Duty-bearers have to discuss and agree on how responsibilities can most effectively be shared. The dialogue should also involve claim-holders, who should be encouraged and learn how to claim their rights. As mentioned, individuals often cannot meet their duties because their own rights are being violated. All important claim-duty relationships identified in the earlier Pattern Analysis should therefore be analyzed. For each human rights relationship, the capacity gaps of both the claim-holder and the duty-bearer should be assessed.

The table below shows examples of capacity gaps of tenants to claim their rights against the landlord, and the capacity gaps of landlord to meet their correlative duties to the tenants.

TABLE: CAPACITY GAPS OF TENANTS AS CLAIM-HOLDERS AND OF LANDLORDS AS DUTY-BEARERS IN THE TENANT-LANDLORD HUMAN RIGHTS RELATIONSHIP (AS PART OF THE RIGHT TO ADEQUATE HOUSING)

Claim-Holder Duty-Bearer	CAPACITY GAPS OF TENANTS AS CLAIM-HOLDERS	CAPACITY GAPS OF LANDLORDS AS DUTY-BEARERS
Responsibility	May sometimes believe that all damages should be repaired by the landlord Does not know about his/her rights	Does not feel responsibility for the repair due to ordinary wear and tear Does not accept the responsibility to follow up with the municipality about water and electricity supplies
Authority	Does not have the courage to request the landlord to repair damages due to wear and tear Does not have the courage to request the landlord to connect to water supply and electricity	Does not have the courage to put demands on the municipality
Resources	Cannot afford any lawyer in a dispute with the landlord	Does not have the economic resources to repair due to wear and tear Cannot afford the required bribery of officials to arrange for water and electricity
Decision-Making Capability	Does not fully understand the conditions and responsibilities in the housing contract	Does not know the conditions of the rented flats well enough to be able to decide what needs to be done Is not involved in the decisions made at the level of the municipality
Communication	No access to some regularly meeting of a 'tenants/landlord' committee for discussion about problems Is not fully conversant with the language of the landlord	There is no 'tenants/landlord' committee for discussion about problems

TABLE: ANALYSIS OF CAPACITY GAPS AND ACTIONS TO CLOSE THE CAPACITY GAPS OF TENANTS TO CLAIM THEIR RIGHTS FROM THE LANDLORDS

Claim-Holder Duty-Bearer	CAPACITY GAPS OF TENANTS AS CLAIM-HOLDERS	ACTIONS TO CLOSE THE CAPACITY GAPS
Responsibility	May sometimes believe that all damages should be repaired by the landlord	Include in the contract in detail exactly what the duties of the tenant and the landlord are for repair of damages
Authority	Does not have the courage to request the landlord to repair damages due to wear and tear Does not have the courage to request the landlord to connect to water supply and electricity	Establish regular tenant/landlord meetings with each tenant participating Tenant protection legislation Legislation to avoid unjustified rent increases
Resources	Cannot afford any lawyer in a dispute with the landlord	Provide economic support for tenants living in poverty to obtain legal assistance
Decision-Making Capability	Does not fully understand the conditions and responsibilities in the housing contract	Before the tenant signs the contract, explain in detail the conditions and responsibilities with an official present
Communication	No access to some regularly meeting of a 'tenants/landlord' committee for discussion about problems Is not fully conversant with the language of the landlord	Obligatory meetings (see above) Ask someone who can translate to participate in the tenants/landlord meetings

3.3.5 Step 4: Identification and Assessment of Priority Actions

For each specific claim-duty relationship, the most important interventions should be identified to reduce or close the capacity gaps of the claim-holders to claim their rights and the most important interventions to reduce or close the capacity gaps of the duty-bearers to meet their duties. Priority actions are then identified that are most likely to contribute to reduce or close each of the capacity gaps of claim-holders and duty-bearers. Such actions should aim at increasing responsibility, authority, resources, and decision-making and communication capabilities of claim-holders and duty-bearers. An example on an analysis of capacity gaps and actions to close the capacity gaps of tenants to claim their rights from the landlord is shown in the table below.

Similarly, the table below shows an example on an analysis of capacity gaps and actions to close the capacity gaps of the landlords to meet their duties to the tenants.

Identified 'candidate' priority actions can be organized in a *Log Frame structure of Inputs – Outputs – Outcomes – Im-*

pact, according to the common concept of “Results-based planning”. The analysis moves ‘backwards’ from a defined or desirable impact to the required outcomes, from the required outcomes to the required outputs, and finally from the required outputs to the required inputs. There are varying definitions of the different levels. One of them is summarized below.²⁴

Impact (or final objective): Describes what the target group will achieve if it changes its behaviour (in some cases this is a tangible benefit, in other cases, this is a step towards a future benefit at a higher level).

Outcome: Describes the desirable future behaviour of the target groups—in which way the target groups will use the potentials described in the outputs (e.g. application of knowledge, adoption of practices, use of technology, etc.). *Outcomes* refer to changes in demand, policy, practice, and/or lessons learnt at local, national, regional or international levels and are often used as a proxy for impact.

Outputs: Describes potentials (technical or human resource potentials) established by the project.

**TABLE: ANALYSIS OF CAPACITY GAPS AND ACTIONS TO CLOSE THE CAPACITY GAPS OF LANDLORDS TO MEET THEIR DUTIES TO TENANTS**

Claim-Holder Duty-Bearer	CAPACITY GAPS OF LANDLORDS AS DUTY-BEARER	ACTIONS TO CLOSE THE CAPACITY GAPS
Responsibility	Does not feel responsibility for the repair due to ordinary wear and tear Does not accept the responsibility to follow up with the municipality about water and electricity supplies	Establish a community or municipal complaints committee Monitor the accessibility of water and electricity in each housing unit of the municipality
Authority	Does not have the courage to put demands on the municipality	Involve landlords in relevant meetings at the municipal level
Resources	Does not have the economic resources to repair due to wear and tear Cannot afford the required bribery of officials to arrange for water and electricity	Negotiate the rent with the tenants Improve the transparency of the municipal work on providing water and electricity
Decision-Making Capability	Does not know the conditions of the rented flats well enough to be able to decide what needs to be done	Establish regular tenant/landlord meetings with each tenant participating
Communication	There is no 'tenants/landlord' committee for discussion about problems	Establish regular tenant/landlord meetings with each tenant participating

Inputs (major activities): Describes major activities, which need to be implemented in order to accomplish each of the outputs. (Activities must be realistically defined considering the resources available).

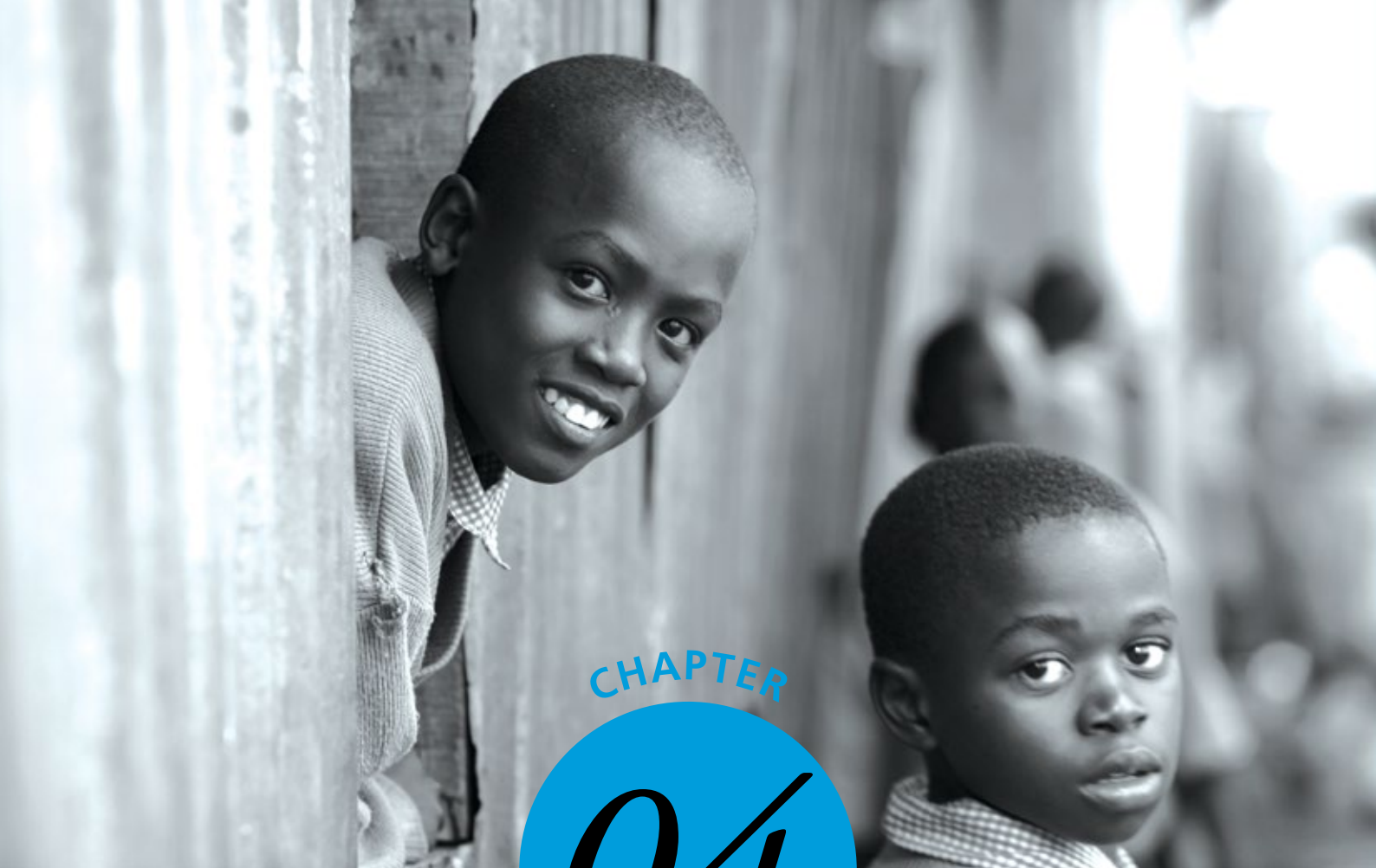
3.3.6 Step 5: Assessment of Selected Processes

Such a Log Frame chain represents *a process*, described earlier in the Outcome/Process construct of development (Chapter 3.2.1), where the *Desirable Outcome* may be any of the impact, outcome and output in a Log Frame. Each of these 'desirable outcomes' should now be assessed from three points of view. First, it should be checked that the desirable impact reflects or represents a codified human rights standard in a human rights treaty ratified by the country. Second, and most important, the *quality of the process* chosen should be assessed to ensure that it meets the criteria of key human rights principles, i.e. adequately reflecting equality, non-discrimination, inclusion, participation, accountability and the rule of law, as appropriate.

Third, it should be checked that the 'desirable outcome' at any level of the Log Frame meets the same human rights criteria as mentioned above.

3.3.7 Step 6: Programme Design

The priority actions should be clustered into specific projects with clear objectives, and projects should be clustered into programmes with similarly clear objectives. This is the reverse of most current programming practices, in which programmes are disaggregated into projects, and projects into activities. Activities can be clustered, or aggregated, according to the level of society in which claim-holders and duty-bearers operate. At each level, some activities will aim at developing capacities of individuals and groups as claim-holders, while others will aim at developing capacities of individuals and groups as duty-bearers. Some activities will do both; sometimes even in relation to more than one right.



CHAPTER

04

Education is fundamental to a well-functioning democracy and will help Africa attain its social and economic goals. © UN-Habitat

HUMAN RIGHTS AND UN-HABITAT

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4.1 Historical Perspective on Human Rights in UN-Habitat

4.1.1 The Bill of Rights

The Universal Declaration of Human Rights (1948) provides for the right for all to an adequate standard of living, including the right to adequate housing.

“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”
(Article 25.1)

Similarly, the International Covenant on Economic, Social and Cultural Rights (1976) states that:

“The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.”
(Article 11.1)

4.1.2 Habitat I Conference, Vancouver, 1976

The First United Nations Conference on Human Settlements took place in Vancouver in 1976 (Habitat I Conference). The focus of the Conference was premised on the need to reduce rural – urban disparities. ***The Vancouver Declaration on Human Settlements***

(1976)²⁵ does not reflect a strong focus on human rights, although the need to protect the *dignity* of all individuals in human settlements is recognized.

“Basic human dignity is the right of people, individually and collectively, to participate directly in shaping the policies and programmes affecting their lives. The process of choosing and carrying out a given course of action for human settlement improvement should be designed expressly to fulfill that right.”

In 1977, the UN General Assembly established the *Commission on Human Settlements (Habitat)*, which replaced the *Committee on Housing, Building and Planning*. The aim of the new Commission was to promote a more robust international cooperation in the domain of human settlements. The *UN Centre for Human Settlements (UNCHS)* functioned as the Secretariat for the Commission, which maintained a focus on rural housing until the Habitat II Conference in Istanbul in 1996.

4.1.3 The Strategy for Shelter to the Year 2000

In 1988, the UN General Assembly adopted a *Strategy for Shelter to the Year 2000*.²⁶ Guidelines for steps to be undertaken by Governments were outlined. The strategy emphasizes the need to be contextual in determining affordability when stating:

“The objectives need to address the scale of the problem, while the ‘adequate’ standard aimed at should be identified on the basis of an analysis of the standards and options affordable to the target population and society at large.”

The objectives and principles of the strategy include (1) enabling policies, (2) women, as income-earners, homemakers and heads of households, (3) shelter and development, and (4) the concept of sustainable development. The then UN Centre for Human Settlements (Habitat) was selected as the secretariat for the strategy.

4.1.4 Habitat II Conference, Istanbul, 1996

The great change came at the Second United Nations Conference on Human Settlements (Habitat II) that took place in Istanbul in 1996. The Conference issued a report, *The Habitat Agenda Goals and Principles, Commitments and the Global Plan of Action (known simply as the 1996 Habitat Agenda)* outlining in detail priorities and actions required for achieving ‘Adequate shelter for all’ and ‘Sustainable human settlements development in an urbanizing world’, including over 100 commitments and 600 recommendations.²⁷ Human rights are elaborated in more than twenty articles of the Agenda (see [Annex 1](#) for details). One of the strongest statements is made in Article 23.

“We reaffirm and are guided by the purposes and principles of the Charter of the United Nations and we reaffirm our commitment to ensuring the full realization of the human rights set out in international instruments and in particular, in this context, the right to adequate housing as set forth in the Universal Declaration of Human Rights and provided for in the International Covenant on Economic, Social and Cultural Rights, ...”

At the end of the Conference Heads of State or Government and the official delegations of countries adopted ***The Istanbul Declaration on Human Settlements*** with a clear stance on the right to adequate housing.

In 2002, the UN General Assembly elevated UN-Habitat to become a fully-fledged programme within the UN system with the expectation that the agency would contribute to a strengthening of the UN development agenda for poverty reduction with its focus on the promotion of sustainable urban development.

4.1.5 The United Nations Housing Rights Programme

The United Nations Housing Rights Programme (UNHRP) was launched in April 2002, as a joint initiative by UN-Habitat and the Office of the United Nations High Commissioner for Human Rights (OHCHR).²⁸ The substantive focus of the programme is grounded in the Habitat Agenda, particularly paragraph 61, which states:

“Within the overall context of an enabling approach, Governments should take appropriate action in order to promote, protect and ensure the full and progressive realization of the right to adequate housing.”

The development objective of the UNHRP is to assist States and other stakeholders with the implementation of their commitments in the Habitat Agenda to ensure the full and progressive realization of the right to adequate housing as provided for in international instruments.²⁹ To this end, UNHRP pursues documenting of standards and guidelines for housing rights as derived from the existing international legal instruments (such as the UN-Habitat/OHCHR Fact Sheet on the Right to Adequate Housing, Urban Indigenous Peoples and Migration). The UNHRP has been instrumental in contributing to the analysis of the housing rights policy, through review and documentation of national and international housing rights legislations and case law concerning housing rights.

Another pillar of the UNHRP is the focus on capacity building among UN staff on the one hand and government officials on the other. A series of internal and external checklists are being produced for the production and revision of housing policies and national housing legislation.



4.2 From Adequate Housing to Sustainable Urbanization and Human Rights

During the last decade, UN-Habitat has gradually broadened the conceptualization of its mandate, in departing from a focus on the right to adequate housing to addressing both the whole *city* as an **outcome** of actions, and *urbanization* as the **process** leading to this outcome. While the focus in the beginning of the 2000s was primarily on the outcome (the city), increasingly the focus has shifted to the process of urbanization, together with continued attention to the city as such. These paradigm shifts included the concepts of Inclusive Cities, “Right to the City”, Urban Prosperity and Sustainable Urban Development, and increasingly Human Rights-Based Urbanization.

4.2.1 Inclusive Cities

In the early 2000s, UN-Habitat launched the *Inclusive Cities Initiative* as a part of its Global Campaign on Urban Governance. The concept of the *Inclusive City* was developed by UN-Habitat in the work to compile international legal instruments addressing good governance, emphasizing, “good governance depends largely on the degree to which it delivers on the promise of human rights”.³⁰ The concept is based on three inter-related ideas that contribute to the realization of full citizenship: respect for human rights, good urban governance and equitable growth.

An Inclusive City promotes *growth with equity*.³¹ It is a place where everyone, regardless of their economic means, gender, race, ethnicity or religion, is enabled and empowered to fully participate in the social, economic and political opportunities that cities have to offer. Participatory planning and participatory decision-making is the core of the Inclusive City.

Promoting inclusiveness is not only socially just, but is good for economic growth and central to sustainable urban development. Inclusive urban governance reduces inequality and social tension; incorporates the knowledge,

productivity, social and physical capital of people living in poverty and disadvantaged in city development; and increases local ownership of development processes and programmes.

4.2.2 The Right to the City

Although not an internationally recognized human right, *per se*, “the Right to the City” is a concept originally coined by the French sociologist and philosopher Lefebvre in 1968.³² Lefebvre emphasized the right to the city as a whole, rather than to specific rights in the city. His position has been summarized as follows:³³

“The right to the city is far more than the individual liberty to access urban resources: it is a right to change ourselves by changing the city. It is, moreover, a common rather than an individual right since this transformation inevitably depends upon the exercise of a collective power to reshape the processes of urbanization.”

The concept was operationalized in the *World Charter for the Right to the City*, initially at the Social Forum of the Americas in Quito (2004) and later revised at the World Urban Forum in Barcelona (2004) and the World Social Forum in Porto Alegre (2005).

In the preamble, the contrast between the ‘reality’ and the ‘potential’ of urbanization is delineated. The ‘reality’ is summarized as: “the development models implemented in the majority of impoverished countries are characterized by the tendency to concentrate income and power, generating poverty and exclusion, contributing to environmental degradation, and accelerating migration and urbanization processes, social and spatial segregation, and privatization of common goods and public spaces”, while the ‘potential’ summarizes that “Cities are potentially territories with vast economic, environmental, political and cultural wealth and diversity. The urban way of life influences the way in which we link with our fellow human beings and with the territory.”



Lack of proper sanitation obstructs the right to life and health. © UN-Habitat



An important argument for the Right to the City concept was Harvey's position that:

"The Right to the City broadens the traditional focus on improvement of peoples' quality of life based on housing and the neighborhood, to encompass quality of life at the scale of the city and its rural surroundings, as a mechanism of protection of the population that lives in cities or regions with rapid urbanization processes."

Here one can see a link forward to the current focus on urbanization for sustainable development.

Another way of conceptualization was suggested by D. Harvey, who emphasizes the importance of recognizing that the 'right to the city' should mean the right to command the whole urban process.³⁴ In this sense he reflects the current paradigm of reconstructing the reality in an inclusive and sustainable city as a desirable outcome and a process of urbanization leading to this outcome. He concludes:

"Urbanization, has played a crucial role in the absorption of capital surpluses, at ever increasing geographical scales, but at the price of burgeoning processes of creative destruction that have dis- possessed the masses of any right to the city whatsoever."

Since the urban process is a major channel of surplus use, Harvey argues establishing democratic management over its urban deployment constitutes the right to the city.

4.2.3 Urban Prosperity and Sustainable Urban Development

Urban Prosperity³⁵

People move to cities because they believe in and have a desire for a better life. Many perceive the city as the home of *prosperity*. The UN-Habitat publication "State of the World's Cities 2012/2013" says, "[the City] is the place where human beings find satisfaction of basic needs and essential public and private goods, where commodities

can be found in sufficiency and their utility enjoyed". For many others, however, cities have often become places of deprivation, inequality and exclusion.

In order to address these challenges, the concept of *urban prosperity* needs to be re-defined and understood in a much broader sense than 'economic prosperity'. UN-Habitat now argues that this new meaning of urban prosperity must:

"Transcend the narrow confines of an accumulation-driven model that benefits only a few to the detriment of the majority. It proposes a new notion that looks beyond the narrow domain of economic growth that has dominated ill- balanced policy agendas over the last decades."

The aim must be a *people-centered, sustainable urban development*.

Factors promoting urban prosperity include (1) Effective urban planning and management; (2) Decentralization and appropriate institutions; (3) A system that creates equal opportunities; (4) Civil society participation; and (5) A favorable business environment

Sustainable Urban Development

Currently UN-Habitat focuses on *Sustainable Urbanization at All Levels of Human Settlements*.³⁶ There must be a change in the attitude to 'urbanization; a shift from regarding urbanization as something undesirable to seeing urbanization as a powerful tool for development. It is clear that in the current globalizing world cities have changed from engines of growth to agents of change.³⁷

Urbanization has for a long time created increased inequalities among urban inhabitants, often even resulting in slums. A Human Rights-Based Approach to urbanization, promoting and ensuring equality and non-discrimination, participation and inclusion; and the rule of law and accountability, would prevent the exacerbating of disparities and the establishment of slums.

In this work, UN-Habitat promotes the adoption of three fundamental principles:

1. **Effective political commitment to urban planning:** This requires a democracy in order to ensure political legitimacy and the adherence to the rule of law.
2. **Adequate governance capacity:** Planned urbanization requires institutional capacity at all levels of society.
3. **Adequate planning capacity:** This includes the capacity to develop and manage all human settlements.

In order to translate these ideas into reality, UN-Habitat recommends four areas of priority: (1) Urban legislation; (2) Urban planning; (3) Urban economy and prosperity; and (4) Urban basic services, which are reflected in the organizational structure of the organization.

4.2.4 Urbanization, The City and Human Rights

A joint research project *Urban Policies and the Right to the City: Rights, Responsibilities and Citizenship*, was launched by the United Nations Educational, Scientific and Cultural Organization (UNESCO) and UN-Habitat in 2005.³⁸ The project was based on the assumption that a Human Rights-Based Approach to urban policies “can help generate the political will and create a culture of resource allocation that places the needs of vulnerable groups and individuals on an equal footing with the interests of those who are better off.”

Both UN-Habitat and UNESCO agree that contrary to the ‘rights in the city’, the ‘right to the city’ is not a positive right in a legal sense, and do not have the intention to promote a new international legal instrument. This right should rather be seen as a tool that the two UN agencies could utilize. They also see the work with the right to the city contributing to *One United Nations*.

In this respect, the ‘right to the city’ is not a new right, but rather adopts rights language to describe the participation of citizens in the overall work of their city. It is not part of a human rights regime; instead, it is an approach for urban change. Consequentially, claiming the right to the city does not confer specific rights (such as ‘city rights’ of the Middle Ages). Therefore, it is necessary to distinguish between formal citizenship of the nation state, and the exercise of urban citizenship through democratic practice. At the World Urban Forum in Naples in 2012, OHCHR representative Marcia V. J. Kran stated that “the narrow vision of housing, water and land considered as commodities is causing millions of people to face unaffordable and inadequate housing and living conditions, as well as forced evictions, displacement and discrimination.” She added “in order to develop an approach to incorporating human rights principles into urban development work, it is important to understand the link between development and the norms and standards of international human rights law, as well as to address the root causes of discrimination.”

4.2.5 A Human Rights-Based Approach to Urbanization for Sustainable Urban Development

In a HRBA, (chapter 3.2) the *process* of urbanization should adhere to the human rights principles of equality and non-discrimination, inclusion and participation, accountability and the rule of law. Concurrently, the *city* (the outcome) should meet specified human rights standards, for example adequate housing, access to water and sanitation, health and education services, work, freedom of speech etc. or any other civil, cultural, economic, political and social right codified in any of the human rights treaties ratified by the country in question. This means that any of the current civil, cultural, economic, political and social rights may be of importance depending on the context.

It is important to appreciate that all human rights are indivisible, interrelated and interdependent, as agreed upon at the Vienna Conference in 1993:



“Democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing.”

This means that in the practical work with a HRBA to urbanization, practitioners must have some knowledge about the key human rights, in particular the economic, social and cultural rights. This requires very ambitious Causality and Pattern Analysis.

As far as human rights are concerned, UN-Habitat has the longest experience with the right to adequate housing, followed by the more recent experience with the right to water and sanitation. In the ensuing chapter, these first two rights are discussed in more detail than in the presentation of all the other important human rights.

4.3 Human Rights in Current UN-Habitat Plans

4.3.1 The UN-Habitat Strategic Plan 2014-2019³⁹

As per the 2014-2019 Strategic Plan, UN-Habitat will be guided by the following:

Vision: UN-Habitat promotes the stronger commitment of national and local governments as well as other relevant stakeholders to work towards the realization of a world with economically productive, socially inclusive and environmentally sustainable cities and other human settlements.

Mission: UN-Habitat, in collaboration with relevant stakeholders and other United Nations entities, supports



Women play football on the 28 September Stadium grounds. These days, the venue is again used for sporting events. © Nancy Palus/IRIN

governments and local authorities, in line with the principle of subsidiarity. They aim to respond positively to the opportunities and challenges of urbanization by providing normative or policy advice and technical assistance on transforming cities and other human settlements into inclusive centers of vibrant economic growth, social progress and environmental safety.

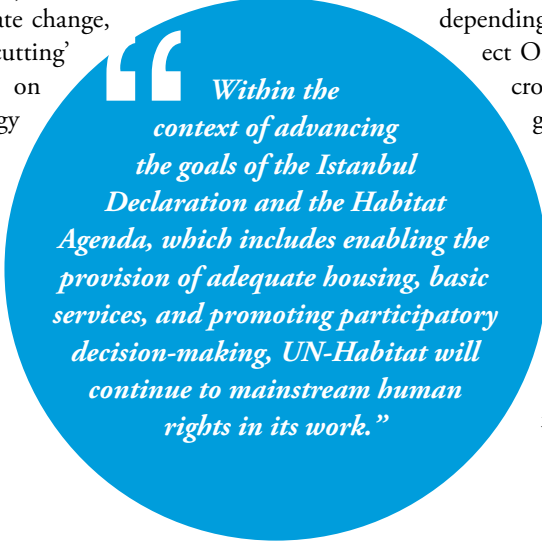
Goal: Well-planned, well-governed and efficient cities and other human settlements with adequate infrastructure and universal access to employment, land and basic services, including housing, water, sanitation, energy and transport.

Strategic result: Environmentally, economically and socially sustainable, gender-sensitive and inclusive urban development policies implemented by national, regional and local authorities have improved the standard of living of the urban poor and enhanced their participation in the socio-economic life of the city.

Programme areas: Four programme areas will be prioritized during 2014–2019, namely: (a) urban legislation, land and governance; (b) urban planning and design; (c) urban economy; (d) urban basic services.

Human rights

Human rights, in conjunction with gender, youth and climate change, are regarded as ‘cross-cutting’ issues. In the chapter on Implementation Strategy it is said,



“Within the context of advancing the goals of the Istanbul Declaration and the Habitat Agenda, which includes enabling the provision of adequate housing, basic services, and promoting participatory decision-making, UN-Habitat will continue to mainstream human rights in its work.”

4.3.2 The UN-Habitat Proposed Work Programme 2014–2015

The following seven substantive thematic subprogrammes have been agreed upon:

1. Urban legislation, land and governance;
2. Urban planning and design;
3. Urban economy;
4. Urban basic services;
5. Housing and slum upgrading;
6. Risk reduction and rehabilitation; and
7. Research and capacity development.

Special attention will be given to the aforementioned cross-cutting issues: human rights, gender, youth and climate change. All cross-cutting issues will be mainstreamed throughout the seven subprogrammes, ensuring that all policies, knowledge management tools and operational activities, incorporate these issues in their design and implementation. Work on the cross-cutting issues will follow a two-track approach consisting of *mainstreaming* and *issue-specific projects*. Mainstreaming of cross-cutting issues will ensure that these issues are integrated in the work of all focus areas, both conceptually and in operational projects. Issue-specific projects will seek to fill identified gaps in the field and will be located in the appropriate subprogramme. Specific normative and operational projects will be located in the most appropriate subprogramme, depending on their substantive content. The Project Office will be responsible for mainstreaming cross-cutting issues across all seven subprogrammes.

Under the coordination of the Project Office, the Project Advisory Group, an in-house peer review mechanism, will ensure that cross-cutting issues are consistently incorporated in all projects at design stage, during implementation and following completion, including in all monitoring and evaluation processes.



Human rights issues considered include safeguards that the project puts in place to ensure that human rights are not violated during the design and the implementation of the project (for example through forced evictions and discrimination), and that indicators are implemented to monitor human rights progress.

4.3.3 Governing Council 24th Session, April 2013

The UN-Habitat report *State of the World Cities 2012/2013* emphasized that cities are not merely places where people reside and in which processes for the production of goods and services occur. In their own internal dynamics, cities are key drivers for growth and development. They generate wealth and prosperity, serve as hubs of innovation and transformation, create multipliers, facilitate redistribution of assets and opportunities, increase productivity and contribute to balanced territorial development.

A Theme Paper was presented by the Executive Director explaining the positive role of cities in creating improved economic opportunities for all, particularly for youth and women within a gender framework.⁴⁰ In respect to *urban form* i.e. the patterns, spatial attributes and qualities of the urban structure, its central components include: (1) Increase population density to sustainable levels; (2) Encourage social diversity and mixed land-use; (3) Devise multimodal mobility strategies; (4) Plan infill development and guided expansion; and (5) Promote livable public spaces and vibrant streets. These principles should be read in conformity with and for the promotion of human rights.

At the April 2013 Session of the UN-Habitat Governing Council, important resolution on the commitment to the Human Rights-Based Approach to development

was tabled. In the Introduction it is acknowledged that UN-Habitat as a United Nations entity should as soon as possible initiate the process of adopting a HRBA in all its activities, as promoted by the UN Secretary-General, OHCHR and many donor governments.

In a separate report on UN-Habitat's commitment to the Human Rights-Based Approach to development, it is stated that human rights are central to the mandate and mission of the United Nations as a whole, as reaffirmed on several occasions by the General Assembly. UN-Habitat had long advocated respect for human rights, as reflected in the Habitat Agenda and the global campaigns on secure tenure and urban governance.

The Rio 2012 outcome document "The Future We Want" reaffirmed the commitments regarding the human right to safe and clean drinking water and sanitation, to be progressively realized.

The proper understanding of a HRBA is clearly reflected in the analysis, summarizing:

"Furthermore, a Human Rights-Based Approach, with its emphasis on empowering not only claim-holders to assert their rights but also duty-bearers to fulfill their role, opens the door to additional levers of influence for UN-Habitat to make its development support to countries a success."

A strategy is proposed in which a Human Rights-Based Approach will be mainstreamed in all UN-Habitat's programmes, and adopted with strong support by senior management. An ambitious staff-training programme will be implemented.

Finally, a number of substantive resolutions reaffirming UN-Habitat's commitment to the Human Rights-Based Approach to development were adopted. The resolutions relate to the priority thematic areas of work of UN-Habitat, which can and should be understood as operating under the fundamental premise of a Human Rights-Based Approach:

Focus area 1: urban legislation, land and governance

Recalling the objective of focus area two, urban planning and design, of the UN-Habitat Strategic Plan 2014-19, that is "...to improve policies, plans and designs for more compact, socially inclusive, better integrated and connected cities that foster sustainable urban development and are resilient to climate change, at the city, regional and national levels.

- Resolution on pursuing sustainable development through national urban policies.

Focus area 2: urban planning and design

Recalling the outcome document of the United Nations Conference on Sustainable Development (Rio+20), "The Future We Want", and reaffirming its commitment to "promote an integrated approach to planning and building sustainable cities and urban settlements, including through supporting local authorities, increasing public awareness and enhancing participation of urban residents, including the poor, in decision-making";

Encourages Member States to promote people-oriented participatory and inclusive approaches, by involving local governments and people especially the urban poor, in the preparation and implementation of city plans, to promote equal access to opportunities, infrastructure and services that urban and local areas offer;

- Draft resolution on inclusive and sustainable urban planning and elaboration of international guidelines on urban and territorial planning.

Focus area 3: urban economy

Recalling paragraph 4 of the Habitat Agenda, which recognizes that sustainable development of human settlements encompasses economic development, social development and environmental protection, with full respect for all human rights and fundamental freedoms;

Encourages Governments to foster a participatory approach to sustainable human settlements through the development and support of strategies and mechanisms that encourage open and inclusive dialogue among all interested parties, with special attention to the needs and priorities of youth, women, and vulnerable population groups in urban and rural areas including children, elderly, people with disabilities, and minorities;

- Resolution on promoting sustainable urban development by creating improved economic opportunities for all, with special reference to youth and gender.

Focus area 4: urban basic services

Recalling further Rio 2012 outcome document "the future we want" and its reaffirmed commitments regarding the human right to safe and clean drinking water and sanitation, to be progressively realized for our populations with full respect for national sovereignty;

Recognizing the significance of equitable and adequate access to urban basic services as a foundation for sustainable urbanization and therefore to overall social and economic development;

Recognizing the need to improve access to safe, clean, affordable, sufficiently available and accessible drinking water and basic sanitation, as well as to improve wastewater management and drainage for sustainable development);



Concerned that equitable access to urban energy, mobility, water, sanitation and waste management services and poor drainage conditions remain as major challenges for many people, especially the urban poor in developing countries;

- Resolution on strengthening UN-Habitat’s work on urban basic services.

Focus area 5: housing and slum upgrading

Acknowledging that sustainable, adequate, rights-based and inclusive housing policies and strategies are instrumental in addressing the challenge of slums and sustainable urban development as well as contributing to stimulating urban economic development and job creation;

Encourages Governments and Habitat Agenda Partners to empower all citizens, particularly women and youth, through inclusive broad-based participatory processes to effectively contribute to the development and implementation of housing and slum upgrading strategies as well as action plans leading to security of tenure;

- Resolution on inclusive national and local housing strategies to achieve the Global Housing Strategy paradigm shift.

Recognizing the need to promote inclusive slum upgrading and prevention strategies that go beyond physical and environmental improvements and ensure that slums are integrated into the political, social, cultural and economic dimensions of cities with a view to reducing urban poverty and inequality;

Invites Member States to implement the universal principles for slum upgrading and prevention such as prohibiting unlawful evictions, empowering women and youth, making slum upgrading interventions affordable and accessible, ensuring public participation regardless of race, sex, religious affiliation, and socio-economic status, and promoting accountability and transparency in all programmes;

Calls upon Member States, in achieving the aforementioned goal, to prioritize slum upgrading and prevention strategies and to refrain from resorting to forced evictions;

- Resolution on making slums history: a worldwide challenge.



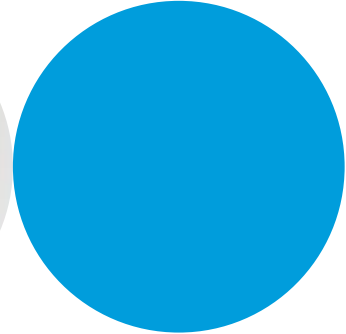
CHAPTER

05

Women involved in the reconstruction of their residential houses in Pidie, Indonesia. © UN-Habitat

HUMAN RIGHTS OF PARTICULAR RELEVANCE TO UN-HABITAT

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Much of UN-Habitat’s work programme derives from the Habitat Agenda, adopted by the United Nations Conference on Human Settlements (Habitat II) in Istanbul 1996. The goals of the Agenda were then defined as ‘Adequate Shelter for All’, and ‘sustainable human settlements development in an urbanizing world’. Increasingly *sustainable urban development* had become the key mission, which should be achieved through “expanding equitable access to land, housing, basic services and infrastructure.”⁴¹

With such a broad mandate, the adoption of a *Human Rights-Based Approach to human settlements* needs to consider a large number of recognized human rights. Thus far, emphasis has been given to the progressive realization of the *right to adequate housing* and the *right to water and sanitation*. These two rights are discussed in some more details below, followed by a shorter presentation of a number of additional human rights of importance for the work of UN Habitat.

5.1 The Right to Adequate Housing

5.1.1 Definitions in United Nations Documents

In 1991, the Committee on the Economic, Social and cultural Rights issued *General Comment No. 4* on the right to adequate housing.⁴² The General Comment first clarifies that ‘the right to housing’ is regarded as a freestanding right in international human rights law. The right to housing or rather the *right to adequate housing* is defined as:

“The right to live somewhere in security, peace, and dignity, for two reasons, first the inherent dignity of the human person from which the right is said to be derived, and second, adequate shelter means...adequate privacy, adequate space, adequate security, adequate lightening and ventilation, adequate infrastructure and adequate location with regard to work and basic facilities – all at a reasonable cost.”

UN-Habitat and OHCHR jointly issued Fact Sheet 21 on the Right to Adequate Housing, which describes in detail the *Right to Adequate Housing*.⁴³ It is emphasized that the right to adequate housing should be defined broadly, including security, peace and dignity, and reflect both *freedoms and entitlements*. The Right to Adequate Housing must include the elements listed below. These elements represent an elaboration on the earlier described AAAQ criteria:

Legal security of tenure: Security of tenure means that all people in any living arrangement possess a degree of security against forced eviction, harassment, or other threats. States are obliged to confer this security legally.

Availability of services, materials, facilities and infrastructure: To ensure the health, security, comfort, and nutrition of its occupants, an adequate house should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services.

Affordability: Affordable housing is housing for which the associated financial costs are at a level that does not threaten other basic needs. States should take measures to ensure that housing costs are proportionate to overall income levels, establish subsidies for those unable to acquire affordable housing, and protect tenants against unreasonable rent levels or increases. In societies where housing is built chiefly out of natural materials, states should help ensure the availability of those materials.

Habitability: Habitable housing provides the occupants with adequate space, physical security, shelter from weather, and protection from threats to health like structural hazards and disease.

Accessibility: Adequate housing must be accessible to those entitled to it. This includes all disadvantaged groups of society, who may have special housing needs that require extra consideration.

Location: The location of adequate housing, whether urban or rural, must permit access to employment opportunities, healthcare, schools, childcare and other social facilities. To protect the right to health of the occupants, housing must also be separated from polluted sites or sources of pollution.

Cultural adequacy: The way housing is built, the materials used, and the policies supporting these must facilitate cultural expression and housing diversity. The development and modernization of housing in general should maintain the cultural dimensions of housing while still ensuring modern technological facilities.

There are a number of misconceptions about the rights to adequate housing. It is therefore important to clarify that:

- The right to adequate housing does not require the State to build housing for the entire population;
- The right to adequate housing is not only a programmatic goal to be attained in the long term;

- The right to adequate housing is not the same as the right to property;
- The right to adequate housing is not the same as the right to land.

5.1.2 Duties or Obligations in Relation to the Right to Adequate Housing

The Obligation/Duty to Respect requires the duty-bearer to refrain from interfering directly or indirectly with the enjoyment of the right. For example States should refrain from carrying out forced evictions and demolishing homes; denying security of tenure to particular groups; imposing discriminatory practices that limits women's access to and control over housing, land and property; infringing on the right to privacy and protection of the home; denying housing, land and property restitution to particular groups; or polluting water resources.

The Obligation/Duty to Protect requires the duty-bearer to take measures that prevent third parties from interfering with the enjoyment of the right, in this case the right to adequate housing. States should adopt legislation or other measures to ensure that private actors, for example landlords, property developers, landowners and corporations, comply with human rights standards and principles related to the right to adequate housing.

The Obligation/Duty to Fulfill requires duty-bearers (1) to adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures towards the full realization of the right, and as a last option (2) to directly provide assistance or services for the realization of the right. States must, for instance, adopt a national housing policy or a national housing plan that defines the objectives for the development of the housing sector, with a focus on disadvantaged and marginalized groups; identify the resources available to meet these goals; specify the most cost-effective way of using them; outline the responsibilities and time frame for the implementation of the necessary measures; monitor the results, and ensure adequate remedies for violations.



5.1.3 Violations of the Right to Adequate Housing

The right to adequate housing may be violated through a wide range of acts or commissions (interference by the State in the free exercise of the right) or omissions (failures to implement a mandate). Examples of common violations are discussed below.

Violations resulting from actions, policies or legislation, for example (1) refusal to grant the ICESCR full legal status under domestic legislation or to allow complainants to cite adequate housing provisions of the Covenant in cases before national courts and tribunals; (2) use of criminal law to deal with problems arising from inadequate housing; (3) displacement of individuals and families from their houses in rural areas to cities; and (4) forced evictions.

Violations related to patterns of discrimination, for example (1) failure of the State to provide legal protection against racial discrimination in housing or effective remedies in cases of racial discrimination; and (2) discrimination against individuals in relation to land distribution.

The UN-Habitat/OHCHR Fact Sheet on Forced Evictions elucidates that while the implementation of some obligations could require financial resources and time, others are of immediate effect and do not require resources. This includes refraining from forcibly evicting people. In this context, States must provide all, irrespective of their type of tenure, a degree of security of tenure sufficient to guarantee legal protection against forced eviction, harassment and other threats in a non-discriminatory way.

5.1.4 The Prohibition of Forced Eviction

A Human Rights-Based Approach is required in any situation involving evictions. While urban sustainability is promoted through the provision of security of tenure and on-site upgrading, in reality informal tenancy status and marginalization often put the urban poor at heightened risk of forced evictions. And while the Human Rights-Based Approach to development should prioritize the needs of marginalized communities, in practice when

forced eviction does occur, these urban poor are all too often further impoverished. In an urban setting, evictions generally push people from city centres into the periphery with little or no access to basic services and livelihood opportunities. This entails more time wasted on transport—if available—to access services and jobs, and additional expenses. They also break the delicate social support systems in the old communities and neighbourhoods. In most situations, people will return to the place where they can earn their living and create another informal settlement from which they will eventually be evicted again, thus perpetuating a vicious circle.

The Human Rights-Based Approach to development integrates the norms, standards and principles of the international human rights system into the plans, policies and processes of development. The elements include links to the human rights standards, accountability to those affected for participating in decisions related to development, and non-discrimination and attention to vulnerable and marginalized groups.

In the *General Comment No. 7 on the right to adequate housing: forced evictions* (1997).⁴⁴ In this General Comment, ‘forced evictions’ are defined as:

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

The role of an appropriate legal framework as a means of securing protection for people against forced evictions is a pervasive theme through the General Comment 7, which notes “legislation is an essential basis upon which to build a system of effective protection.”

The UN-Habitat/OHCHR *Fact Sheet No. 25 Rev. 1* (2014) outlines in detail the human rights aspects of forced evictions, national legislative and policy responses to forced evictions, responses by civil society, remedies against forced evictions, and means to prevent, protect and redress forced evictions.⁴⁵ UN-Habitat has also published books and reports on the challenge of forced evictions.⁴⁶

Fully justified evictions may be permissible in exceptional circumstances. In many places, expropriations and evictions are carried out without genuine justification. “Public interest”, “general welfare”, “public welfare”, “public good”, “State interest”, “national interest”, “common well-being” or “serving the public good” have been commonly used to justify expropriations and evictions. While implying that the expropriation and/or given and there is no control over such a decision.

Decisions based on such arguments need to conform to a number of conditions to protect human rights and the rule of law, for instance:

- Only exceptional circumstances justify the use of the “public interest” argument
- Be “reasonable” and carried out as a last resort when no alternative is available
- Be “proportional” (evaluation of the decision’s impact on and potential benefit for various groups, including through an eviction impact assessment)
- Need to promote general welfare and show evidence of such an outcome
- Non-discriminatory in law and in practice
- Defined in law and “foreseeable”
- Subject to control to evaluate their conformity with the constitution and the State’s international obligations



Women and those without legal security of tenure tend to suffer disproportionately from the practice of forced eviction. © UN-Habitat



- Information on decisions and the criteria for their justification need to be public and transparent
- Subject to consultation and participation
- Effective recourse mechanisms should be available for those directly or indirectly affected.

The then Special Rapporteur on the Right to Adequate Housing, Miloon Kothari, elaborated the **Basic Principles and Guidelines on Development-Based Evictions and Displacement** in 2007. These address the human rights implications of development-linked evictions and related displacement in urban and/or rural areas and clearly articulate the obligation of the State and the entitlements of persons during different stages of the process. The Guidelines recommend that: “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 and should take into account the differential impacts of forced evictions on women, children, the elderly, and marginalized sectors of society. Such assessments, when relevant, should be based on the collection of disaggregated data, so that all differential impacts can be appropriately identified and addressed. They also state that where livelihoods are affected, proper and adequate support must be given for its restoration within an appropriate timeframe.

The Basic Principles and Guidelines on Development-Based Evictions and Displacement call for:

- A fair hearing;
- Access to legal counsel;
- Legal aid;
- Return;
- Restitution;
- Resettlement;
- Rehabilitation and compensation.

5.1.5 The Relations Between the Right to Adequate Housing and Other Human Rights

In UN-Habitat, the programme under Focus Area 5: Housing and Slum Upgrading has advanced the right to adequate housing. However, because human rights are interdependent, indivisible and interrelated, the right to adequate housing may affect the enjoyment of a wide range of other human rights and vice versa. Thus, creating numerous opportunities for UN-Habitat’s Branches/Focus Areas to interact and cooperate in the common endeavor of rights-based human settlements development.

In each of the chapters below (Chapters 6.2-6.9), the interdependence between each right / possible area of work and the right to adequate housing is described.

The realization of the right to adequate housing can be a precondition for the enjoyment of several other human rights, for example the rights to health, work, education and privacy. Homeless people are frequently denied the right to vote, do not enjoy social services or receive health care. Forced evictions often have particularly serious implications, including the interruption of children’s schooling as well as generalized harassment and violence. At the same time, the right to adequate housing can be affected by the non-realization of other rights, for example the rights to education, work and social security.

5.1.6 Planning for Sustainable Cities and the Realization of the Right to Adequate Housing

The work of UN-Habitat primarily focuses on providing advisory and technical services to national and local governments towards their planning for *sustainable* cities with the view of advancing sustainable human settlements for *all*. This requires addressing current urbanization challenges such as urban sprawl, poverty, inequality, pollution, and congestion as well as urban biodiversity, urban mobility and energy. These challenges, and how they are handled, affect a variety of human rights, including the right to adequate housing. UN-Habitat recommends that the following *Five Principles* guide the planning of sustainable urbanization: (1) adequate street density; (2) high density; (3) mixed land use; (4) social mix; and (5) limited land

PRINCIPLE	IMPACT ON THE REALIZATION OF	EXAMPLES OF DESIRABLE ACTIONS
THE RIGHT TO ADEQUATE HOUSING		
1. Adequate street density and efficient street network	Improved availability and accessibility of social services, including health and education	Ensure strategic positions of primary schools and health facilities (FA 2 and 4)
2. High density	Improved location of housing facilities	Ensure the inclusion low-rent housing (FA 2, 3 and 5)
3. Mixed land use	Reduced transport cost from home to work place	Introduce commuter bus system (FA 2)
4. Social mix	Increases the cultural adequacy in housing /location	Invest in public housing (FA 4 and 5)
5. Limited land use specialization	Increased accessibility by all tenants	Monitor carefully any emergence of slum areas (FA 5)

use specialization.⁴⁷ The Table below demonstrates some of the impacts of sustainable urban planning principles on the progressive realization of the right to adequate housing, together with a number of suggested examples of desirable actions by UN-Habitat.

5.2 The right to hold property

5.2.1 The meaning of the Right to Hold Property

Article 17 of the UDHR provides for the right to hold property, stating that:

1. *Everyone has the right to own property alone as well as in association with others.*
2. *No one shall be arbitrarily deprived of his property.*

The meaning of Article 17 has been contentious in a number of forums. The minimum accepted interpretation of paragraph 1 of Article 7 is that it means that everybody has a right not to be excluded from the class of potential property owners.⁴⁸ It can be argued that this has implications for equality in processes of property allocation but it does not mean that anybody has a right to actually be an owner and so must not be confused with a literal ‘right to property’. The commonly accepted meaning of paragraph 2 of Article 17 is that, to deprive a person of property that they hold, there must be some form of due process of law to determine whether that deprivation of property is in the public interest and, in most interpretations, there should be reasonable compensation⁴⁹.

Article 17(1) was a particular focus of Cold War dispute during the 1950s and 1960s, partly because of contested concepts of the ownership of property but also because of some arguments that it prohibited the wholesale socialization of property in a society.⁵⁰ This limited the incorporation of property into the two main UN Covenants (ICCPR and ICESCR) to some very limited, and still contested, aspects of personal property although, as discussed below, this situation has changed somewhat with more recently adopted instruments.

Article 17(2) is almost universally accepted in its general meaning but has been contested in the details of its application. In particular, the requirement for, and definition of, the public interest required to be shown to deprive a person of their property varies enormously and very few, if any, international principles exist in this regard. The mechanism to determine the appropriateness of compensation is also heavily contested in most jurisdictions.

Several international instruments include reflections of the right to hold and not be arbitrarily deprived of property.

The Convention on the Elimination of All Discrimination Against Women (CEDAW) states that everyone has the “right to own property alone as well as in association with others” and “the right to inherit”. CEDAW focuses on discrimination and inequality, asserting:



“States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women, including (h): The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration”. (Article 16h)

The International Convention on Migrant Workers, states: *“No migrant worker or member of his or her family shall be arbitrarily deprived of property, whether owned individually or in association with others.” (Article 15)*

Some regional human rights instruments include references to a ‘right to property’, although the plain meaning of these is ambiguous as to whether they extend beyond the accepted meaning of Article 17 of the UDHR. These regional instruments include the American Declaration of the Rights and Duties of Man (1948), the European Convention on Human Rights (1953), and, most explicitly, the African Charter on Human and Peoples’ Rights (1986), which states:

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

5.2.2 The Right to Hold Property and the mandate of UN-Habitat.

The most important points to note regarding the right to hold and not be arbitrarily deprived of property relate to the definition of property and national implementation. ‘Property’ includes all forms of ‘real’ and ‘personal’ property, i.e. land and things attached to land as well as movable or intangible property. This means that recognized tenure rights, whether established in writing or by other means, can be just as much a form of property as a freehold title to land. Similarly, agreements for the provision of basic services also often give rise to individual and collective forms

of property. All individuals and groups should have rights to acquire these forms of property and, once they are acquired, should not be arbitrarily deprived of them. In terms of national implementation, it is important to note that almost all Member States have constitutional or other law establishing some form of the right to hold and not be arbitrarily deprived of property. As noted earlier, the exact nature of these rights is often contested and, therefore, varies significantly at the national level. It is complex because no other human right is subject to more qualifications and limitations and consequently, no other right has resulted in more complex case-law interpretations.

It is also important to note that property rights have frequently been regarded as preventing the realization of human rights for all, for example through slavery and the exploitation of others, sometimes based on their sex, race and/or minority status. The modern era has seen regular disputes over the obligation of Member States to recognize rights to hold exclusive property in socially or economically important information, such as the formulae for life-saving medicines. Tensions between competing rights in property, particularly between the occupiers and freehold title owners of land, are often problematic, particularly because they often also reflect asymmetrical access to information and other levers of power. As such, property rights may appear to be part of the problem, rather than as an interest that merits protection. While there sometimes may be tensions between rights to property and other human rights, these can usually be solved through the application of human rights standards and HRBA.

The Right to Adequate Housing states clearly, *“the right to adequate housing is NOT the same as the right to property.”*

The right to adequate housing is much broader than the right to own property as it addresses rights not related to ownership, but aims at ensuring that “everyone has a safe and secure place to live in peace and dignity, including non-owners of property”. *Security of tenure*, is a key prerequisite for the right to adequate housing, which can

take a variety of forms, including rental accommodation, cooperative housing, lease, owner-occupation, emergency housing or informal settlements.

Right to adequate housing also protects the right to home property through the element of legal security of tenure, for instance against abusive expropriations – including those through the public interest arguments – which are also considered as forced evictions.

5.3 Land Rights

5.3.1 Introduction

The ability to acquire and use land is indivisibly connected with the realisation of a range of fundamental economic, social and cultural rights, and facilitates access to a number of civil and political rights. Yet there is no international human rights instrument that addresses the issue of the ‘right to land’ comprehensively, and the domestication and enforcement of the standards that do exist has been partial and uneven. The absence of a clear articulation of the rights and duties related to land allows for excessive interpretive discretion.

For millions of people, both rural and urban, the ability to realize their human rights depends on their access to, and control over land. Land rights have thus become a focus of social movements and civil society organizations globally. Without secure land rights, individuals and communities live under the constant threat of eviction, negatively affecting the realization of a range of fundamental human rights. However, the right to land, and the broader implications of access to land in the international human rights framework remain imprecise.

Access to, and control over land is a central human rights issue in a rapidly urbanizing world. Land grabbing has been exacerbated by models of urban development that have transformed urban lands into mere marketable commodities, in many cases undermining the social and devel-

opmental functions of land. The result is often the marginalization of the poor to the fringes of cities, away from their source of livelihoods, facilities and services.

Many conflicts over rights to land are highly political, and often they become the focal point for power struggles between different interest groups. In this context it is important for Member States to provide a coherent response through the global human rights framework.

Two realities make a compelling case for building a comprehensive human rights agenda on land. The first is the significance of land for the realization of a range of internationally recognized human rights, including the right to an adequate standard of living, food, adequate housing and water, the right to enjoy one’s own culture, the right to freely pursue economic, social and cultural development, equal treatment and the right to privacy and family life. The second is the alarming extent of grave human rights violations arising from situations of land grabbing, landlessness, forced evictions and displacement, whereby people are dispossessed of their means of livelihood and habitat, social conflicts erupt and land-rights advocates and activists are criminalized and persecuted.⁵¹

5.3.2 Human Rights Treaties

While there is no universal right to land codified in international human rights law, the necessity of providing access to land in order to facilitate the realization of human rights has been considered in several international principles and interpretive documents.

In addition, specific rights to land are recognised in the *ILO Convention on Indigenous and Tribal Peoples* (described below) as well as the 2008 UN Declaration on the Rights of Indigenous Peoples.

Also, there are a number of broadly accepted international instruments and regional jurisprudence that address various human rights issues relevant to land. CEDAW, for example, requires that State parties shall ensure women the



right to equal treatment in land and agrarian reform, as well as in land resettlement schemes. While land rights are not explicitly developed thoroughly in this Convention or elsewhere in the core human rights treaties, the human rights framework clearly dictates that human rights should be applied non-discriminatorily and equally for all people. The *ILO Convention on Indigenous and Tribal Peoples (1989)*, recognizes the right to land explicitly, and is the only binding international instrument relating to the rights of indigenous peoples.⁵² The Convention includes a section on land and requires States parties to identify lands traditionally occupied by indigenous peoples and guarantee ownership and protection rights. The Covenant states:

“The right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use.”

The interpretive work of the main UN human rights treaty bodies have further contributed to emerging jurisprudence regarding human rights and land. A number of General Comments, and Concluding Observations following the review of states by the International Covenant on Economic, Social and Cultural rights (ICESCR), have shown concern about natural resource exploitation, forced evictions and land grabbing.

General Comment 4, relevant to art 11 of ICESCR links tenure security to the right of housing and recognizes that tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. Regardless of the type of tenure, all people should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States parties are obliged to take immediate measures aimed at respect, protect, and fulfill legal security of tenure.

Article 2 of ICESCR requires States parties to use “all appropriate means”, including the adoption of legislative measures, to promote all the rights protected under the Covenant. Such legislation should include measures which (a) provide the greatest possible security of tenure to occupiers of houses and land and (b) to strictly control the circumstances under which evictions may be carried out. Women, children, youth, older persons, Indigenous people, ethnic and other minorities, and other vulnerable individuals and groups all suffer disproportionately from the practice of forced eviction. Women in all groups are especially vulnerable given the extent of legal, social and cultural types of discrimination which often apply in relation to property rights (including home ownership) or rights of access to property or accommodation. Women are especially vulnerable to acts of violence and sexual abuse when they are rendered homeless.

The Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, (A/HRC/22/46P) links tenure security to the rights to live in security, peace and dignity. While the report does not address land tenure other than as prerequisite for housing, it must be noted that issues pertaining to land—whether for housing or agriculture—are closely linked. Further Paragraph 26 identifies tenure categories broadly as: individual freehold (ownership in perpetuity); delayed freehold (conditional ownership); registered leasehold (ownership for a specified period, from a few months to 999 years); public rental (rental occupation of publicly owned land or housing); private rental (rental of privately owned property); collective or communal ownership, including cooperative (ownership is vested in the cooperative or group of which residents are co-owners); community land trust (a non-profit organization develops and stewards affordable housing on behalf of a community); and customary ownership or use.

Crucially, the obligation to confer legal tenure security is due to everyone, *irrespective of the type of tenure held*. The Special Rapporteur observes that the determinations

of who may constitute legitimate rights holders should be made in accordance with international human rights law. On one hand, the evolving human rights agenda in relation to land reflects initiatives to develop new standards, and on the other hand, efforts to promote the elaboration and interpretation of existing standards in order to clarify human rights in relation to land.

Axiomatically, there is a growing recognition among human rights advocates and social movements that a stronger, more effective international human rights agenda in relation to land, in conjunction with vigorous implementation programmes, is necessary. Without land rights, a population cannot enjoy a wide range of other human rights meaningfully.

Human rights, land and tenure security

Land tenure security is a cross-cutting issue, affecting an array of human rights in the international legal framework. Rights have been established in the international legal framework that relate to land access for particular groups (e.g. indigenous people and, to a more limited extent, women). Numerous rights are affected by access to land (e.g., housing, food, water, work). General principles in international law provide protections that relate to access to land (e.g., equality and non-discrimination). In this context, an explicit consideration of the legal implications of access to land for a broad range of human rights is necessary. Land is related to the right to food and food security, the right to adequate housing and tenure security, the right to participation as well as the right to cultural identity for many groups living with the land under customary land systems and indigenous peoples' rights. Women's access to land is considered under the Convention to End All forms of Discrimination Against women (CEDAW). In addition, lack of access to land resources has a negative impact on the enjoyment of several human rights for women; including food security, tenure security, meaningful participation, freedom from poverty.

In recognition of these concerns, the Habitat Agenda commits States to providing legal security of tenure and

equal access to land to all people, including women and those living in poverty, stating:

“Providing legal security of tenure and equal access to land to all people, including women and those living in poverty; and undertaking legislative and administrative reforms to give women full and equal access to economic resources, including the right to inheritance and to ownership of land and other property, credit, natural resources and appropriate technologies.” (para 40b)

Land and tenure security involves a wide range of rights and responsibilities. It is in demand by a wide range of users, institutions and interest groups for different and often conflicting reasons, for example, housing and livelihoods, access to credit, investment, cultural heritage, and political power.

In response UN-Habitat Governing Council endorsed the continuum of land rights:

“Encourages Governments and Habitat Agenda partners, with regard to land issues:

*7 (b) To promote security of tenure for all segments of society by recognizing and respecting a plurality of tenure systems, identifying and adopting, as appropriate to particular situations, intermediate forms of tenure arrangements, adopting alternative forms of land administration and land records alongside conventional land administration systems, and stepping up efforts to achieve secure tenure in post-conflict and post-disaster situations”;*⁵³

Land, tenure security and human poverty

Addressing tenure security a central element in tackling poverty eradication, including as it relates to economic deprivation – lack of income – is a standard feature of most definitions of poverty. However, the economic perspective in itself does not take account of the myriad of social, cultural and political aspects of the phenomenon. Poverty is not only deprivation of economic or material resources but a violation of human dignity too. Indeed, no social phenomenon is as comprehensive in its assault



on human rights as poverty. Poverty erodes or nullifies economic and social rights such as the right to health, adequate housing, food and safe water, and the right to education. The same is true of civil and political rights, such as the right to a fair trial, political participation and security of the person. This fundamental recognition is reshaping the international community's approach to the next generation of poverty reduction initiatives.

5.3.3 How the Right to Land tenure security relates to the Right to Adequate Housing

The Special Rapporteur on the right to adequate housing and the Special Rapporteur on right to food have both on several occasions emphasized the role of access to land in delivering on human rights.

Land is also linked to tenure security as specifically mentioned under in CESCR General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant)

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

[...]

(e) Accessibility. Adequate housing must be accessible to those entitled to it. Disadvantaged groups must be accorded full and sustainable access to adequate housing resources. Thus, such disadvantaged groups as the elderly, children, the physically disabled, the terminally ill, HIV-positive individuals, persons with persistent medical problems, the mentally ill, victims of natural disasters, people living in disaster-prone areas and other groups should be ensured some degree of priority consideration in the housing sphere. Both housing law and policy should take fully into account the special housing needs

of these groups. Within many States parties increasing access to land by landless or impoverished segments of the society should constitute a central policy goal. Discernible governmental obligations need to be developed aiming to substantiate the right of all to a secure place to live in peace and dignity, including access to land as an entitlement;”

Another tool available within the international human rights framework is the revised Fact Sheet No.25, Forced Evictions and Human Rights, produced by the Office of the High Commissioner on Human Rights. This document states that although forced evictions might not initially be viewed necessarily as an issue of human rights, but rather as a simple side-effect of development, of urban renewal, a consequence of armed conflict, or an aspect of environmental protection or energy generation by, for example, hydroelectric dams. However, to be persistently threatened or actually victimized by the act of forced eviction from one's home or land is surely one of the most supreme injustices any individual, family, household or community can face.

In recent years, there has been marked international recognition of the negative human rights implications which can and often do result from forced evictions. An emerging global consensus on the unacceptability of forced evictions is increasingly evident. The UN Special Rapporteur of the Sub-Commission on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms has recognised that: “the issue of forced removals and forced evictions has in recent years reached the international human rights agenda because it is considered a practice that does grave and disastrous harm to the basic civil, political, economic, social and cultural rights of large numbers of people, both individual persons and collectivities” (E/CN.4/Sub.2/1993/8, para. 21).

Various United Nations human rights bodies have declared forced evictions to be “gross violations of human rights” and particular Governments have been asked to eradicate them to the maximum possible extent.

5.3.4 The Global Land Tool Network (GLTN)

The Global Land Tool Network (GLTN) was formed in 2006 as an alliance of international land actors contributing to poverty alleviation through land reform, improved land management and security of tenure. This growing network now includes more than 65 key international land actors, including UN-Habitat, a founding partner. The GLTN Secretariat is based in UN-Habitat.

GLTN was established against a backdrop of increasing insecurity of tenure globally, reaching critical proportions, with 70% of developing country populations outside any formal land recording system, only 1.5 billion out of 6 billion rights registered, and high proportions of urban populations living in informality and poverty (e.g. more than 60% in sub-Saharan Africa). Conventional systems have been unable to cope the volume and complexity of the challenge, due not only to a lack of capacity but also the inability of those systems to recognise, record and administer the full range of existing tenure forms. An affordable, inclusive, scalable approach to achieving tenure security is urgently required. This is essential to:

- Help overcome land, housing and livelihood inequalities
- Promote equity, inclusion and the realisation of human rights
- Promote food security, entrepreneurship and sustainable development
- Facilitate provision of essential facilities, services and quality of life
- Reduce physical insecurity and conflict
- Reduce forced eviction, corruption, ‘land grabbing’
- Overcome wide-spread discrimination against women
- Create options for youth

GLTN’s goals are to advance access to land and tenure security through affordable, gender responsive, pro-poor, and sustainable land management and planning, land administration and information, land-based financing, land policy and legislation. It focuses specifically on the concerns of poor women and men. It is developing a set of “land tools” that are practical ways to solve problems in

land administration and management, and that are affordable and capable of being scaled up to be used in the whole country.

GLTN is currently in its second phase of operations (2012-2017). The expected accomplishments of GLTN Phase 2 are:

- Strengthened land-related policy, institutional and technical frameworks and tools and approaches to address the challenges in delivering security of tenure at scale, particularly for the urban and rural poor;
- Improved global knowledge and awareness on land-related policies, tools and approaches that are pro-poor, gender appropriate, effective and sustainable for securing land and property rights for all;
- Strengthened capacity of partners, land actors and targeted countries, cities and municipalities to promote and implement appropriate land policies, tools and approaches that are pro-poor, gender appropriate, effective and sustainable

The work of GLTN has contributed to a global paradigm shift away from seeing land as a purely technical matter towards a pro-poor, gender-responsive, accountable and sustainable land management, aimed at achieving tenure security for all. GLTN accordingly supports a continuum of land rights approach to land tenure challenges, in terms of which tenure can take a variety of forms, documented as well as undocumented, formal as well as informal, for individuals as well as groups, including pastoralists, and residents of slums and other settlements, whether formal or informal. The rights do not in fact lie on a single line, and they may overlap with one another. Registered freehold should not be seen as the preferred or ultimate form – it is one of a number of appropriate and legitimate forms. The most appropriate form depends on context. (UN-Habitat and GLTN, *Handling Land*, 2012.)

The Network also works on eight cross-cutting issues: conflict/disaster, environment, gender, and grassroots, land governance, youth, capacity development, and land in the Muslim world. Human rights standards and principles



underpin the land tool development and thus bridge the gap between policy intentions, international human rights commitments and the reality on the ground for poor and marginalized groups.

GLTN is built on an understanding that land is not a neutral commodity. It is in demand by a wide range of users, institutions and interest groups for different and often conflicting reasons, for example, housing and livelihoods, access to credit, investment, cultural heritage, and political power. Competing claims over land often occur under conditions of unequal power and resources. Rich people and the middle classes have the means, knowledge and connections to buy and sell land, register it officially, demand services, use land as collateral to borrow money, and defend their rights to it. The situation is different for people with low incomes, and especially for poor women and young people. As in the human rights analysis, GLTN recognizes that an analysis of who benefits from the current system is central to be able to identify obstacles and develop a strategy which would ultimately lead to a buy-in for a change in the land administration and management system which is more pro-poor, equitable, inclusive and sustainable.

The importance of recognition of a “diversity of tenure forms and rights”, as well as the urgent need for practical, effective policies and measures to enable, promote and protect those forms and rights, particularly for the poor, was given prominence by the Special Rapporteur on adequate housing in reports to the Human Rights Council in 2012 and 2013 (A/HRC/22/46 and A/HRC/25/54). The important role of GLTN tools such as the Social Tenure Domain Model and enumerations in the promotion of tenure security for all was also referred to in these documents. In March 2014 the Special Rapporteur’s “guiding principles to assist States and other relevant actors in addressing the current tenure insecurity crisis faced by the urban poor in an increasingly urbanized world” (A/HRC/25/54) were formally acknowledged by the United Nations Human Rights Council. The Council encouraged “States to take these guidelines into account when plan-

ning and implementing measures to improve the security of tenure for the urban poor” (A/HRC/25/L.18/Rev.1).

5.4 The Right to Water and Sanitation

5.4.1 Background

The concept of basic water requirements to meet fundamental human needs was initially established at the 1977 United Nations Water Conference in Mar del Plata, Argentina, then confirmed by Agenda 21 in 1992. Subsequently, a number of other plans of action have referred to safe drinking water and sanitation as a human right. For example, the Programme of Action of the 1994 International Cairo Conference on Population and Development recognized that:

“Countries should ensure that all individuals are given the opportunity to make the most of their potential. They have the right to an adequate standard of living for themselves and their families, including adequate food, clothing, housing, water and sanitation.”

The Habitat Agenda, adopted by the United Nations Conference on Human Settlements (Habitat II) in 1996, concurred with this statement. In 2002, the Committee on the Economic, Social and Cultural Rights issued *General Comment No. 15 on the right to water*, which rejected the common idea that water could not be a human right.⁵⁴

While sanitation was not yet recognized as a self-standing right, an increasing number of national, regional and international declarations and national legislations seemed to be moving in this direction. In July 2005, the Special Rapporteur presented a set of draft guidelines for the realization of the right to drinking water and sanitation.⁵⁵ The Human Rights Council Resolution: “Affirms that the human right to safe drinking water and sanitation is derived from the right to an adequate standard of living and inextricably related to the right to the highest attainable standard of physical and mental health, as well as the right to life and human dignity;”⁵⁶

In relation to the right to water and sanitation, the General Assembly in 2010 stated:

*“The right to safe and clean drinking water and sanitation is a human right that is essential for the full enjoyment of life and all human rights.”*⁵⁷

5.4.2 The Meaning of the Right to Water and Sanitation

A joint UN-Habitat and OHCHR publication, *the Right to Water Factsheet No. 35* (2010), clarifies that the right to water contains both *freedoms* and *entitlements*.⁵⁸ The *freedoms* include protection against arbitrary and illegal disconnections; prohibition of unlawful pollution of water resources; non-discrimination in access to safe drinking water and sanitation, notably on the basis of land or housing status; non-interference with access to existing water supplies, especially to traditional water sources; and ensuring that personal security is not threatened when accessing water or sanitation outside the home. The *entitlements* include access to a minimum amount of safe drinking water to sustain life and health; access to safe drinking water and sanitation in detention; and participation in water including decision-making related to sanitation at the community and national levels.

According to the Committee on Economic, Social and Cultural Rights (CESCR) *General Comment No. 15, the right to water* must include elements required for human dignity, life and health.⁵⁹ Similar to the realization of many other human rights, the earlier shown AAAQ criteria are used in monitoring the *adequacy* of water.

Availability: The water supply for each person must be sufficient and continuous for personal and domestic uses. These uses ordinarily include drinking, personal sanitation, washing of clothes, food preparation, personal and household hygiene.

Accessibility: Water and the associated water facilities and services have to be accessible to everyone without discrimination, within the jurisdiction of the State party. Accessibility has four overlapping dimensions: (1) *Physical accessibility* means that water, and adequate water facilities and services, must be within safe physical reach for all sections of the population. Sufficient, safe and acceptable water must be accessible within, or in the immediate vicinity, of each household, educational institution and workplace; (2) *Economic accessibility* means that water, and water facilities and services, must be affordable for all; (3) *Non-discrimination* means that

“The right to safe and clean drinking water and sanitation is a human right that is essential for the full enjoyment of life and all human rights.”



Misconception	Clarification
The right entitles people to free water	Water and sanitation services need to be affordable for all. People are expected to contribute financially or otherwise to the extent that they can do so.
The right allows for unlimited use of water	The right entitles everyone to sufficient water for personal and domestic uses and is to be realized in a sustainable manner for present and future generations.
The right entitles everyone to a household connection	Water and sanitation facilities need to be within, or in the immediate vicinity of the household, and can comprise facilities such as wells and pit latrines.
The right to water entitles people to water resources in other countries	People cannot claim water from other countries. However, international customary law on trans boundary watercourses stipulates that such watercourses should be shared in an equitable and reasonable manner, with priority given to vital human needs.
A country is in violation of the right if not all its people have access to water and sanitation	The right requires that a State utilizes the maximum of available resources to progressively realize the right.
The right to water extends to water for agriculture or pastoralism.	The right to water covers only personal and domestic uses; it does not cover water for agriculture or pastoralism.

water and water facilities and services must be accessible to all, including the most vulnerable or marginalized sections of the population, in law and in fact, without discrimination on any of the prohibited grounds; and (4) *Information accessibility*, includes the right to seek, receive and impart information concerning water issues.

Acceptability and Quality: The water required for each personal or domestic use must be safe, therefore free from microorganisms, chemical substances and radiological hazards that constitute a threat to a person’s health. Furthermore, water should be of an acceptable color, odor and taste for each personal or domestic use.

It is also important to know and be aware of what the right to water *does not mean*. In 2007, the Centre on Housing Rights and Evictions (COHRE) issued a Manual on the Right to Water and Sanitation.⁶⁰ The Manual outlines some common misconceptions regarding the right to water and sanitation.

5.4.3 Duties in Relation to the Right to Water and Sanitation

Following the standard categorization of duties into *respect, protect and fulfill*, General Comment No. 15 provides the following definitions:

The Obligation/Duty to Respect requires that States parties refrain from interfering directly or indirectly with the enjoyment of the right to water. The obligation includes, inter alia, refraining from engaging in any practice or activity that denies or limits equal access to adequate water; arbitrarily interfering with customary or traditional arrangements for water allocation; unlawfully diminishing or polluting water, for example through waste from State-owned facilities or through use and testing of weapons; and limiting access to, or destroying, water services and infrastructure as a punitive measure, for example, during armed conflicts in violation of international humanitarian law.

The Obligation/Duty to Protect requires State parties to prevent third parties from interfering in any way with the enjoyment of the right to water. Third parties include individuals, groups, corporations and other entities as well as agents acting under their authority. The obligation

includes, inter alia, adopting the necessary and effective legislative and other measures to restrain, for example, third parties from denying equal access to adequate water; and polluting and inequitably extracting from water resources, including natural sources, wells and other water distribution systems.

The Obligation/Duty to Fulfill can be disaggregated into the *obligations to facilitate, promote and provide*. The obligation to facilitate requires the State to take positive measures to assist individuals and communities to enjoy the right. The obligation to promote obliges the State party to take steps to ensure that there is appropriate education concerning the hygienic use of water, protection of water sources and methods to minimize water wastage. States parties are also obliged to fulfill (provide) the right when individuals or a group are unable, for reasons beyond their control, to realize that right themselves by the means at their disposal.

In General Comment No. 3 (1990), the Committee on Economic, Social and Cultural Rights (CESCR) confirms that States parties have a core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights enunciated in the Covenant. In the Committee's view, at least a number of core obligations pertinent to the right to water can be identified, which are of immediate effect, including (1) access to the minimum essential amount of water, that is sufficient and safe for personal and domestic uses to prevent disease; (2) ensure the right of access to water and water facilities and services on a non-discriminatory basis, especially for disadvantaged or marginalized groups; and (3) ensure personal security is not threatened when having to physically access water.

5.4.4 The Relations Between the Right to Water and Sanitation, and Other Human Rights

The realization of the right to water and sanitation is a precondition of the enjoyment of other human rights, including the rights to adequate housing, health, education, and nutrition. In relation to the right to adequate housing, General Comment No. 4 stipulated in 1961 that:

“All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services.” (Article 8(b))

According to the Convention on the Rights of the Child, the right to clean drinking water is a necessary precondition for the children's right to health:

“To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution.” (Art. 24c)

The right to water and sanitation can also be affected by the lack of enjoyment of other rights, for example for people who are denied the rights to adequate housing, education, work and social security. The lack of ensuring tenure among slum dwellers is a common cause of lack of safe drinking water and sanitation.

5.4.5 Practical Implications for UN-Habitat: Planning for Sustainable Cities and the Realization of the Right to Water and Sanitation

In UN-Habitat, advancement of the right to water and sanitation, has been executed by the programme under Focus Area (FA) 4: Urban Basic Services. However, human rights are interdependent, indivisible and interrelated. The realization of the right to water and sanitation may affect the enjoyment of a wide range of other human rights and vice versa. Thus, creating numerous opportunities for UN-Habitat's Branches/Focus Areas to interact and cooperate in the common endeavor of rights-based human settlements development.

Planning for sustainable cities addresses current urbanization challenges such as urban sprawl, poverty, inequality, pollution, congestion, as well as urban



PRINCIPLE	IMPACT ON THE REALIZATION OF THE RIGHT TO WATER AND SANITATION	EXAMPLES OF DESIRABLE ACTIONS
1. Adequate street density and efficient street network	Improved planning of street systems facilitates water supply planning and engineering	Plan for adequate water pipe lines and water points for the maximal population in each area (UN-Habitat FA 4 and 2)
2. High density	Decreased cost of distributing water to households	Establish a water subsidy for tenants who cannot afford to pay the full cost of water supply (FA 3 and 4)
3. Mixed land use	Increased security of water supply as a result of the closeness of industrial activities	Promote joint public and industrial planning for water supply (FA 2,3 and 4)
4. Social mix	Tenants from different cultural background meet at water points	Establish a mechanism that ensures non-discrimination at water points (FA 1 and 4)
5. Limited land use specialization	Increased security of water supply as a result of the closeness of industrial activities	Promote joint public and industrial planning for water supply (FA 2,3 and 4)

biodiversity, urban mobility, drainage and energy. UN-Habitat recommends that the following *Five Principles* should guide the planning of sustainable cities: (1) Adequate street density; (2) High density; (3) Mixed land use; (4) Social mix; and (5) Limited land use specialization. The Table below shows some of the impacts on the progressive realization of the right to water and sanitation by the adoption of each of the five principles. Also, some suggested examples of desirable actions of UN-Habitat’s programmes within the relevant focus areas are given in the table below.

5.5 The Right to Food

5.5.1 The Meaning of the Right to Food

The CESCR has defined the right to food as follows:⁶¹

“The right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement.”

The CESCR affirms that the right to adequate food is indivisibly linked to the inherent dignity of the human person and is indispensable for the fulfillment of other human rights enshrined in the International Bill of Human

Rights. It is also inseparable from social justice, requiring the adoption of appropriate economic, environmental and social policies, at both the national and international levels, oriented to the eradication of poverty and the fulfillment of all human rights for all.

5.5.2 Duties in Relation to the Right to Food

The right to adequate food, like any other human right, imposes three types obligations on States parties: the obligations to *respect*, to *protect* and to *fulfill*. The obligation to *fulfill* incorporates both an obligation to *facilitate* and an obligation to *provide*. The obligation to *respect* existing access to adequate food requires States parties not to take any measures that result in preventing such access. The obligation to *protect* requires measures by the State to ensure that enterprises or individuals do not deprive individuals of their access to adequate food. The obligation to *fulfill (facilitate)* means the State must pro-actively engage in activities intended to strengthen people’s access to and utilization of resources and means to ensure their livelihood, including food security. Finally, whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to *fulfill (provide)* that right directly. This obligation also applies for persons who are victims of natural or other disasters.

5.5.3 Human Rights Standards

In Fact Sheet No. 34, *The Right to Adequate Food*; a detailed review is created of the use of AAAQ indicators for the realization of the right to food.⁶²

Availability requires on the one hand, that food should be available from natural resources either through the production of food, by cultivating land or animal husbandry, or through other ways of obtaining food, such as fishing, hunting or gathering. On the other hand, it means that food should be available for sale in markets and shops.

Accessibility requires that *economic* and *physical access* to food be guaranteed. Economic accessibility means that food must be affordable. Physical accessibility means that food should be accessible to all, including to the physically vulnerable, such as children, sick people, persons with disabilities or the elderly, for whom it may be difficult access food. Access to food must also be guaranteed to people in remote areas and to victims of armed conflicts or natural disasters, and to prisoners.

Adequacy means that the food must satisfy *dietary needs*, taking into account the individual's age, living conditions, health, occupation, sex and other relevant factors. Food should be *safe* for human consumption and free from adverse substances, such as contaminants from industrial or agricultural processes, including residues from pesticides, hormones or veterinary drugs. Adequate food should also be *culturally acceptable*.

The notion of *sustainability* is linked to the notion of adequate food or food *security*, implying that food is accessible for both present and future generations.

The Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security (Right to Food Guidelines) is an example of a soft-law instrument. They are accepted by States and serve as guidance for the implementation of the right to food.⁶³

The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security promote secure tenure rights and equitable access to land, fisheries and forests as a means of eradicating hunger and poverty, supporting sustainable development and enhancing the environment. They were officially endorsed by the Committee on World Food Security on 11 May 2012. Since then implementation has been encouraged by G20, Rio+ 20, United Nations General Assembly and Francophone Assembly of Parliamentarians.⁶⁴

5.5.4 How the Right to Food Relates to the Right to Adequate Housing

Human rights are interdependent, indivisible and interrelated, which means that violating the right to food may impair the enjoyment of other human rights, such as the right to adequate housing. The *right to adequate housing* is when a house lacks basic amenities, such as for cooking or storing food, and the right to adequate food of its residents may be undermined. Also, when the cost of housing is too high, people may have to reduce their food bill. In relation to the *right to water*, the right to food cannot be realized if people lack access to safe drinking water for personal and domestic uses which is defined as water for drinking, washing clothes, food preparation and personal and household hygiene.

5.5.5 Practical Implications for UN-Habitat: Planning for Sustainable Cities and the Realization of the Right to Food

In UN-Habitat, the advancement of the right to food is directly linked to the work on land rights under UN-Habitat's Focus Area 1 (Urban Land and Legislation, Governance). The realization of the right to food has implications on land-related rights, but also affects the wellbeing of the human settlements' inhabitants and thus relates to the enjoyment of a wide range of other human rights. There are numerous opportunities for UN-Habitat's Branches/Focus Areas to interact and cooperate in the common endeavor of rights-based human settlements development.



PRINCIPLE	IMPACT ON THE REALIZATION OF THE RIGHT TO FOOD	EXAMPLES OF DESIRABLE ACTIONS
1. Adequate street density and efficient street network	Increased availability and physical accessibility of food	Planning of streets and shops such that tenants have walking distance to food shops (FA 1) Establish local food markets (FA 3)
2. High density	Increased quality of food as a result of short distances from home to shops	Establish One Stop Centers for youth for increased income and food consumption (FA 3) Ensure energy services for improved frying or boiling of food (FA 4)
3. Mixed land use	May facilitate home-gardening	Urban legislation to increase access to land by women for increasing home gardening of fruits and vegetables (FA 1) Create public space for home gardening (FA 2)
4. Social mix	Increased job opportunities will increase the affordability of accessible food. Improved availability of culturally acceptable food	Encourage and support food markets with food from several cultures to improve the diet (FA 1) Prioritize construction of low-cost housing for single mothers with children in order to increase money spent on food
5. Limited land use specialization	Reduced need for travel long distances for services	

The work of UN-Habitat focuses on providing advisory and technical services to partner national and local governments towards their planning for *sustainable* cities with the view of advancing sustainable human settlements for *all*. This requires addressing the current urbanization challenges such as urban sprawl, poverty, inequality, pollution, congestion as well as urban biodiversity, urban mobility and energy. The control of these challenges affects a variety of human rights, including the right to food. UN-Habitat recommends that the following *Five Principles* should guide the planning of sustainable urbanization: (1) Adequate street density; (2) High density; (3) Mixed land use; (4) Social mix; and (5) Limited land use specialization. The Table below shows some of the impacts of sustainable urban planning principles on the progressive realization of the right to food, together with some suggested examples of desirable actions by UN-Habitat’s programmes within the relevant focus areas.

5.6 The Right to Health

5.6.1 The Meaning of the Right to Health

The CESCR defines the right to health as “the highest attainable standard of physical and mental health”. The Constitution of WHO, however, conceptualizes health as “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity”. However, the CESCR clarifies that its definition of ‘right to health’ should be interpreted in a much broader sense, embracing a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, a healthy environment, and gender equality.

The right to health contains both freedoms and entitlements. The *freedoms* include the right to be free from non-consensual medical treatment, such as medical experiments and research or forced sterilization, and to be free from torture and other cruel, inhuman or degrading treatment or punishment. The *entitlements* include the right to a system of health protection providing equality of opportunity for everyone to enjoy the highest attainable level of health; the right to prevention, treatment and control of diseases; access to essential medicines; maternal, child and reproductive health; equal and timely access to basic health services; the provision of health-related education and information; and participation of the population in health-related decision-making at the national and community levels.

According to the World Health Organization (WHO), the right to health is *not* the same as the right to be *healthy*. A common misconception is that the State has to guarantee good health for everybody. However, good health is influenced by several factors that are outside the direct control of States, such as an individual's biological make-up and socio-economic conditions. This is a vehemently debated position.

5.6.2 Duties in Relation to the Right to Health

The obligation to respect requires States to refrain from interfering directly or indirectly with the right to health. For example, States should refrain from denying or limiting access to health-care services; from marketing unsafe drugs; from imposing discriminatory practices relating to women's health status and needs; from limiting access to contraceptives and other means of maintaining sexual and reproductive health; from withholding, censoring or misrepresenting health information; and from infringing on the right to privacy (e.g., of persons living with HIV/AIDS).

The obligation to protect requires States to prevent third parties from interfering with the right to health. For example, countries should adopt legislation or other

measures to ensure that private actors conform with human rights standards when providing health care or other services; control the marketing of medicines by private actors; control the marketing of breast milk substitutes; ensure that privatization does not constitute a threat to the availability, accessibility, acceptability and quality of health-care facilities, goods and services.

The obligation to fulfill requires States to adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures to fully realize the right to health. For example, countries must adopt a national health policy or a national health plan covering the public and private sectors; ensure the provision of health care, including immunization programmes against infectious diseases and services designed to minimize and prevent further disabilities; ensure equal access for all to the underlying determinants of health, such as safe and nutritious food, sanitation and clean water.

5.6.3 Human Rights Standards

In the *General Comment No. 14*, a detailed review is made of the use of AAAQ indicators for the realization of the right to health.⁶⁵

Availability: Functioning public health and health-care facilities, goods and services, as well as programmes, have to be available in sufficient quantities within the State party. They will include the underlying determinants of health, such as safe and potable drinking water and adequate sanitation facilities, hospitals, clinics and other health-related buildings, trained medical and professional personnel receiving domestically competitive salaries, and essential drugs.

Accessibility: Health facilities, goods and services have to be accessible to everyone without discrimination, within the jurisdiction of the State party. Accessibility has four overlapping dimensions: Non-discrimination; Physical accessibility; Economic accessibility (affordability); Information accessibility.



Acceptability: All health facilities, goods and services must adhere to medical ethics and be culturally appropriate, i.e. respectful of the culture of individuals, minorities, peoples and communities, sensitive to gender and life-cycle requirements, as well as being designed to respect confidentiality and improve the health status of those concerned.

Quality: In addition to being culturally acceptable, health facilities, goods and services must also be scientifically and medically appropriate and of good quality. This requires, *inter alia*, skilled medical personnel, scientifically approved and unexpired drugs and hospital equipment, safe and potable water, and adequate sanitation.

5.6.4 How the Right to Health Relates to the Right to Adequate Housing

The importance given to the ‘underlying determinants of health’, i.e. the factors and conditions that protect and promote the right to health beyond health services, goods and facilities, shows that the right to health is dependent on, and contributes to, the realization of many other human rights, including the right to housing and the right to water and sanitation. The right to water is elaborated upon in the Fact Sheet No. 31 on the Right to Health, by emphasizing the relationships between the ingestion of or contact with unsafe water, lack of clean water (linked to inadequate hygiene), lack of sanitation, and poor management of water resources and systems. Most diarrheal diseases in the world are attributable to unsafe water, sanitation and hygiene.

Conversely, individuals’ right to health cannot be realized without realizing other rights, the violations of which are at the root of poverty, such as the rights to work, food, housing and education, and the principle of non-discrimination.

In conclusion, both the right to health and the right to adequate housing are codified in the same Article 25(1) of the ICESCR as part of the right to an adequate standard of living.

The immensely broad definition of the right to health bears similarities with the increasingly broader definition of the right to adequate housing. This results from the reality that ‘inadequate housing’ and ‘ill-health’ are both **symptoms** of much broader and deeper problems in society, with sometimes very similar underlying and basic (structural) causes of the ‘symptoms’.

5.6.5 Practical Implications for UN-Habitat: Planning for Sustainable Cities and the Realization of the Right to Health

In UN-Habitat, the advancement of the right to health is linked to the work on urban basic services under UN-Habitat’s Focus Area 4. As human rights are interdependent, indivisible and interrelated, the realization of the right to health has direct implications on the wellbeing of the human settlements’ inhabitants and thus relates to the enjoyment of a wide range of other human rights. There are numerous opportunities for UN-Habitat’s Branches/ Focus Areas to interact and cooperate in the common endeavor of rights-based human settlements development.

The work of UN-Habitat focuses on providing advisory and technical services to partner national and local governments towards their planning for *sustainable* cities with the view of advancing sustainable human settlements for *all*. This requires addressing the current urbanization challenges such as urban sprawl, poverty, inequality, pollution, congestion as well as urban biodiversity, urban mobility and energy. The control of these challenges affects a variety of human rights, including the right to health. UN-Habitat recommends that the following *Five Principles* should guide the planning of sustainable urbanization: (1) adequate street density; (2) high density; (3) mixed land use; (4) social mix; and (5) limited land use specialization. The Table below shows some of the impacts of sustainable urban planning principles on the progressive realization of the right to health, together with some suggested examples of desirable actions by UN-Habitat’s programmes within the relevant focus area.

PRINCIPLE	IMPACT ON THE REALIZATION OF THE RIGHT TO HEALTH	EXAMPLES OF DESIRABLE ACTIONS
1. Adequate street density and efficient street network	Increased physical accessibility to basic health services, most often reachable through walking friendly streets.	Establish an urban network of primary health facilities ensuring access for all. (FA 1)
2. High density	Increased availability of a major hospital.	Minimize the distance between schools and the hospital. (FA 1)
	Reduced cost of water and sewage improving hygiene and therefore health.	Ensure availability and accessibility of safe drinking water for every person. (FA 2)
	Increased slum upgrading	Support hygiene education programmes. (FA 5)
3. Mixed land use	Increases the likelihood of increased availability and accessibility of good quality health services.	Prioritize local recruitment of health staff (FA 3)
4. Social mix	Increased social interaction will reduce discrimination and increase cultural acceptability in health services.	Establish neighborhood groups to help in the provision of health services reflecting different cultural values (FA 2)
	Increased job opportunities will increase the affordability of accessible health services.	Support the establishment of affordable basic health services. (FA 4)
5. Limited land use specialization	A move from single blocks to communities	Establish community-based solid waste management systems. (FA 4)

Sustainable urban planning address current urbanization challenges such as urban sprawl, poverty, inequality, pollution, congestion as well as urban biodiversity, urban mobility and energy. The control of these challenges all affect the right to health. UN-Habitat recommends that the following *Five Principles* should guide the planning of sustainable urbanization: (1) adequate street density; (2) high density; (3) mixed land use; (4) social mix; and (5) limited land use specialization. The Table below shows some of the impacts on the progressive realization of the right to health by the adoption of each of the five principles, together with some suggested examples of desirable actions are given in the table below.

5.7 The Right to Education

5.7.1 The Meaning of the Right to Education

The right to education, similar to the right to adequate housing and the right to health, is a broad and multi-faceted human right, with an ever changing and expanding meaning. No other human right is defined in such detail in the ICESCR as the right to education. This broad and changing definition has resulted in particular difficulties in the realization of the right due to questions of interpretation. ‘Everyone has the right to education’, the Declaration proclaims. But questions arise as to what this means. Is it the right to any kind of education, at any given time, and who shall provide it?

Article 26.1 of the *UDHR* outlines in detail the Right to Education.



“Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.”

The definition is further elucidated in the *General Comment No. 13* (1999).⁶⁶ The former UN Special Rapporteur on the Right to Education, Katarina Tomasevski, made a useful elaboration of the meaning of the right to education. She defined three dimensions or categories of the Right to Education, in which the right to education (1) refers to the right every child has to a compulsory and free basic education; (2) refers to the right to a school environment that is conducive for learning, including appropriate curricula, quality of teaching and non-discrimination, including absence of corporal punishment; and (3) refers to the outcome of education and its effects on society, including shared democratic values. Monitoring should include all three of these categories or dimensions of the right to education. This structure has proven very useful in the monitoring of the progressive realization of the right to education.⁶⁷

5.7.2 Duties in Relation to the Right to Education

The right to education, like all human rights, imposes three types or levels of obligations on States parties: the obligations to respect, protect, and fulfill. In turn, the obligation to fulfill incorporates both an obligation to facilitate and an obligation to provide.

The obligation to respect means that States must avoid measures that hinder or prevent the enjoyment of the right to education.

The obligation to protect means that States parties must take measures that prevents third parties from interfering with the enjoyment of the right to education.

The obligation to fulfill (facilitate) means that States parties are obliged to take positive measures that enable and assist individuals and communities to enjoy the right to education. Finally, States parties have an obligation to fulfill (provide) the right to education. As a general rule, States parties are obliged to fulfill (provide) a specific right in the Covenant when an individual or group is unable, for reasons beyond their control, to realize the right themselves by the means at their disposal.

5.7.3 Human Rights Standards

In *General Comment No. 13*, a set of ‘interrelated and essential features’ of the right to education is defined, reflecting the earlier presented AAAQ framework. These are outlined below;

Availability: Functioning educational institutions and programmes have to be available in sufficient quantities within the jurisdiction of the State party. For example, all institutions and programmes are likely to require buildings or other protection from the elements, sanitation facilities for both sexes, safe drinking water, trained teachers on domestically competitive salaries, and teaching materials; some may also require facilities such as a library, computer laboratory and information technology.

Accessibility: Educational institutions and programmes have to be accessible to everyone, without discrimination, within the jurisdiction of the State party. Accessibility has three overlapping dimensions: non-discrimination and physical accessibility, and economic accessibility.

Acceptability: The form and substance of education, including curricula and teaching methods, has to be acceptable (e.g., relevant, culturally appropriate and of good quality) to students and, in appropriate cases, parents. This is subject to the educational objectives required by article 13(1) and such minimum educational standards as may be approved by the State.

Quality: Education has to be flexible so it can adapt to the needs of changing societies and communities, and respond to the needs of students within their diverse social and cultural settings.

5.7.4 How the Right to Education Relates to the Right of Adequate Housing

Children's health and educational advancement are strongly influenced by the quality of the housing in which they live. Lack of adequate housing, forced evictions or homelessness have a profound impact on children due to their specific needs, affecting their growth, development and enjoyment of a whole range of human rights, including the right to education.

While the existence of millions of children living on the street is often the most visible sign of children's lack of shelter, other situations also have specific ramifications for their enjoyment of the right to adequate housing. Cramped, crowded, noisy or run-down housing conditions seriously undermine children's development and health, as well as their capacity to study.

The location of housing is also important to ensuring children's access to schools, health care and other relevant services. If settlements are located far from schools, or if transport is either non-existent or too expensive, it is hard for children to access education.

5.7.5 Practical Implications for UN-Habitat: Planning for Sustainable Cities and the Realization of the Right to Education

In UN-Habitat, advancement of the right to education is linked to the work on urban basic services under UN-Habitat's Focus Area 4. As human rights are interdependent, indivisible and interrelated, the realization of the right to education has direct implications on wellbeing of the human settlements' inhabitants and thus relates to the enjoyment of a wide range of other human rights. There are numerous opportunities for UN-Habitat's Branches/ Focus Areas to interact and cooperate in the common endeavor of rights-based human settlements development.

The work of UN-Habitat focuses on providing advisory and technical services to partner national and local governments towards their planning for *sustainable* cities with the view of advancing sustainable human settlements for *all*. This requires addressing of current urbanization challenges such as urban sprawl, poverty, inequality, pollution, congestion as well as urban biodiversity, urban mobility and energy. The control of these challenges affects a variety of human rights, including the right to health. UN-Habitat recommends that the following *Five Principles* should guide the planning of sustainable urbanization: (1) adequate street density; (2) high density; (3) mixed land use; (4) social mix; and (5) limited land use specialization. The Table below shows some of the impacts of sustainable urban planning principles on the progressive realization of the right to education, together with some suggested examples of desirable actions by UN-Habitat's programmes within the relevant focus areas.



Everyone has the right to education. © UN-Habitat



PRINCIPLE	IMPACT ON THE REALIZATION OF THE RIGHT TO EDUCATION	EXAMPLES OF DESIRABLE ACTIONS
1. Adequate street density and efficient street network	Increased physical accessibility to basic education schools, most often reachable through walking friendly streets.	Ensure clear markings of where to cross major streets (FA 1)
2. High density	Increased availability and accessibility of secondary schools.	Provide scholarships for secondary school students from families living in poverty (FA 1, 3 and 4)
3. Mixed land use	Increased accessibility to safe green areas	Ensure accessibility to a green area for every school within safe walking distance. (FA 2)
4. Social mix	Increased social interaction will reduce discrimination and increase cultural diversity in schools. Increased job opportunities will increase the affordability of accessible education services.	Establish schools in the socially most mixed areas. (FA 2) Support the establishment of affordable primary and secondary schools. (FA 4)
5. Limited land use specialization	A move from single blocks to communities.	Establish accessible recreation and sports spaces. (FA 2)

5.8 The Rights of Women

5.8.1 Advancing Women's Rights and Gender Equality

In the Preamble of the *Charter of the United Nations* it is stated that:

“We the peoples of the United Nations determined to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small.”

The *Universal Declaration of Human Rights* reaffirms that human rights apply to all people equally, “without distinction of any kind such as race, color, sex, language... or any other status”.

The *Convention on the Elimination of All Discrimination Against Women (CEDAW)* (1979), coalesces, in a single legally binding instrument, provisions requiring the elimination of discrimination on the basis of sex in the enjoyment of civil, cultural, economic, political and social rights and specific rights of particular concern to women and girls.

In 1993 the *Declaration on the Elimination of Violence Against Women* (DEVAW) proposed ways in which governments should act to prevent violence, and to protect and defend women's rights. The Declaration holds States responsible to:

“...exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the state or by private persons”

Human rights encapsulate women's rights. CEDAW progresses beyond guarantees of equality and equal protection before the law in existing legal instruments and sets out measures for the achievement of equality between men and women, regardless of their marital status, in all aspects of political, economic, social and cultural life.

At the *Fourth World Conference on Women*, Beijing 1995, a new language was introduced with an emphasis on *Women's Empowerment*. It was no longer premised on merely achieving equality and eradication of discrimination but

empowering women became an increasingly important objective for them to become full and equal partners in all policies and decision-making processes in their communities.

Violence against women is rooted in a global culture that discriminates against women and denies them the enjoyment of equal rights as men. The violations of the rights of women tend to take the form of discrimination on the grounds of race, ethnicity, sexual identity, caste, religion, class or age. The type and prevalence of violence and discrimination that women experience are often determined by how their gender interacts with these other factors. CEDAW defines discrimination against women as:

“Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”

General Comment No. 16 (2005) is particularly important since violations of women’s right to housing are frequently the result of discriminatory laws, policies, customs and traditions in other areas which lead to deeply rooted inequalities between women and men in housing.⁶⁸

5.8.2 Duties in Relation to the Rights of Women

States have a responsibility to prevent abuses against women. Their obligations or duties under international human rights law can be summarized under three categories: respect, protect and fulfill.

The obligation/duty to respect women’s human rights means that a State’s constitution must recognize equality between women and men in all spheres; state or official actors must be held accountable when they perpetrate violence against women; and private actors who perpetrate violence against women must be prosecuted.

The obligation/duty to protect women’s human rights requires the State to take all necessary measures to prevent individuals or groups from violating the rights of each individual. As such, the state must take affirmative steps to prevent direct and indirect discrimination against women. Women must be fairly represented in government and have legal access to all forms of employment.

The obligation/duty to fulfill the human rights of women requires the State to ensure opportunities for individuals to obtain what they need and to provide, that which cannot be secured by personal efforts. This obligation for women and men ranges from providing food, water, housing and education to ensuring the conditions indispensable for women’s organizations to form and function.

5.8.3 Human Rights Standards

According to CEDAW, States parties accept the following desirable outcomes:

- Incorporating the principle of equality of men and women in their constitution and legal systems;
- Repealing all discriminatory laws and adopting laws prohibiting discrimination against women;
- Establishing tribunals and other public institutions to ensure the effective protection of women against discrimination;
- Ensuring elimination of all acts of discrimination against women by persons, organizations or enterprises; and
- Reporting in accordance with the Convention to the Committee on the Elimination of Discrimination against women on progress in implementing the Convention.

In 2013, the UN-Habitat Governing Council agreed to strengthen and support UN-Habitat in executing a two-fold gender strategy: a) the mainstreaming of gender equality and women’s empowerment in UN-Habitat’s normative work and operational programmes in all key



focus areas; and b) set up of policies and programmes needed to achieve gender equality and women's empowerment.

5.8.4 How the Rights of Women Relate to the Right to Adequate Housing⁶⁹

Women represent a disproportionate majority of those who are inadequately housed and face discrimination in many aspects of life. The sources of discrimination are related to their sex but can also be relegated to other factors such as poverty, age, class, sexual orientation or ethnicity. In many parts of the world, and particularly in rural areas, women's enjoyment of the right to adequate housing predominantly depends on their access to, and control over land and property.

Discrimination against women in the cities can be caused by many underlying issues, for instance, discriminatory statutory laws; gender-neutral laws and policies that fail to take into account women's special circumstances (such as their vulnerability to sexual and gender-based violence); the predominance of customary laws and practices which discriminate against women; bias in the judiciary and public administration; lack of access to remedies, information or decision-making processes; and lack of awareness of rights. This discrimination is underpinned by structural and historical factors.

While forced evictions have an impact on both men and women, women tend to be disproportionately affected. Women are often exposed to violence and intense emotional stress before, during and after an eviction, because of their close ties to the home and their roles as caregivers for the entire family. The lack of shelter and privacy in such settlements can lead to increased exposure to sexual and other forms of violence.

While not all international human rights treaties have explicitly codified the right to adequate housing in the context of women's rights, all such treaties recognize the overarching principles of gender equality and non-discrimination.

The Commission on Human Rights has issued a number of resolutions addressing the fact that discrimination in law against women in relation to having access to, acquiring and securing land, property and housing constitutes a violation of women's human rights to protection against discrimination.⁷⁰

The OHCHR recently published a comprehensive report on "Women and the Right to Adequate Housing".⁷¹ The report analyzes in detail the relationships between women's rights and the right to adequate housing. Empirical evidence reveals that women disproportionately lack security of tenure, which is a common cause of the violation of their right to adequate housing.

5.8.5 Practical Implications for UN-Habitat: Planning for Sustainable Cities and the Realization of the Rights of Women

Planning and programming for sustainable cities addresses the current urbanization challenges such as urban sprawl, poverty, inequality, pollution, congestion, as well as urban biodiversity, urban mobility and energy. The control of all these challenge affect the rights of women. UN-Habitat promotes inclusive urbanization, motioning the recognition of the rights of women whilst interacting with its counterparts at local, national and global level. UN-Habitat recommends that the following *Five Principles* should guide the planning of sustainable urbanization: (1) adequate street density; (2) high density; (3) mixed land use; (4) social mix; and (5) limited land use specialization. The Table below shows some of the impacts on the progressive realization of the rights of women by the adoption of each of the five principles, together with some suggested examples of desirable actions are given.

PRINCIPLE	IMPACT ON THE REALIZATION OF THE RIGHT OF WOMEN	EXAMPLES OF DESIRABLE ACTIONS
1. Adequate street density and efficient street network	Improved affordability and accessibility to public transport will increase women's access to education, training, job opportunities, health care and social network and will decrease their exposure to gender based violence.	Support urban legislation against any sexual harassment of women at public transport (FA 1) Improve policies and frameworks for planning and design of gender-responsive compact integrated and connected cities adopted at the national, regional and local level. (FA 2)
2. High density	Reduced time for women in household work as a result of increased accessibility to a variety of services and shops within walking distance and availability of electricity, water etc.	Increased flow of investments into gender-sensitive urban basic services and compact cities (FA 4)
3. Mixed land use	Improved availability and accessibility of job opportunities for women; Increased access to resources, economic opportunities, spaces for social interaction for women.	Establish gender responsive advisory services; formulate and implement gender evaluation and gender-responsive land policies and provide national and local urban legal assessments (FA 1)
4. Social mix	Improved respect for gender equality in allocation of low cost public housing.	Establish a community monitoring system for discrimination in public housing allocation. (FA 5)
5. Limited land use specialization	Increase availability of light industrial jobs,	Legislate against discrimination of women in recruitments to full-time or part-time jobs. (FA 1) Adopting gender-responsive planning, policies and strategies that limit single function blocks (FA1)

5.9 The Rights of Children

5.9.1 The Meaning of the Rights of Children

Following the *UN International Year of the Child* in 1979, the efforts to prepare a Convention gained momentum and resulted in the adoption of the *Convention on the Rights of the Child (CRC)* a decade later in 1989. The CRC was rapidly ratified by many countries and entered into force already in 1990. Today all but two countries have ratified it, making it the most ratified convention. The CRC translated the general principles in the two Covenants to the specific situation of children and treats the child as a *subject* of rights rather than as an *object* of protection.

At the *World Summit for Children (WSC)* in New York, September 1990, a *World Declaration on the Survival, Protection and Development of Children* was adopted. The Summit and the entry into force of the Convention on the Rights of the Child contributed significantly to the increased political priority given to children all over the world.

At the Habitat II Conference in Vancouver in 1996,⁷² the United Nations Children's Fund (UNICEF) launched the *Child-Friendly Cities Initiative (CFCI)*. It was the first multi-stakeholder partnership to place children at the forefront of the urban agenda. The Initiative was brought into the wider acceptance of community participation in decision-making to promote local accountability for children's rights.



The Child Friendly Cities Initiative emerged in recognition of several important trends: the rapid transformation and urbanization of global societies; the growing responsibilities of municipal communities for their populations in the context of decentralization; and consequently, the increasing importance of cities and towns within national political and economic systems.

Underpinning child-friendly urban planning and programming is a Human Rights-Based governance model that embodies the principles of non-discrimination, child survival and development, and child participation enshrined in the CRC.

5.9.2 How the Rights of Children Relate to the Right to Adequate Housing

At the 2002 *Special Session of the United Nations General Assembly on Children* in New York, the role of mayors and local governments in achieving children's rights at the local level was reaffirmed, especially how the rights of children relate to the right to adequate housing.

The UN Special Session in 2002 recognized the pivotal role of adequate housing and the role of children in the design of the specific aspects of urbanization, emphasizing,

“The involvement of children in developing play facilities; child-friendly design of new housing, safe water or hygiene projects, traffic and transport schemes; in schools, consultations with children over curriculum and behaviour policies.”

The UN Committee on the Rights of the Child clarifies children's right to adequate housing as follows,⁷³

“In the light of the pervasiveness of the phenomenon of homelessness and inadequate housing, which occurs in all parts of the world and affects developing as well as developed countries, the Committee deems it important to emphasize the universal character of the right to housing. It applies to every child, without restriction or distinction of any kind...”

5.9.3 Duties in Relation to Children's Rights to Adequate Housing⁷⁴

Children affected by the restrictions of the right to adequate housing suffer from persistent and systemic violations of their human rights. Inhabiting the streets of cities or living in inadequate conditions, children have a lower chance of being valued as citizens and having their interests respected, their voices heard and their views considered.

The obligation/duty to respect the right of children to adequate housing entails that states should refrain from any action that would prevent children and their families from realizing this right whenever they themselves are able to do so. This means that duty-bearers must not act in ways that would exacerbate, or lead to a further deterioration of the housing rights situation for children. A key implication of this duty is that states are prohibited from forcibly evicting children and their families, and from arbitrarily and unlawfully destroying their homes.

The obligation/duty to protect the right of children to adequate housing requires that states effectively prevent violations of that right by non-state duty-bearers, such as landlords, corporations or other private sector individuals or bodies. Everywhere in the world, non-state duty-bearers are responsible for forcibly evicting families, including children. Non-state duty-bearers also make access to housing and basic services unaffordable or contribute to the inhabitability of housing, for example, by unjustifiably increasing rents or water and sanitation charges, or by neglecting to maintain housing and allowing it to fall into disrepair.

The obligation/duty to fulfill the right of children to adequate housing entails certain positive obligations, and may require public expenditure in respect of appropriate budgetary commitments, state regulation, provision of public services, and provision of housing subsidies or social housing, including housing programmes that are sensitive to children's special needs.

PRINCIPLE	IMPACT ON THE REALIZATION OF THE RIGHT OF CHILDREN	EXAMPLES OF DESIRABLE ACTIONS
1. Adequate street density and efficient street network	Streets will be walkable and cyclist friendly.	Where possible separate walking and cycling lanes. (FA 1)
2. High density	Improved accessibility to play grounds.	Ensure safe walking distance for all children to a public play ground (FA 4)
3. Mixed land use	Likelihood of increased availability and accessibility of good quality health services.	Prioritize local recruitment of health staff (FA 3)
4. Social mix	Increased social interaction of children with different cultural background.	Establish clubs with youth of mixed cultural background. (FA 3)
5. Limited land use specialization	Increased likelihood of both parents working not too far from home.	Establish pre-school in strategic places. (FA 2)

Most recently, the subject of the UNICEF State of the World children's report 2012 was *Children in an Urban World*, in which the following actions were recommended for the progressive realization of the rights of children living in urban settings:

1. Improve understanding of the scale and nature of urban poverty and exclusion affecting children.
2. Use the improved understanding of exclusion to identify and remove the barriers to inclusion that prevent marginalized children and their families from using services and enjoying such core elements of citizenship as legal protection and security of housing tenure.
3. Maintain a sharp focus on the particular needs and priorities of children in urban planning, infrastructure development, service delivery and broader efforts to reduce poverty and disparity.
4. Promote partnership between the urban poor and government at all its levels.
5. Work together to achieve sustainable improvements in children's rights.

5.9.4 Practical Implications for UN-Habitat: Planning for Sustainable Cities and the Realization of the Rights of Children

Sustainable urban planning address current urbanization challenges such as urban sprawl, poverty, inequality, pollution, congestion as well as urban biodiversity, urban mobility and energy. The control of these challenges all

affects the rights of children. UN-Habitat recommends that the following *Five Principles* should guide the planning of sustainable urbanization: (1) adequate street density; (2) high density; (3) mixed land use; (4) social mix; and (5) limited land use specialization. The Table above shows some of the impacts on the progressive realization of the rights of children by the adoption of each of the five principles, together with some suggested examples of desirable actions are given.

5.10 Youth and Human Rights

5.10.1 Background

The United Nations defines 'youth' as those persons between the ages of 15 and 24 years. Youth constitutes a readily identifiable group with a distinctive perspective on life, a discernible culture and an important contribution to make to the progress and development of their respective communities. Youth carries innovation and if organized, youth can be a powerful force of change able to operate beyond national borders, challenge established society patterns and break national governing structures.

There are several obstacles, specific to youth, across countries and regions, which prevent them from advancing their personal and professional development as individuals and members of their communities. Many aspects of non-realization of human rights that are related to poverty, exclusion, discrimination, are given to youth as opposed to



children or adults, namely because of the crucial transition between child- and adulthood. As an example, access to employment and decent employment for youth, is proving to be a major challenge for young people due to persistent legal, societal and cultural preconditions, restricting youth from entering the labor market (for instance extended retirement age, age-based discrimination in the workplace) Many employed youth suffer deprivation of their right to work: they remain unaware of their rights as a worker, only to fall victim of exploitation and abuse.

Restrictions of socio-economic and political opportunities can inspire youth-led and organized social upheaval. Protests and social-disobedience can lead to the development of new social contracts and more equitable governance. In other scenarios, social upheavals are followed by further restrictions of freedoms and violation of rights of the protesters and entire societies.

The growing numbers of youth-led social movements worldwide suggest not only the need for addressing non-realization of human rights of young people, but also shifting the development paradigm from one based on fulfilling the needs of youth to one dedicated to realizing their human rights.

5.10.2 The Meaning of ‘Youth Rights’

From a human rights perspective this implies that youth between the ages of 15 and 18 years are children, and those between 19 and 24 years are adults. All International Human Rights Treaties cover both these groups, while the first one is also covered by the Convention on the Rights of the Child. Motherhood and childhood are entitled to special care and assistance, Nevertheless, there is no coherent international policy recognizing the youth as a demographic group, between childhood and adulthood, with distinctive needs and rights. While the Convention on the Rights of the Child (CRC) acknowledges the specific rights of children up to 18 years old, the same does not occur for those over 18 who have not yet fully transitioned into adulthood. There is not yet a specific universal instrument that affords youth a set of rights although

they are theoretically covered in other conventions and declarations.

The United Nations recognized the important role of youth at an early stage and has promoted a number of programmes and initiatives for the mobilization and support of youth.⁷⁵ At the opening of the High Level Meeting on Youth in New York, 25-26 July 2011, Secretary-General Ban Ki-Moon stated.

“A nation that does not take care of its youth, does not have a future – and does not deserve one” and “failing to invest in our youth is a false economy.”

The *International Year of Youth* was first celebrated by the United Nations in 1985. A decade later, the General Assembly adopted the *World Programme of Action for Youth to the Year 2000 and Beyond*, which established a policy framework and guidelines for national action and international support to improve the situation of young people.

The *Third World Youth Forum of the United Nations* in August 1998, in *The Braga Youth Action Plan* emphasizes particularly the need for human rights education of youth, to make them stronger in the promotion of human rights, stating:

“Institutions, including governments, the UN system, intergovernmental organizations and educational authorities, responsible for human rights education at the community, national, regional and international level, must ensure an enabling environment for youth involvement in human rights education.”

5.10.3 UN-Habitat and Youth

Fourteen out of the two hundred and forty one paragraphs in the Habitat Agenda address youth issues in human settlements development. In paragraph thirteen; the member states have stipulated that:

“The needs of children and youth, particularly with regard to their living environment have to be taken fully into account. Special attention needs to be paid to the participatory processes dealing with the shaping of cities, towns and neighborhoods; this is in order to secure the living conditions of children and of youth and to make use of their insight, creativity and thoughts on the environment.”

Amongst, the UN agencies, UN-Habitat has been at the forefront of promoting the engagement of youth in sustainable development, including sustainable urbanization. The target group of UN-Habitat’s strategy, urban 15-24-year-olds in developing countries, is recognized as possessing immense potential to contribute to social development if afforded the right opportunities. The challenge of placing the youth at the center of development strategies can be compared to the challenge of putting women and gender issues on the development agenda, as experienced two decades ago.

UN-Habitat’s position on urban youth is well articulated in the report *Advancing Youth’s Civic Engagement* as well as in the *State of the Urban Youth Report 2010/2011*.⁷⁶ In the latter, the following statement of the Executive Director is included in the foreword:

The report clarifies that young people’s right to the city contains five distinct rights: (1) the right to equitable access to all basic services; (2) the right to avail of all economic opportunities and activities; (3) the right to voice political opinions freely; (4), the right to enter and enjoy all areas of the city; and (5) the right to all social and cultural facilities and venues. Interestingly, all these rights are already recognized for young people through ICESCR, ICCPR, the Convention

f *Consistent with the “rights-based” approach endorsed in the main report, the five-city survey reflects local young people’s perceptions of the extent to which the “right to the city” is effective in its four dimensions – political, economic, social and cultural – in their respective day-to-day environments.”*

on the Rights of the Child, and International Labour Organization (ILO) Conventions.

In the UN-Habitat Work Programme 2014-2015, it is planned to support the design and implementation of economic empowerment models for young men and women based on UN-Habitat’s experience of implementing “One Stop Centers” and managing the “Urban Youth Fund projects”. It is further planned to increase youths’ access to entrepreneurship, livelihoods and incomes, and developing model programmes derived from best practices to build the capacity of local authorities and youth non- governmental organizations to mainstream these into their programmes and services.

5.11 The Rights of Migrant Workers and Members of Their Families

5.11.1 The Meaning of the Rights of Migrant Workers and Members of Their Families

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families came into force in July 2003. Its primary objective is to protect migrant workers and their families, a particularly vulnerable population, from exploitation and the violation of their human rights. The Convention defines a ‘migrant worker’ as a person who is engaged or has been engaged in a remunerated activity in a country of which he or she is not a national.

The Convention seeks to establish minimum standards that States parties should apply to migrant workers and members of their families, irrespective of their



migratory status. The rationale behind the recognition of rights of undocumented migrant workers is also reaffirmed in the preamble, in which the States parties consider that irregular migrants are frequently exploited and face serious human rights violations. As such, appropriate action should be encouraged to prevent and eliminate clandestine movements and trafficking in migrant workers while at the same time ensuring the protection of their human rights.

The Convention is not proposing any new human rights for migrant workers, but rather emphasizes that migrant workers have the same rights, which are enshrined in the Universal Declaration of Human Rights and elaborated in the international human rights treaties ratified by the country of employment.

According to the Convention, migrant workers shall enjoy equality of treatment with nationals of the State of employment in relation to the access to, *inter alia*, “housing, including social housing schemes, and protection against exploitation in respect of rents.”

5.11.2 Practical Implications for UN-Habitat: Planning for Sustainable Cities and the Realization of the Rights of Migrant Workers and Members of Their Families

Migrant workers often end up living in precarious and unsafe conditions in cities and urban areas. Employers may oblige migrant domestic workers or factory workers to live at their place of work. Many will end up living in overcrowded dormitories, sleeping in shifts and without access to adequate sanitation. Domestic workers can be compelled to sleep in poorly ventilated rooms, storerooms or common living areas with no regard for their dignity, privacy or personal security.

Their lack of legal status, and the criminalization of irregular migration in many countries, means that most will be unable or unwilling to challenge discriminatory or otherwise abusive rental practices and seek legal remedies. National housing strategies rarely include migrants, and will practically never include irregular migrants.

The Convention, however, states clearly that:

In UN-Habitat, advancement of the rights of the migrant workers is related to designing of cities and settlements that work for all, including those, who arrive to the cities seeking labor.



Migrant workers shall enjoy equality of treatment with nationals of the State of employment in relation to [...] (d) access to housing, including social housing schemes, and protection against exploitation in respect of rents.” (art. 43.1)

The work of UN-Habitat focuses on providing advisory and technical services to partner national and local governments towards their planning for *sustainable* cities with the view of advancing sustainable human settlements for *all*. This requires addressing of current urbanization challenges such as urban sprawl, poverty, inequality, pollution, congestion as well as urban biodiversity, urban mobility and energy. The control of these challenges all affects the rights of migrant workers and members of their families. UN-Habitat recommends that the following *Five Principles* should guide the planning of sustainable urbanization: (1) adequate street density; (2) high density; (3) mixed land use; (4) social mix; and (5) limited land use specialization. The Table below shows some of the impacts on the progressive realization of the rights of migrant workers and members of their families by the adoption of each of the five principles, together with some suggested examples of desirable actions are given.

5.12 The Right of Persons with Disabilities

5.12.1 The Meaning of the Rights of Persons with Disabilities

The *Convention on the Rights of Persons with Disabilities* was adopted, and came into force in May 2008. It is the newest Convention and perhaps therefore the best formulated Convention in international human rights law.⁷⁷

PRINCIPLE	IMPACT ON THE REALIZATION OF THE RIGHT OF MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES	EXAMPLES OF DESIRABLE ACTIONS
1. Adequate street density and efficient street network	Improved accessibility to public housing	Inform all migrant workers about the availability of public housing (FA 4 and 5)
2. High density	Increased availability and accessibility of primary schools	Register all children of migrant families for primary education (FA 4)
3. Mixed land use	Improved availability and accessibility of job opportunities for women	Legislate against discrimination of women in recruitments to full-time or part-time jobs. (FA 1)
4. Social mix	Increased social interaction will reduce discrimination and increase cultural acceptability in all social services.	Establish neighborhood groups to help in the provision of social services reflecting different cultural values (FA 4)
5. Limited land use specialization	Increased economic diversity	Establish job finding/recruitment offices in the neighborhood (FA 3 and 4)

The Convention is a human rights instrument with an explicit social development dimension. It adopts a broad categorization of persons with disabilities and reaffirms that all persons with all types of disabilities must enjoy all human rights and fundamental freedoms. It clarifies and qualifies how all categories of rights apply to persons with disabilities and identifies areas where adaptations have to be made for persons with disabilities to effectively exercise their rights and areas where their rights have been violated, and where protection of rights must be reinforced.

According to the Convention, ratifying countries have an obligation to:

“Recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right.” (Art. 28.1)

It is important to understand the difference between ‘disability’ and ‘handicap’. The latter term continues to be incorrectly used for ‘persons with disabilities’. A ‘handicap’ is a hindrance for a person with disability, for example a staircase instead of an elevator. It is further advised to use the term ‘persons with disabilities’ instead of the shorter ‘disabled persons’.

The Convention clarifies what its main purpose is:

“To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas.” (Art. 91)

The rights of people with disabilities include an obligation to fully recognize the equal right of all persons with disabilities to live in the community, with choices equal to others. This includes (a) persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement; (b) persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community.



5.12.2 Practical Implications for UN-Habitat: Planning for Sustainable Cities and the Realization of the Rights of Persons with Disabilities

Persons with disabilities remain the most marginalized people in cities. Housing, housing-related facilities and neighborhoods are traditionally designed for people without disabilities. The frequent exclusion and marginalization of persons with disabilities often mean that they are rarely consulted when new housing structures or neighborhoods are developed or slums are upgraded. They are also vulnerable to associated violations of their rights. For instance, the lack of adequate sanitation facilities in informal settlements can pose severe challenges for them. Security of tenure poses another challenge for persons with disabilities, in particular those with an intellectual or psychosocial disability. The frequent lack of recognition of their legal capacity, often coupled with requirements for applications in person, means that persons with such disabilities are rarely able to enter into any type of formal housing contract.

Generally, when stigmatization remains unaddressed, and social or community services are unavailable, persons with disabilities continue to face discrimination when seeking housing, or more general challenges in securing

the resources necessary for obtaining adequate housing. Such challenges inevitably render them more vulnerable to forced evictions, homelessness and inadequate housing conditions.

General comment No. 4 states:

“Persons with disabilities must be accorded full and sustainable access to adequate housing resources, and that housing law and policy should take into account their special needs”.

Sustainable urban planning address current urbanization challenges such as urban sprawl, poverty, inequality, pollution, congestion as well as urban biodiversity, urban mobility and energy. The control of these challenges all affects the rights of persons with disabilities. UN-Habitat recommends that the following *Five Principles* should guide the planning of sustainable urbanization: (1) adequate street density; (2) high density; (3) mixed land use; (4) social mix; and (5) limited land use specialization. The Table below shows some of the impacts on the progressive realization of the rights of persons with disabilities by the adoption of each of the five principles, together with some suggested examples of desirable actions are provided,

PRINCIPLE	IMPACT ON THE REALIZATION OF THE RIGHT OF PERSONS WITH DISABILITIES	EXAMPLES OF DESIRABLE ACTIONS
1. Adequate street density and efficient street network	Improved mobility for people with physical disabilities	Ensure separate lanes free of cyclists for walking and the use of wheel chair (FA 1)
2. High density	Increased availability and accessibility of health services	Ensure safe street crossings for wheel chair bound persons (FA 1)
3. Mixed land use	Increased availability of local jobs	Monitor the employment of people with physical disabilities (FA 1 and 4)
4. Social mix	Improved respect for people with disabilities	Legislate that new construction of housing must include a certain percent of flats which are friendly to people with disabilities (FA 1 and 5)
5. Limited land use specialization	Increased availability of a hospital in the neighborhood	Facilitate travel of people with disabilities to visit the hospital (FA 1, 4 and 5)



CHAPTER

06

Maasai women make, sell and display their bead work in Kajiado, Kenya. © Georgina Goodwin/World Bank

MONITORING OF HUMAN RIGHTS

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6.1 Monitoring by the Human Rights Committees

The Concluding Observations of the *International Treaty Body Monitoring System* play an increasingly important role in the country level work to accelerate the realization of human rights. However, as the number of international human rights treaties has increased over the years, many governments have problems to issue in their regular monitoring reports.

6.2 Human Right-Based Monitoring of Policies and Programmes

6.2.1 Introduction

An important implication of a ‘human rights perspective’ is the need to give equal attention to the achievement of desirable outcomes *and* to the quality of process leading to these outcomes (chapter 3.2.1). The *UN Common Understanding of a Human Rights-Based Approach* recommends that, “Programmes should monitor and evaluate both outcomes and processes guided by human rights standards and principles” (chapter 3.2.2). However, most current development practice is usually focusing on the monitoring of desirable outcomes only, and seldom pays any significant attention to the quality of the processes. The equal attention to monitoring both outcome *and* process is a fundamental premise in human rights monitoring.

6.2.2 Human Rights Monitoring Indicators

During the last decade, governments, multilateral and bilateral development agencies, activists, researchers and statisticians have tried to identify and define indicators for monitoring the progressive realization of human rights.

There are several reasons for identifying and using indicators. The principal reason is that an indicator “provides a way of measuring and presenting information that reveals whether standards are being met”,⁷⁸ which means that information systems work more effectively and efficiently. Therefore, the question is what the reasons are for developing, establishing and using information systems. The main reason is to improve decisions about policies, strategies and programmes. In addition, if the indicators are generic or universal, comparisons among different countries can be made.

Thus, *information is only useful if it is used for improved decision making*. Hence, it is important to know who receives the information and the extent to which the receiver of the information has the capacity (e.g. authority and resources) to decide. An information management system must therefore be clearly linked or integrated with the appropriate decision making systems.

According to the OHCHR, monitoring in a human rights approach has two major objectives: (1) to help identify, on an ongoing basis, the areas on which duty-bearers may

need to concentrate, or to which it may need to redirect its attention if its targets for the realization of human rights are to be attained in the most expeditious and effective manner; and (2) to enable a right-holder to hold the duty-bearer accountable for its failure to discharge its duties.⁷⁹

In a broader sense, the purpose for using indicators in monitoring include: (1) assessing the progressive realization of specific human rights; (2) identifying the degree to which duty-bearers have met their duties, in particular the extent to which governments have met their obligations, in order to exercise accountability; (3) identifying unintended human rights impact of laws, policies and programmes; (4) improving laws, policies, strategies and programmes; and (5) exposing issues that have been neglected or silenced.

6.2.3 Criteria for Indicators

The most important criteria for monitoring indicators are the following:

- **Reliability:** Different users at the same or at different times should get the same result.
- **Validity:** The indicator should measure what it intends to measure.
- **Consistency:** The indicator should be consistent over time.
- **Possibility to disaggregate:** It should be possible to disaggregate the data according to, for example sex, ethnic group, geographic area and income group.
- **Policy relevant:** The indicator should measure issues that can be influenced, directly or indirectly, by policy action.
- **Affordability:** The indicator should be sustainably affordable.
- **Realistic:** The indicator should be based on data that is available and accessible.

Accountability is an important human rights principle that depends on, but goes beyond monitoring. An accountability mechanism provides claim (right)-holders with information to judge how well duty-bearers meet their duties in relation to a specific right. Duty-bearers, however, cannot be held accountable if they lack capacity to act.

6.2.4 A Human Rights-Based Monitoring System

The OHCHR has for several years worked on a conceptual and methodological framework for developing quantitative indicators for monitoring compliance by States parties with international human rights treaties. This work recently resulted in the most detailed and authoritative guidelines, *Human Rights Indicators: A Guide to Measurement and Implementation*.⁸⁰

To assess human rights, a conceptual framework with the following types of indicators would be required: (1) *structural indicators* (ratification, institutions, laws and policies); (2) *process indicators* (policy instruments, including public programmes and specific interventions); and (3) *outcome indicators* (status of the realization of human rights in a given context).

The identification and use of these indicators requires a translation of human rights standards into a set of *human rights attributes*, which will facilitate the final definition of *human rights indicators*.

As a starting point, it is important that the narrative on the legal standard of a human right is transcribed into a limited number of characteristics or *attributes* of that right. By identifying the attributes of a right, the process of selecting and developing suitable indicators or clusters of indicators is facilitated as one arrives at a categorization that is clear, concrete and, perhaps more “tangible”.



Indeed, the notion of attributes of a right helps in making the content of a right concrete and makes explicit the link between identified indicators of a right on the one hand and the normative standards of that right on the other.

Three considerations guide the identification of the attributes of a human right:

- To the extent feasible, the attributes should be based on an exhaustive reading of the standard, starting with the provisions in the core international human rights treaties, so that no part of the standard is overlooked either in the choice of the attributes of a particular human right or in identifying the indicators for that right;
- To the extent feasible, the attributes of the human right should collectively reflect the essence of its normative content, be few in number and their articulation should

help the subsequent identification of the relevant indicators; and

- To the extent feasible, the attributes' scope should not overlap. In other words, the selected attributes should be mutually exclusive.

In relation to the human rights for which illustrative indicators have been identified, on average about four attributes are able to capture reasonably well the essence of their normative content. For example for the *right to health*, five attributes, namely, “sexual and reproductive health”, “child mortality and health care”, “natural and occupational environment”, “prevention, treatment and control of diseases”, and “accessibility to health facilities and essential medicines”, have been suggested. These proposed attributes were identified from reading a large number of relevant human rights treaties.

TABLE: ILLUSTRATIVE INDICATORS ON THE RIGHT TO ADEQUATE HOUSING (UNIVERSAL DECLARATION OF HUMAN RIGHTS, ART. 25)

	Habitability	Accessibility to services	Housing affordability	Security of tenure
Structural	<ul style="list-style-type: none"> International human rights treaties relevant to the right to adequate housing ratified by the State Date of entry into force and coverage of the right to adequate housing in the constitution or other forms of superior law Date of entry into force and coverage of domestic laws for implementing the right to adequate housing Type of accreditation of national human rights institutions by the rules of procedure of the International Coordinating Committee of National Institutions Number of registered and/or active NGOs (per 100,000 persons) involved in the promotion and protection of the right to adequate housing 	<ul style="list-style-type: none"> Time frame and coverage of national housing policy or strategy for the progressive implementation of measures, including special measures for target groups, for the right to adequate housing at different levels of government Time frame and coverage of national policy on rehabilitation, resettlement and management of natural disasters 	<ul style="list-style-type: none"> Date of entry into force and coverage of legislation on security of tenure, equal inheritance and protection against forced eviction 	
Process	<ul style="list-style-type: none"> Proportion of received complaints on the right to adequate housing investigated and adjudicated by the national human rights institution, human rights ombudsperson or other mechanisms and the proportion of these responded effectively to by the Government Number of and total public expenditures on housing reconstruction and rehabilitation by evicted/displaced persons during the reporting period Net official development assistance for housing (including land and basic services) received or provided as proportion of public expenditure on housing or gross national income* Proportion of targeted residents reporting satisfaction with how involved they feel in decision-making affecting their enjoyment of the right to adequate housing 	<ul style="list-style-type: none"> Share of public expenditure on provision and maintenance of sanitation, water supply, electricity and other services of homes Proportion of targeted population that was extended sustainable access to an improved water source,* improved sanitation,* electricity and waste disposal in the reporting period 	<ul style="list-style-type: none"> Proportion of households that receive public housing assistance, including those living in subsidized rental and subsidized owner-occupied housing Proportion of targeted households living in squatter settlements rehabilitated in the reporting period Proportion of homeless population that used public or community-based shelters in the reporting period 	<ul style="list-style-type: none"> Average time taken to settle disputes related to housing and land rights in courts and tribunals Number/proportion of legal appeals aimed at preventing planned evictions or demolitions ordered by courts in the reporting period Number/proportion of legal procedures seeking compensation following evictions in the reporting period, by result after adjudication Number and proportion of displaced or evicted persons rehabilitated or resettled in the reporting period
Outcome	<ul style="list-style-type: none"> Proportion of population with sufficient living space (persons per room or rooms per household) or average number of persons per room among target households Proportion of households living in permanent structure in compliance with building codes and by-laws Proportion of households living in or near hazardous conditions 	<ul style="list-style-type: none"> Proportion of urban population living in slums* Proportion of population using an improved drinking water (public / private) source, sanitation facility, electricity and waste disposal Proportion of household budget of target population groups spent on water supply, sanitation, electricity and waste disposal 	<ul style="list-style-type: none"> Proportion of households spending more than "X" per cent of their monthly income or expenditure on housing or average rent of bottom three income deciles as a proportion of the top three Annual average of homeless persons per 100,000 population ("X" being defined normatively for the national context) 	<ul style="list-style-type: none"> Reported cases of "forced evictions" (e.g., as reported to the special procedures), in the reporting period Proportion of households with legally enforceable, contractual, statutory or other protection providing security of tenure or proportion of households with access to secure tenure Proportion of women with title to land or property

All indicators should be disaggregated by prohibited grounds of discrimination, as applicable and reflected in metadata sheets

Source: OHCHR 2012 http://www.ohchr.org/Documents/Issues/HRIndicators/AGuideMeasurementImplementationChapterIV_en.pdf





CHAPTER

07

Children breaking bricks for a living. © IRIN

BACKGROUND:
UNITED NATIONS
AND HUMAN RIGHTS

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7.1 The UN Charter and the Bill of Rights

7.1.1 United Nations and its Charter

The League of Nations was established immediately after the end of World War I in the Peace Treaty of Versailles (1919) with the main aim to hinder and pre-empt another world war. This was the first universal international organization and the precursor of the United Nations.

Today's understanding of human rights arose with the birth of the United Nations, which established universal human rights principles and standards.⁸¹ The UN Charter outlines its three pillars: Peace and security, development and human rights. Since its birth, the United Nations has promoted human rights, as exemplified by the following statement from the Charter:

“We the peoples of the United Nations, determined to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in equal rights of men and women and of nations large and small...”

7.1.2 Universal Declaration of Human Rights (UDHR)

The *Universal Declaration of Human Rights* (UDHR) was adopted in 1948.⁸² The Declaration recognizes human rights as the most important of the four ‘pillars’ in the UN Charter, stating:

“The recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world.”

Since then, the United Nations has served as the institutional framework upon which many other human rights instruments have been developed. The UDHR has acquired the status of a universally recognized norm of customary international law that binds all member states of the United Nations.

In spite of the fact that human rights constitute the very foundation of the United Nations, the organisation did not take a lead in promoting human rights during the first almost 50 years of its existence. The major reason for this was the very different positions held by member states during the Cold War, after which a dramatic change took place. The fact that this change took place so immediately after the end of the Cold War was also the result of the commitment and work of UN Secretary-General Kofi Annan. In 1997 the Secretary-General launched a *Programme of UN Reform* with a clear emphasis on human rights.⁸³

7.1.3 The Two International Covenants (ICCPR and ICESCR)

The International Covenant on Civil and Political Rights (ICCPRs) and the International Covenant of Economic, Social and Cultural Rights (ICESCR) were both adopted by the General Assembly in 1966 and entered into force in 1976.⁸⁴

The ICCPR includes right to Life; freedom from slavery, servitude, forced or compulsory labour; freedom from torture; right to a fair trial; freedom of assembly and association; freedom of thought, conscience and religion; freedom of expression; right to an effective remedy; and the right to vote and be elected.

The question of which rights exactly fall into the category of economic, social and cultural rights (ESCR) has not always received a uniform answer. Generally, the rights that are considered to belong to this group are the ones set out in the ICESCR. These include: labour rights (right to work and to just and favorable conditions at work, right to join trade unions, etc.); right to health; right to education; right to family life; right to an adequate standard of living; right to social security; right to participate in cultural life; right to partake of the benefits of scientific progress; minority rights, and the right to self-determination. More recently, the right to water and sanitation has been recognized as an ESCR.

“All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis.”⁸⁵

All human rights may be associated with positive and negative obligations; to respect, protect and fulfill; the realization of each may be expensive or free of charge; both may have obligations of conduct and obligations of result; and both have duties of immediate effect or duties of progressive realization.

The UDHR, ICCPR, and ICESCR as the foundational instruments of the modern human rights regime, are sometimes referred to as the **Bill of Rights**. Since the adoption of the UDHR, several conventions have been adopted by the UN General Assembly and ratified by member states. Most of them deal with the rights of particularly vulnerable groups in society, such as children (CRC), women (CEDAW), migrant workers (ICRMW), persons with disabilities (CRPD), while a few other focus on unacceptable actions, including racial discrimination (ICERD), torture (CAT) and enforced disappearance.

Many international human rights treaties are followed by *Optional Protocols*, which may either provide for procedures with regard to the treaty or address a substantive area related to the treaty. Optional Protocols to human rights treaties are treaties in their own right, and are open to

signature, ratification or accession by countries that are party to the main treaty.

The Optional Protocol to the ICESCR was adopted in December 2008. This Optional Protocol introduced, for the first time, a complaints procedure for ESCR. It does not include any new rights, but provides a mechanism that makes it possible for individuals or groups to submit a complaint to the CESCR in regard to violations of their economic, social and cultural rights by a State party. The Optional Protocol includes both a *communication procedure* and an *inquiry procedure*. The former is a mechanism contained in several international conventions that gives the opportunity for an individual or group of individuals to bring a complaint, alleging violations of certain treaty rights to the body of experts set up by the treaty for quasi-judicial adjudication. The latter is a mechanism that allows the CESCR (described in Chapter 7.1) to investigate, based on reliable information received or on its own initiative, situations that appear to constitute a consistent pattern of gross or systematic violations of economic, social and cultural rights within a State party.

7.1.4 The Justiciability of Economic, Social and Cultural Rights

Justiciability of rights means the ability to litigate – to bring claims before courts. The litigation of social and economic issues is not a new phenomenon. Courts and other tribunals commonly address claims ranging from labour rights to housing and health rights. The reliance on human rights norms themselves is new; invoking the rights directly in order to hold states and other actors to their obligations to respect, protect and fulfill economic, social and cultural rights. The experience of some countries and jurisdictions clearly indicates that this is possible.⁸⁶

The integration of economic and social rights in national laws and policies has taken different forms in different countries and during different times. These include: (1) inclusion of ESCR in national constitutions; (2) amending and changing old laws and introducing new laws that have included and codified ESCR; (3) changing practices in



court litigation; and (4) activism and public litigation.

A Human Rights-Based analysis, in which human rights are seen as specific relationships between right-holders and duty-bearers with correlative duties, will facilitate the identification and articulation of specific litigation opportunities. In addition, such an analysis can strengthen social mobilization to demand increased justiciability of economic, social and cultural rights.

7.2 Other Human Rights Treaties

7.2.1 Core International Human Rights Treaties

There are nine core international human rights treaties, with the two Covenants included. Each of these treaties has established a committee of experts to monitor the implementation of the treaty provisions by its States' parties (See Chapter 4.3.3 for details). As mentioned earlier (Chapter 4.1.3), some of the treaties are supplemented by Optional Protocols dealing with specific concerns.

The nine treaties are the product of 60 years of elaboration

since the adoption of the Universal Declaration of Human Rights in 1948. Each treaty defines the substantive rights and freedoms in the area addressed by that document. The treaties are shown in the table below indicating their monitoring bodies and number of ratifying states. All United Nations Treaties can be found on <http://www.un.org>.

Additionally, the Office of the High Commissioner for Human Rights (OHCHR) regularly issues informative *Fact Sheets* analyzing and explaining specific issues or areas of human rights, including *the Human Rights of Housing* (No. 21) and *Forced Evictions and Human Rights* (No. 25).

7.2.2 Ratification, Reservation and Derogation

Countries become bound to a particular treaty through *ratification* or *accession*. Either of these two acts signals a country's concrete willingness to undertake the legal rights and obligations contained in a treaty. A country that has ratified or acceded to a treaty is often referred to as being a 'State party' to the treaty. *Signing* of a treaty by a country

INSTRUMENT	DATE	MONITORING BODY	COUNTRIES RATIFIED (JUNE 2013)
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)	Dec 1965	CERD	175
International Covenant on Civil and Political Rights (ICCPR)	Dec 1966	HRC	167
International Covenant on Economic, Social and Cultural Rights (ICESCR)	Dec 1966	CESCR	160
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	Dec 1979	CEDAW	187
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	Dec 1984	CAT	153
Convention on the Rights of the Child	Nov 1989	CRC	193
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)	Dec 1990	CMW	46
International Convention for the Protection of All Persons from Enforced Disappearance (ICCPED)	Dec 2006	CED	40
Convention on the Rights of Persons with Disabilities (ICRPD)	Dec 2006	CRPD	127

is an indication that the country intends to examine the treaty to determine its position towards it before accession. While a signature does not bind a country to a treaty, it does result in an obligation to refrain from acts, which might defeat the object and purpose of the treaty.

Reservations are statements made by a State party at the end of a Convention, which limit some of their obligations under the terms of the Convention. Sometimes these reservations reduce the ‘power’ of the treaty significantly, as has often been the case with CEDAW.

Under certain special circumstances, *derogations* of certain rights are allowed, i.e. allowing States parties to temporarily adjust their obligations under the treaty, for example under times of public emergency threatening the life of the nation. Such emergencies include, but are not limited to armed conflicts, civil and violent unrest and environmental and natural disasters.

Each treaty provides a list of rights that cannot be

derogated from. Although the list varies among the treaties, the following are included in all treaties as far as civil and political rights are concerned: the right to life, the prohibition of slavery, prohibition of torture or to cruel, inhuman or degrading treatment or punishment and prohibition of retroactive penal measures, and non-discrimination. None of the rights in the Convention on the Rights of the Child is derogable at any time.

7.2.3 Core Obligations

The CESCR introduced early the notion about the need to define *minimum core obligations*. In its General Comment No. 3 (1990), the rationale for this was to ensure that the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party. The issue is explained as follows:

“A State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, prima facie, failing to discharge its obligations



Kibera slum dwellers walking home from work along a railwayline. © UN-Habitat



under the Covenant. If the Covenant were to be read in such a way as not to establish such a minimum core obligation, it would be largely deprived of its raison d'être.” (Article 10)

Core obligations are *non-derogable*, and exist under all circumstances, including during situations of conflict, emergencies and natural disasters. They require States to ensure the satisfaction of the minimum essential levels of each human right.

Core obligations may be summarized into three major categories: (1) ensuring *nondiscrimination*; (2) ensuring *equal access* for women and men to goods, services and resources implicit in economic, social and cultural rights; and (3) adopting and implementing *national strategies and plans of action* to realize specific economic, social and cultural rights. Core obligations, thus, require national development planning to ensure nondiscrimination in its processes and outcomes; adopt measures, programmes and projects that ensure equal access; and adopt and implement national strategies and plans of action for every economic, social and cultural right.

7.2.4 Progressive Realization of Human Rights

While civil and political rights are seen as rights that must be realized without any delay, economic, social and cultural rights may be realized ‘progressively’ depending on the availability of resources. The issue has been vigorously debated since it was first introduced in ICESCR, which states:

“Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.” (Article 2A)

The 1990 CESCR issued General Comment No. 3 (1990) on *The Nature of States parties’ Obligations*, explaining the

meaning to the key concepts.⁸⁷ These have been underlined in the quote above and are elaborated below:

To take steps: While full realization of the relevant rights may be achieved progressively, steps towards that goal must be taken within a reasonably short time after the Covenant’s entry into force for the State concerned.

Maximum use of available resources: Maximum available resources must be spent to ensure the progressive realization of human rights and if States are not spending maximum available resources then they are failing to satisfy their commitment. Maximum available resources can include debt financing, progressive taxation, innovative forms of financing, development assistance etc.

Progressive realization: There is an obligation to “move as expeditiously and effectively” as possible towards enjoyment of ESCR. Progressive realization implies that retrogression in the enjoyment of rights is prohibited or at the very least must be carefully justified after the exhaustion of all possible alternatives.

All appropriate means, including particularly the adoption of legislative measures: This should not only be interpreted as legislation, but include judicial remedies with respect to the justiciability of rights.

7.2.5 Customary International Law

The International Court of Justice Statute defines customary international law as “evidence of a general practice accepted as law”. This is generally determined through two factors, first, the general practice of states, and second, what states have accepted as law.⁸⁸ Another definition of customary international law says that it “... consists of rules of law derived from the consistent conduct of States acting out of the belief that the law required them to act that way.”⁸⁹

States are bound by customary international law regardless of whether the states have codified these laws domestically or through treaties. The scope and content

of the customary international law of human rights is (as all customary international law) an evolving concept. A number of the provisions of the UDHR are recognized as having achieved the status of customary international law such as the prohibition on torture, genocide and slavery, as well as the principle of non- discrimination.

7.2.6 International Human Rights Declarations

International Human Rights Declarations are different from International Human Rights Treaties in the sense that the former are not legally binding. Declarations are adopted, while Treaties are ratified. Some of the Declarations, most related to the work of UN-Habitat, are listed below:

- United Nations Declaration on the Rights of Indigenous Peoples (2006)
- Declaration on Cities and Other Human Settlements in the New millennium (2001)
- United Nations Millennium Declaration (2000)
- Declaration on the Elimination of Violence against Women (1993)
- Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992)
- Declaration on the Right to Development (1986)
- Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981)
- Declaration on the Elimination of Discrimination against Women (1967)

7.3 The International Human Rights Machinery

7.3.1 Introduction

The United Nations human rights machinery operates through two different types of mechanisms: (1) bodies that are based on the UN Charter (*charter-based bodies*); and (2) bodies that are based on UN human rights treaties (*treaty-based bodies*).

The charter-based bodies are created as a result of the UN Charter, of which the *Human Rights Council* plays a prominent role. The *Universal Periodic Review* and the *Special Procedures* are two of the most important functions of the Human Rights Council.

The treaty-based bodies include the *Human Rights Treaty Bodies*, composed of independent experts who monitor the implementation of the nine core human rights treaties. The Treaty Bodies are responsible for preparing both country specific *Concluding Observations* and *General Comments*. The set up is summarised below.⁹⁰

7.3.2 The Human Rights Council and Other Charter-Based Bodies

The *Human Rights Council* is an inter-governmental body within the United Nations system. The Council is a separate entity from the Office of the High Commissioner for Human Rights (OHCHR), although the latter serves as the Secretariat to the Council. The Council is responsible for strengthening the promotion and protection of human rights in the world and for addressing human

CHARTER-BASED BODIES	TREATY-BASED BODIES
HUMAN RIGHTS COUNCIL (Member States)	COMMITTEES
<ul style="list-style-type: none"> • Reports for Universal Periodic Review (UPR) • Recommendations of Special Procedures 	<ul style="list-style-type: none"> • General Comments • State reports and Concluding Observations • Recommendations to States on individual complaints

SITA group working on their plastic bags, bottles and used carton boxes recycling workshop in Dandora dumping site, Nairobi, Kenya. © UN-Habitat



rights violations and makes recommendations for how to act. The Council consists of 47 United Nations Member States, elected by the UN General Assembly.

The Universal Periodic Review (UPR) is a unique process which involves a review of the human rights records of all UN Member States. The UPR is a State-driven process, under the auspices of the Human Rights Council, which provides the opportunity for each State to declare what actions they have taken to improve the human rights situations in their countries and to fulfil their human rights obligations. As one of the main features of the Council, the UPR is designed to ensure equal treatment for every country when their human rights situations are assessed. The UPR was created through the UN General Assembly on 15 March 2006 by resolution 60/251, which established the Human Rights Council itself. It is a cooperative process which, by October 2011, has reviewed the human rights records of all 193 UN Member States. Currently, no other universal mechanism of this kind exists. The UPR is one of the key elements of the Council which reminds States of their responsibility to fully respect and implement all human rights and fundamental freedoms. The ultimate aim of this mechanism is to improve the human rights situation in all countries and address human rights violations wherever they occur.

The UN Special Procedures refer to mechanisms which are mandated to investigate situations in specific countries or territories (country mandates), or on major phenomena of human rights violations worldwide (thematic mandates). Special Procedures can be either individuals (called “Special Rapporteurs”, “Special Representatives” or “Independent Experts”) or a working group composed of five members who are leading experts in a particular area of human rights. Special Procedures mandate holders are independent; they do not represent any particular country or region and are not UN staff members.⁹¹

7.3.3 The UN Treaty-Based Bodies

Each international human rights treaty is associated with a *Treaty Body Committee*. These committees consist of

independent experts nominated and elected to monitor implementation of the core international human rights treaties.

When a country ratifies one of the international human rights treaties, it assumes a legal obligation to implement the rights recognized in that treaty. Each State party has an additional obligation to submit regular reports to the monitoring committee set up under that treaty on how the rights are being progressively realized. To meet their reporting obligation, States must submit an initial report usually one year after joining and then periodically in accordance with the provisions of the treaty (usually every four or five years). In addition to the government report, the treaty bodies may receive information on a country’s human rights situation from other sources, including non-governmental organizations, UN agencies, other intergovernmental organizations, academic institutions and the press. In light of all the information available, the Committee examines the report together with government representatives. Based on this dialogue, the Committee publishes its concerns and recommendations, referred to as **Concluding Observations**.

In addition to the reporting procedure, some of the treaty bodies may perform additional monitoring functions through three other mechanisms: (1) the inquiry procedure; (2) the examination of inter-state complaint; and (3) the examination of individual complaints. Five of the Committees, Human Rights Committee (HRC), Committee on Economic, Social and Cultural Rights (CESCR), Committee on the Elimination of Racial Discrimination (CERD), Committee Against Torture (CAT) and Committee on the Elimination of Discrimination Against Women (CEDAW) can, under certain conditions, receive petitions from individuals who claim that their rights under the treaties have been violated.

The treaty bodies also issue **General Comments** (or *General Recommendations* by CEDAW and CERD) based on their interpretation of key issues in international



human rights treaties that do not seem to be adequately clear. General Comments offer good examples of how the rights set forth in their respective treaties are interpreted by the body mandated to monitor their implementation. General Comment No. 3 on *The Nature of States parties' obligations*, one of the most important Comments, was discussed in Chapter 4.2.4. General Comments addressing issues relevant to the work of UN Habitat include General Comment No. 7: The Right to Adequate Housing (1991) and General Comment No. 15: the Right to Water (2003).

7.3.4 The UNDG Human Rights Mainstreaming Mechanism (UNDG-HRM)

During 2004-2008, the UNDP/OHCHR Action 2 Global Programme on Human Rights Strengthening contributed significantly to strengthen the capacity of many UN agencies to develop a HRBA. In 2009, the UNDG Human Rights Mainstreaming Mechanism (UNDG-HRM) was established as a successor to the Action 2 Programme. Its objective is:

“To further institutionalize human rights mainstreaming efforts in the UN development system and to strengthen system-wide coherence, collaboration and support for Resident Coordinators and UNCTs on human rights mainstreaming.”

The Operational Plan for 2011-2013⁹² has the following objectives: (1) promote a coordinated and coherent UN system-wide approach towards the integration of human rights principles and international standards into UN operational activities; (2) strengthening support to Resident Coordinators and United Nation Country Team (UNCT) agency leadership on human rights; (3) developing a coherent approach through enhanced collaboration among UN agencies to support strengthening of national human rights protection systems at government's request; and (4) integrating human rights into the overall UNDG advocacy on development agenda. UN-Habitat is an active member of the UNDG-HRM.

The need for early action, and the crucial role of responding early to human rights violations, is at the heart of the Secretary-General's 2013 “Rights up Front” initiative.

“Rights up Front” is framed in terms of the protection of human rights, but it also includes the task of protection of civilians. In this context, the importance of preventive efforts is consistently emphasized. Another central aspect of the Rights up Front Action Plan is better organizational preparedness by the UN. The Secretariat, Funds and Programmes are to ensure that the UN System, both on the ground and at HQ, is appropriately prepared – early on – to deal with evolving crisis situations.



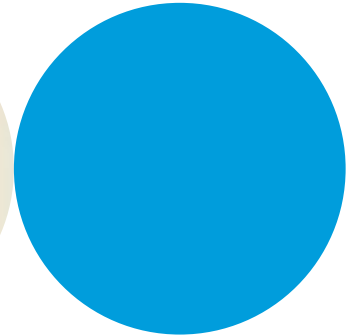
CHAPTER

08

Equality is one of the human rights principles.
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THE IMPORTANT ROLE OF
EQUALITY IN A HUMAN RIGHTS-BASED
APPROACH TO DEVELOPMENT

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8.1 Background

Equality and equity are important concepts used in describing societies; unfortunately, they are often used interchangeably, without the due recognition of their important differences. Equality has both ancient and modern philosophical origins and is now a recognized *human rights principle* that is defined as ‘the same’, although there are multiple accepted forms of ‘equality’. Equity is a *justice concept* meaning ‘fairness’, originally as a means of addressing unfairness that could result from the formal application of law.

8.2 Equality and Equity

Equity is the ‘spirit and habit of fairness, justness, and right dealing’.⁹³ In the real world this means that equity involves ensuring that everyone has access to the resources, opportunities, power and responsibility they need to reach a fair outcome.⁹⁴ The challenge with equity is that determining what is fair and just as an outcome can be subjective and is open to manipulation, particularly given the disparities among countries. This, combined with the desire to promote a set of universal rights, has led the human rights community to prefer the concept of equality, which they apply in the sense of ‘substantive equality’.

Equality is a recognized *human rights principle* and is defined as ‘the same’. It refers to a qualitative relationship between individuals or groups in that they are not identical but are the same in some particular respect. This requires an identification of the individuals or groups to be com-

pared and of the attribute regarding which they should be compared. It is also important to note that there are several principles within the general term ‘equality’ with that adopted by the human rights community being a form that derives from the European Enlightenment: ‘substantive’ equality.⁹⁵ This rests on the understanding that every person deserves the same dignity or respect and that they should, therefore, be alike in important respects and that this should be reflected in how society allocates rights, responsibilities and burdens. In practical terms, this means that all individuals and groups should have the same human rights but that differential treatment may be used to help overcome different situations.

A failure to recognize substantive equality leads to the ancient debate over equality of opportunity versus equality of result. One position is that the State should only ensure *equal opportunities*, because if people have equal opportunities, what they make of those opportunities is their responsibility. If they end up worse off, the State should not intervene to help them. Equality of opportunity is seen as only requiring the elimination of barriers to advancement that are in some sense arbitrary. Equality of opportunity means that a law must not unfairly disadvantage anyone in their opportunity to seek a variety of social goods such as education, employment, housing etc. Equality of opportunity is believed to result automatically into equality of results. The political position ‘that our society should guarantee equality of opportunity, but not equality of result’ is increasingly heard in the current development debate.⁹⁶ If individuals lack the capacity to act independently and to make their own free choices (i.e. lack agency); it is their own fault.





Annex

HUMAN RIGHTS REFERRED TO IN THE HABITAT AGENDA⁹⁷

Para. 4. As to the second theme, sustainable development of human settlements combines economic development, social development and environmental protection, with full respect for all human rights and fundamental freedoms, including the right to development, and offers a means of achieving a world of greater stability and peace, built on ethical and spiritual vision. Democracy, respect for human rights, transparent, representative and accountable government and administration in all sectors of society, as well as effective participation by civil society, are indispensable foundations for the realization of sustainable development. The lack of development and the existence of widespread absolute poverty can inhibit the full and effective enjoyment of human rights and undermine fragile democracy and popular participation. Neither of them, however, can be invoked to justify violations of human rights and fundamental freedoms.

Para. 13. Parents and other persons legally responsible for children have responsibilities, rights and duties, consistent with the Convention on the Rights of the Child, to address these needs.

Para. 23. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of all States to promote and protect all human rights and fundamental freedoms, including the right to development.

We reaffirm and are guided by the purposes and principles of the Charter of the United Nations and we reaffirm our commitment to ensuring the full realization of the human rights set out in international instruments and in particular, in this context, the right to adequate housing as set forth in the Universal Declaration of Human

Rights and provided for in the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child, taking into account that the right to adequate housing, as included in the above-mentioned international instruments, shall be realized progressively. We reaffirm that all human rights civil, cultural, economic, political and social are universal, indivisible, interdependent and interrelated. We subscribe to the principles and goals set out below to guide us in our actions.

Para. 32. All people have rights and must accept their responsibility to respect and protect the rights of others, including future generations and to contribute actively to the common good.

Para. 40(h) Increasing the supply of affordable housing, including through encouraging and promoting affordable home ownership and increasing the supply of affordable rental, communal, cooperative and other housing through partnerships among public, private and community initiatives, creating and promoting market-based incentives while giving due respect to the rights and obligations of both tenants and owners.

Para. 40(n) Protecting all people from and providing legal protection and redress for forced evictions that are contrary to the law, taking human rights into consideration. When evictions are unavoidable, ensuring, as appropriate, that alternative suitable solutions are provided.

Para. 43(a) Promoting, as appropriate, socially integrated and accessible human settlements, including appropriate facilities for health and education, combating segregation and discriminatory and other exclusionary policies and



Annex *continued*

practices, and recognizing and respecting the rights of all, especially of women, children, persons with disabilities, people living in poverty and those belonging to vulnerable and disadvantaged groups.

Para. 55. Unemployment, environmental degradation, social disintegration and large-scale populations displacements, as well as intolerance, violence, and violation of human rights, have also emerged as critical factors. We must keep these new conditions in view, as we draw up human settlements strategies for the first two decades of the twenty-first century.

Para. 59(b) The conditions for women and men to exercise their individual rights and responsibilities equally and to engage their abilities effectively in activities that will improve and sustain their living environments.

Para. 61. Since the adoption of the Universal Declaration of Human Rights in 1948, the right to adequate housing has been recognized as an important component of the right to an adequate standard of living. Within the overall context of an enabling approach, Governments should take appropriate action in order to promote, protect and ensure the full and progressive realization of the right to adequate housing.

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



The right to safe and clean drinking water and sanitation is a human right that is essential for the full enjoyment of life and all human rights
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Annex *continued*

Para. 68(b) Establish appropriate processes for coordination and decentralization that define clear local-level rights and responsibilities within the policy development process.

Para. 75. Ensure that equal rights of women and men related to land and property are protected under the law.

Para. 78(c) Review legal and regulatory frameworks, adjusting them to the principles and commitments of the Global Plan of Action and ensuring that the equal rights of women and men are clearly specified and enforced.

Para. 98. To reduce vulnerability, Governments at the appropriate levels, including local authorities should:

(b) Protect all people from and provide legal protection and redress for forced evictions that are contrary to the law, taking human rights into consideration; when evictions are unavoidable, ensure that, as appropriate, alternative suitable solutions are provided;

Para. 116(a) Giving priority to the needs and rights of women and children, who often bear the greatest burden of poverty

Para. 177. Setting in motion a strategic and participatory urban management process rooted in a shared vision while ensuring and protecting human rights;

Para. 182 (k) Providing access to effective judicial and administrative channels for affected individuals and groups so that they can challenge or seek redress from decisions and actions that are socially and environmentally harmful or violate human rights, including legal mechanisms to ensure that all State bodies, both national and local, and other civil organizations remain accountable for their

actions, in accordance with their social, environmental and human rights obligations.

Para. 190. This improved information technology should be appropriately and optimally utilized to preserve and share cultural and moral values and enhance and improve education, training and public awareness of the social, economic and environmental issues affecting the quality of life, and to enable all interested parties and communities to exchange information on habitat practices, including those that uphold the rights of children, women and disadvantaged groups in the context of growing urbanization.

Para. 199. International economic imbalances, poverty and environmental degradation, combined with the absence of peace and security, human rights violations and the varying degrees of development of judicial and democratic institutions, are all factors affecting international migration.

Para. 233. The important role of the Committee on Economic, Social and Cultural Rights in monitoring those aspects of the Habitat Agenda that relate to States parties' compliance with the International Covenant on Economic, Social and Cultural Rights should be emphasized.

Para. 241. As part of their commitment to strengthening their existing shelter and settlements related data collection and analysis capabilities, Governments at all levels, including local authorities, should continue to identify and disseminate best practices, and should develop and apply shelter and human settlements development indicators, including those that reflect the rights and wellbeing of children.



List of abbreviations

AAAQ	Availability, Accessibility, Affordability, Quality
CBO	Community-based organization
CEDAW	Convention on the Elimination of Discrimination Against Women
CESCR	Committee on the Economic, Social and Cultural Rights
CFCI	Child Friendly City Initiative
COHRE	Center on Housing Rights and Eviction
CRC	Convention on Rights of the Child
ESCR	Economic, Social and Cultural Rights
GTLN	The Global Land Tool Network
HRBA	Human Rights-Based Approach
HRBAP	Human Rights-Based Approach to Programming
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organization
OHCHR	Office of the High Commissioner for Human Rights
MDG	Millennium Development Goals
NGO	Non-governmental organization
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCHS	United Nations Centre for Human Settlements
UNDAF	United Nations Development Assistance Framework
UNDG	United Nations Development Group
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNHRP	United Nations Housing Rights Programme
UNICEF	United Nations Children's Fund
UPR	Universal Periodic Review
UN-Habitat	United Nations Human Settlements Programme
WSC	World Summit for Children
WHO	World Health Organization



ENDNOTES

- 1 United Nations (2007); *Triennial comprehensive policy review of operational activities for development of the United Nations system*; General Assembly Resolution, New York, 19 December 2007
- 2 UNDAF is a programme document between a government and the UN Country Team that describes the collective actions and strategies of the UN to the achievement of national development.
- 3 UNDG (2010), *Guidance Note; Application of the Programming Principles to the UNDAF*; United Nations Development Group, January 2010. It should further be noted that the OECD Development Assistance Committee has a long history of efforts to include, incorporate or integrate human rights in development theory and practice.
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- 5 United Nations (2010); *Keeping the promise: united to achieve the Millennium Development Goals*; General Assembly Resolution, New York, 17 September 2010
- 6 United Nations (2013): General Assembly: <http://www.un.org/sg/rightsupfront/doc/RuFAP-summary-General-Assembly.htm>
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During the last decade, the United Nations Human Settlements Programme (UN-Habitat) has gradually broadened the conceptualization of its mandate, in departing from a focus on the right to adequate housing to addressing both the whole city as an outcome of actions, and urbanization as the process leading to this outcome.

This Guidance Note on the Promotion and Protection of Human Rights aims to increase the awareness of staff of UN-Habitat and its partners as to why the Human Rights-Based Approach to sustainable urban development is of paramount importance. Why, in the words of the Secretary-General in November 2013, with the Human Rights Up Front initiative, we renew our commitment to “We the Peoples” of the UN Charter.

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