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经济、社会和文化权利

适足生活水准权所含适足住房及在此方面  
不受歧视权问题特别报告员米隆·科塔里的报告\*

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\* 由于报告迟交，本文件只有内容提要被译成所有正式语文。报告本身载于附件，仅以原文分发。

## 内 容 提 要

本报告是第一位适足生活水准权所含适足住房问题特别报告员在 6 年任期结束时根据人权委员会第 2004/21 号决议提交的最后一份报告。本报告全面回顾了他上任以来所开展的主要活动，并试图对这些活动进行跟踪并从中得出结论，说明业已取得的进展、特别令人关切的问题以及各国政府、联合国和其他国际机构应该特别注意的领域。

特别报告员确认，他的出发点是强调人权的不可分割性，否则适足住房权便失去了意义。虽然这一出发点最初意味着着重讨论适足住房权作为一项经济、文化和社会权利的与新闻权和住家安全权等相关的公民权利和政治权利之间的互相联系，但特别报告员的工作一再表明，现有的联系远远超过这些。要对适足住房权这一人权的多层内容进行深入的分析，就必须探讨它与其他相关人权(如土地权、食物权、水权、卫生权、工作权、财产权、平等权、继承权、人身安全权、不受不人道和有辱人格的待遇权等)之间的联系，而其核心是不歧视和财产保有权的安全问题。

特别报告员强调了今后需要各方面加强工作的一些关键领域，如土地和财产问题以及自然灾害和人道主义紧急情况对适足住房权的影响。最后，特别报告员向各国提供了一份关于以开发为由逐出住户问题的准则，作为一项实用的实施工具。

特别报告员在建议中鉴于全球持续的住房危机，请人权委员会继续有关适足住房问题的任务授权，开始通过特别报告员提议的关于强行逐出住户的准则的程序，考虑承认土地权为人权，并请各国制止城市和农村的隔离，控制不加约束的财产投机倒把活动和没收土地的行为。

**Annex**

**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**

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## Introduction

1. The present report is submitted in accordance with resolution 2004/21 of the Commission on Human Rights.
2. This report of the first Special Rapporteur on adequate housing appointed by the Commission on Human Rights, submitted at the end of his six-year mandate, comprehensively reviews his main activities since his appointment in 2000, and outlines emerging issues that require the attention of the Commission and the international human rights community for the realization of human rights relevant to his mandate.
3. In his first report to the Commission (E/CN.4/2001/51) the Special Rapporteur advocated a broad interpretation of the right to adequate housing. The report indicated several priority issues including gender discrimination, land, forced evictions, poverty, access to potable water, the impact of globalization on housing, and international cooperation for the realization of housing rights. Applying the indivisibility approach, the Special Rapporteur has in his subsequent reports chosen to focus on specific themes: discrimination and segregation in housing and civic services, and the impact of globalization on the realization of housing rights (E/CN.4/2002/59); water and sanitation, indicators in the context of the Millennium Development Goals and a summary of the first three years of work (E/CN.4/2003/5); forced evictions (E/CN.4/2004/48); and homelessness and its causes and consequences (E/CN.4/2005/48).<sup>1</sup> The current report attempts to follow up on and draw conclusions from six years of work, highlighting progress made, issues of particular concern and areas where particular attention should be paid by Governments, United Nations and other international bodies in the future.
4. The Special Rapporteur has seen as one of his main responsibilities the suggestion and development of practical tools and solutions to overcome existing obstacles to the realization of the right to adequate housing. With this in mind, this final report of the Special Rapporteur contains practical guidelines on development-based forced evictions.
5. Since the establishment of his mandate, the right to adequate housing has received increased attention - in national laws and policies, by courts and judges and in the work of United Nations bodies, national human rights institutions and civil society. The Special Rapporteur points to the need to continue to collect jurisprudence and good practices to further the progressive implementation of the right to adequate housing. He has also continued to engage in substantive and constructive dialogues with States and other actors, including by responding to urgent cases and in the context of country missions. During the reporting period, the Special Rapporteur undertook two country missions, to the Islamic Republic of Iran (July 2005) and Cambodia (August 2005). Reports on these missions are available as addenda to the present report (E/CN.4/2006/41/Add.2 and 3). The Special Rapporteur also presents his communications with Governments during the reporting period as an addendum (E/CN.4/2006/41/Add.1).
6. The Special Rapporteur has also prepared a separate final report on women and adequate housing (E/CN.4/2006/118), pursuant to Commission resolution 2005/25 on women's equal ownership of, access to and control over land and the equal rights to own

property and to adequate housing. This annual report should be read in conjunction with the Special Rapporteur's report on women and housing.

7. The Special Rapporteur is grateful to those Governments, United Nations and other international bodies, non-governmental organizations and civil society groups that supported him in carrying out his mandate, as well as individual experts who contributed information and analysis.

## **I. OVERVIEW OF ACTIVITIES - CONSTRAINTS AND GOOD PRACTICES**

### **A. Overall methodology and approach**

8. At the beginning of his term, the Special Rapporteur announced that he intended to take a constructive approach to his mandate, which would provide practical and concrete solutions aimed at the realization of the human right to adequate housing. While the Special Rapporteur has attempted to draw attention to violations of the right to adequate housing worldwide, his intention has been to focus primarily on identifying where and in what form innovation and strategic cooperation have led to, or could lead to, the realization of adequate housing as a component of the right to an adequate standard of living.

9. From the outset, the Special Rapporteur has adopted an approach stressing the indivisibility of human rights, without which the right to adequate housing loses its meaning. Whereas this approach initially meant focusing on the interface between adequate housing as an economic, social and cultural right, and relevant civil and political rights such as the right to information and the right to security of the home, the work of the Special Rapporteur has demonstrated that existing interlinkages go much beyond. An in-depth analysis of the status of the right to adequate housing necessitates the exploration of linkages with other related rights and principles such as gender equality, the rights to land, food, water, health, work, property, and security of person and protection against inhuman and degrading treatment, with non-discrimination and security of tenure at the core. Moreover, in the Special Rapporteur's work on women and housing, the indivisibility, substantive equality and non-discrimination approach has also necessitated exploring interlinkages between women's right to adequate housing and violence against women, as well as the incompatibility of specific traditional and cultural practices governing housing, land and inheritance with women's rights to adequate housing as protected in international human rights law.

10. At the beginning of his term, the Special Rapporteur proposed a definition of the right to adequate housing taking into account the above elements,<sup>2</sup> a definition, which since has received considerable support. In view of observations made by the Committee on the Rights of the Child (CRC), the Special Rapporteur wishes to amend his definition of the right to adequate housing, emphasizing the element of safety, to read as follows: "The right of every woman, man, youth and child to gain and sustain a safe and secure home and community in which to live in peace and dignity."

11. In order to fulfil this ambitious mandate, the Special Rapporteur has sought to establish dialogue, cooperation and partnership with States, United Nations and other intergovernmental

agencies, international financial institutions, human rights treaty bodies, other special procedures and civil society organizations at all levels.

## **B. Dialogue with States**

12. During his term, the Special Rapporteur carried out country missions and visits to Afghanistan, Brazil, Cambodia, the Islamic Republic of Iran, Kenya, Mexico, the occupied Palestinian territories, Peru and Romania. He wishes to express his appreciation of the cooperation extended to him during and in the follow-up to these missions. He regrets that the country mission planned to Angola in late 2005 was cancelled by the Government. The Special Rapporteur has recently received positive replies to his mission requests from the Governments of Australia, the Philippines and Spain.<sup>3</sup>

13. The Special Rapporteur is particularly pleased that his country missions have enabled continuing dialogue with the Governments concerned, especially with respect to implementation of recommendations. The Special Rapporteur is of the view that a country mission, while useful in itself, should be seen as the beginning of long-term interaction between the relevant Government, civil society, and the United Nations. As an example, he would like to commend the Government of Mexico which, in March 2003 and subsequent to his mission, upgraded the status of the existing inter-secretarial human rights committee by officially establishing the Inter-secretarial Commission on Government Policies in the Field of Human Rights, chaired by the Ministry of the Interior and with the Ministry of External Relations as its vice-chair and with the active participation of civil society groups. The Special Rapporteur is also encouraged by the collaboration that has ensued between the Kenyan National Human Rights Commission and the relevant ministries dealing with housing to implement recommendations contained in the Special Rapporteur's mission report.

14. Whereas the positive impacts of country missions and dialogues with national authorities are evident, there is also a need for a close and systematic follow-up mechanism to be created. The Special Rapporteur hopes that the Office of the High Commissioner for Human Rights will enable the establishment of a mechanism to take advantage of the momentum created by country missions of special procedures, and to ensure follow-up of both positive initiatives and main issues of concern.

15. The Special Rapporteur has continued to engage in active dialogue with both States and civil society, particularly in situations where States have not observed relevant principles and standards on housing rights. The Special Rapporteur appreciates the timely responses received from a number of Governments and United Nations bodies, which has broadened the scope for continued and constructive dialogues with a view to finding solutions. The majority of communications relate to cases of threatened or undertaken forced evictions, including alleged excessive use of force, lack of consultation and prior notice or absence of compensation or alternative housing. However, communications have also addressed other issues such as: administrative measures allegedly threatening low-income families' access to affordable housing, including proposed cuts to housing assistance programmes; development-based displacement; housing rights of indigenous peoples and Roma; and environmental and health hazards affecting the adequacy of housing.

16. Finally, the Special Rapporteur would like to express his gratitude to the Governments of Germany and Finland for their support of his mandate, including their contribution to his work on developing guidelines for evictions, including through enabling the holding of an International Workshop on Forced Evictions, in Berlin in June 2005. Special acknowledgement to the Government of Mexico for its dedicated support and interest in his work on women and adequate housing.

### **C. Cooperation within the United Nations system**

#### **1. Treaty bodies**

17. During his term, the Special Rapporteur devoted significant time and resources to strengthening cooperation with relevant treaty bodies and with other special rapporteurs, representatives and independent experts. Since his appointment in 2000, he has held regular dialogues with the Committee on Economic, Social and Cultural Rights (CESCR), the Committee on the Rights of the Child (CRC), the Committee on the Elimination of Discrimination against Women (CEDAW), and the Committee on the Elimination of Racial Discrimination (CERD). These processes have facilitated greater cooperation and mutual learning in several areas. In his 2002 annual report to the Commission<sup>4</sup> the Special Rapporteur provided guidelines for States to ensure there is no discrimination in guaranteeing the right to adequate housing, and outlined strategies for overcoming obstacles. These guidelines highlighted the impacts of racial, gender and multiple discrimination on the realization of the right to adequate housing. Moreover, during country missions, the Special Rapporteur made conscious efforts to encourage the implementation of relevant general comments and recommendations and to assess the impacts of relevant concluding observations adopted by these treaty bodies.

18. The Special Rapporteur contributed to the drafting process of CESCR general comments Nos. 15 and 16 on “The right to water” and “The equal right of men and women to the enjoyment of all economic, social and cultural rights” (article 3 of the International Covenant on Economic, Social and Cultural Rights), respectively. He also participated in and contributed to general discussions held by CESCR on the right to water, and economic, social and cultural rights in the development activities of international institutions, and by CRC on the role of private service providers.

19. The Special Rapporteur also contributed to discussions on the development of the Optional Protocol to the Covenant on Economic, Social and Cultural Rights. He strongly supports the adoption of such a protocol, as an important mechanism which could ideally lead to further articulation of the normative content of the right to adequate housing, promote the justiciability of economic, social and cultural rights, and develop strategies aimed at guaranteeing the right to adequate housing.

20. In February 2006, the Special Rapporteur continued his dialogue with CEDAW. The Committee was informed about the Special Rapporteur’s work on women and adequate housing and the Special Rapporteur is encouraged by the fact that the Committee shares his view that work in this area needs to be strengthened, possibly through the elaboration of a general recommendation on women and housing and land. The Special Rapporteur agreed to develop a

set of model questions for the Committee's use in the examination of State reports. Model questions to this end have already been developed by the Special Rapporteur for CERD.

## **2. United Nations agencies and programmes**

21. The Special Rapporteur has closely followed the work of the United Nations Human Settlements Programme (UN-Habitat), the main United Nations entity responsible for housing and human settlements. He participated in several expert group meetings and events organized by UN-Habitat, including the UN-Habitat Governing Council; the Expert Group Meeting on urban indicators, held in October 2002; the Expert Group Meeting on gender and women's issues in human settlements, held in February 2003; as well as the Expert Group Meeting on housing rights monitoring jointly organized by OHCHR and UN-Habitat under the United Nations Housing Rights Programme in November 2003. His interaction with UN-Habitat has enabled him to make recommendations towards integrating the rights relevant to his mandate into its policies, programmes and activities, including its work on women and housing.

22. In his previous reports, the Special Rapporteur has drawn attention to the United Nations Housing Rights Programme (UNHRP)<sup>5</sup> launched by OHCHR and UN-Habitat in 2002. UNHRP has important potential in the areas of advocacy; support for United Nations housing rights mechanisms; monitoring, evaluation, capacity-building and training; and research and analysis on housing rights. Whereas a number of initiatives have been undertaken since 2002, the Special Rapporteur would welcome a strengthening of UNHRP's capacities, including through an overall increase of resources for OHCHR.

23. The Special Rapporteur also pursued dialogues with other United Nations entities to explore the scope of cooperation with a view to integrating rights relevant to his mandate into their programmes and activities oriented towards improving housing and living conditions for the poor, women and children, indigenous peoples, refugees and internally displaced persons. In early February 2006, the Special Rapporteur met with several relevant New York-based entities, including the Office for the Coordination of Humanitarian Affairs and the Department of Political Affairs of the Secretariat, in order to discuss in particular, the right to adequate housing in situations of humanitarian emergencies.

24. The Special Rapporteur is also a member of the Leadership Council of the Global Coalition on Women and AIDS (GCWA), a worldwide alliance of civil society groups, Governments, United Nations organizations, and networks of women with HIV/AIDS, launched by the Joint United Nations Programme on HIV/AIDS (UNAIDS),<sup>6</sup> with a view to highlighting the impact of AIDS on women and girls and mobilizing actions at global, regional and national levels. One of the key issues of the Coalition is to highlight the link between women's and girls' property and inheritance rights and HIV/AIDS.

## **D. Civil society**

25. Working with civil society groups has been a source of inspiration and encouragement for the Special Rapporteur. Since his last report, the Special Rapporteur has continued to participate in civil society initiatives, including: the International NGO Consultation on Women Human Rights Defenders, held in Colombo, Sri Lanka, in November and December 2005 and

national workshops on subjects ranging from the right to housing, to homelessness, to the right to water in the United States of America, India, Spain, Ireland and Sweden.

26. The Special Rapporteur has benefited enormously from the mobilization and support of civil society organizations during his country missions. In addition to meetings with well-established non-governmental organizations (NGOs) and social movements, open civil society forums were organized in several locations visited by the Special Rapporteur. This allowed space for testimonies to be brought forward, as was the case in Kenya, Brazil and Peru. This methodology proved to be both informative and strategic while creating a platform for potential follow-up. The Special Rapporteur has also been impressed by the dedication and support of non-governmental organizations for his work on women and adequate housing.

27. The Special Rapporteur welcomes the fact that a number of major NGOs with a traditionally civil and political rights profile have, in the past decade, expanded their work to also cover economic, social and cultural rights, thereby highlighting the indivisibility of human rights. The Special Rapporteur has previously mentioned Amnesty International's work in this regard. In order to strengthen his collaboration with the organization, the Special Rapporteur visited its international secretariat in London in November 2005 and was impressed by the work on the right to adequate housing and forced evictions.

28. Regional consultations on women and housing<sup>7</sup> were jointly organized with local civil society groups working on women's rights and housing rights, and international, regional and national civil society organizations. The consultation process also involved, in addition to testimonies, an initial training on monitoring and advocating for women's rights to housing and land.<sup>8</sup>

## II. MAIN OBSTACLES AND CONTEMPORARY TRENDS

29. During his term, the Special Rapporteur has highlighted a number of obstacles to the realization of adequate housing as a component of the right to an adequate standard of living. Applying an indivisibility of human rights approach means having to examine complex interlinkages and analyse related causes and effects. There are inevitably a number of key areas where enhanced work will be needed in the future, by a range of actors. Whereas the main aim of this report is to provide practical tools for implementation, as reflected in section III below, the Special Rapporteur wishes to very briefly highlight a number of main obstacles and contemporary trends that require urgent attention:

- *Adequate housing and land and property concerns.* Testimonies, country missions to Afghanistan, Brazil, Cambodia or Kenya, and other sources of information have clearly demonstrated that the realization of the right to adequate housing cannot be examined in isolation from land and property considerations. Relevant concerns include: land and property speculation and the unwillingness of States to intervene in the market to ensure that low-income persons can access rental and owner-occupied housing; land occupation/grabbing; land confiscation and expropriation; destruction and deterioration of land; inequality in land ownership; agrarian reform; housing and property restitution in the context of the return of refugees, evicted persons, and

internally displaced persons; and the inability of States to control the growth and power of land mafias and cartels;

- *Natural disasters and humanitarian emergencies.* Tragic events in recent years, such as the earthquake in Bam, Islamic Republic of Iran, in December 2003; the Indian Ocean tsunami in December 2004; the South Asia earthquake in October 2005 that affected areas of Pakistan and India; Hurricane Katrina, which caused flooding along the Gulf Coast of the United States; and Hurricane Mitch, which devastated parts of Nicaragua, have shown that there is a need to integrate human rights standards into relief and rehabilitation efforts. Concerns raised in recent evaluation studies<sup>9</sup> include discrimination and corruption in distribution of aid, compensation and reconstruction work; and overcrowding, lack of water and sanitation, and violations of the human rights to adequate housing, and privacy and security of the person in temporary and intermediate shelters. Attention should be paid to the elaboration of means by which the international community, including international financial institutions and non-government organizations, can incorporate human rights standards in their policies and practices including the speedy transition from temporary shelter to permanent housing.<sup>10</sup> The serious impacts of disasters and the consequent response mechanisms on women have been referred to at length in the Special Rapporteur's report on women and adequate housing (E/CN.4/2006/118). The Special Rapporteur also welcomes and will contribute to the current initiative of the Special Representative of the Secretary-General to prepare Operational Guidelines on Human Rights Protection in Situations of Natural Disasters;
- *Urban and rural.* Urban areas across the world today are scenes of violations of the right to adequate housing, due to the inability and unwillingness of Governments at local, national and international levels to adequately control land and house speculation, to reverse concentration of land and hoarding of property, to promote affordable rental housing and to invest in social housing. This has led to an increase in the number of people who live in slums; and a rise in "urban apartheid", "segregation", and "ghettoization" with physical borders of separation between wealthy and poor urban residents. While recognizing the enormous challenges stemming from rapid urbanization and the need to respond thereto, the Special Rapporteur has, on numerous occasions, emphasized the need to also urgently address the housing rights of rural populations and the distressed reality of inadequate housing and homelessness in rural areas. This includes paying attention to large-scale projects like dams and mining and other extractive industries that promote urban development while resulting in the displacement and loss of homes and livelihoods of large sections of the rural population. Given the grim status of housing rights, it is imperative that States and other involved actors urgently develop policies for both urban and rural areas. Agrarian reform must be given priority in rural development, and planning must address complex trends such as inequality in land ownership, rapid urbanization, growing homelessness, forced evictions, forced migration, land-grabbing, and segregation;

- *Housing finance for the very poor.* The Special Rapporteur has continuously pointed out the worldwide failure to finance and ensure adequate housing for the poor who comprise the bottom 20 per cent of national populations. As pointed out in the Special Rapporteur's missions, it should be possible to restructure the national housing finance system to meet the needs of this group;
- *Groups in focus.* The Special Rapporteur has undertaken considerable work on women and adequate housing.<sup>11</sup> Having identified the persistent "culture of silence" as one of the main obstacles confronting women in their struggle for their right to adequate housing and land, it is critical that the situation of women be attentively addressed in the future. The same is true with respect to the situation of the world's growing homeless population.<sup>12</sup> In addition, an in-depth analysis will be needed on homelessness and discrimination faced by other groups, such as children, youth, the elderly, persons with disabilities, indigenous peoples, refugees, migrants, minorities, and the poorest of the poor.

### III. PRACTICAL TOOLS OF IMPLEMENTATION

#### Basic principles and guidelines on development-based evictions and displacement

30. Throughout his mandate, the Special Rapporteur has favoured a constructive approach with a view to suggesting concrete recommendations and developing practical implementing tools to this end. In his 2002 annual report to the Commission,<sup>13</sup> the Special Rapporteur provided guidelines for States to ensure there is no discrimination in relation to the right to adequate housing, and outlined strategies for addressing existing obstacles. In this last report to the Commission, the Special Rapporteur wishes to present practical guidelines for States on development-based evictions and displacement.

31. Forced evictions constitute prima facie violations of a wide range of internationally recognized human rights and can only be carried out under exceptional circumstances and in full accordance with international human rights law. Despite the work of a range of actors, including treaty bodies, several special procedures, United Nations agencies and programmes, and civil society organizations to counter this worldwide practice, forced evictions of individuals and groups continue, resulting in displacement, loss of livelihood, property and belongings, and physical and psychological injury to those affected, which often include persons already living in extreme poverty, women, children, indigenous peoples, minorities and other vulnerable groups. During country missions, the Special Rapporteur has observed the adverse impact of forced evictions first-hand, in addition to testimonies and continuous reports received from a variety of sources, including in the communications procedure.

32. Against this backdrop, the Special Rapporteur submitted his 2004 report to the Commission on the issue of forced evictions (E/CN.4/2004/48) and highlighted the rationale for improved guidelines on forced evictions. The Special Rapporteur recommended that an expert seminar be held to develop clear guidelines for States on forced evictions, based on existing human rights instruments. As stated in his 2004 report, the Special Rapporteur, while acknowledging the previous standards on forced evictions by the Committee on Economic, Social and Cultural Rights (in its general comment No. 7) and the Sub-Commission (in its

comprehensive human rights guidelines on development-based displacement), was of the view that the existing standards could be further strengthened and put forward in more operational terms.

33. In June 2005, the Special Rapporteur co-organized, with the German Federal Foreign Office and the German Institute for Human Rights, an International Workshop on Forced Evictions, held in Berlin, for the purpose of elaborating guidelines aimed at assisting States and the international community in developing policies and legislations to address forced evictions at the domestic level. In light of the outcome of the workshop and in consultation with the participants,<sup>14</sup> the Special Rapporteur has elaborated a set of guidelines (see appendix).

34. The basic principles and guidelines on development-based evictions and displacement represent a further development of the United Nations Comprehensive Human Rights Guidelines on Development-based Displacement (E/CN.4/Sub.2/1997/7, annex). They offer several new prescriptions, based on experiences gathered worldwide since 1997, which render more clear the obligations of States within this context. These include: the need for States to conduct comprehensive impact assessments in advance of evictions that take into account their differential impact on women, children and other vulnerable groups; calling for States to take intervening measures to ensure that market forces do not increase the vulnerability of low-income and marginalized groups to forced eviction; affirming the obligation of States to recognize the fundamental human rights of evicted persons to return, resettlement and fair and just compensation; and the requirement that all affected persons be notified in writing and sufficiently in advance with a view towards minimizing the adverse impacts of evictions; the enumeration of detailed steps to be taken by States to protect human rights prior to, during and after evictions; and the establishment of stringent criteria for initiating and carrying out evictions in exceptional circumstances.

#### IV. CONCLUSIONS AND RECOMMENDATIONS

35. **In his final report the Special Rapporteur has attempted to provide an overview of the methodology adopted during the mandate, examples of activities undertaken and proposed emerging issues and standards for consideration by the Commission. Throughout this and previous annual and country reports, the Special Rapporteur has suggested courses of action for both States and non-State actors on implementation of strategies for the right to adequate housing. However, he would like to reiterate the following recommendations, which should be read along with recommendations contained in the final report on women and adequate housing. In the context of the continuing global housing crisis, which requires concerted action by all actors to promote the human right to adequate housing, the Special Rapporteur requests the Commission to:**

**(a) Continue the mandate on adequate housing as a component of the right to an adequate standard of living;**

**(b) Consider wide distribution and eventual adoption of the guidelines on forced evictions proposed by the Special Rapporteur in the appendix to this report;**

**(c) Recognize the right to land as a human right and protected under international human rights law - given the scale of the crisis of homelessness and landlessness across the world, and the undeniable link between landlessness and homelessness;**

**(d) Request States to give priority to agrarian reform in rural areas and to land and wealth redistribution in both urban and rural areas. Legislation should be enacted and implemented to check against forced evictions; urban apartheid and segregation; growth of the “land mafia” and land cartels, and unbridled property speculation; and indiscriminate escalation of housing and property prices, which excludes marginalized and vulnerable populations from accessing their right to adequate housing;**

**(e) Request States and other actors involved in post-disaster relief and rehabilitation to uphold international human rights standards.**

**36. Although the official mandate of the Special Rapporteur ends in July 2006 and this is his last report to the Commission, the Special Rapporteur would like to stress his commitment to promoting the human right to adequate housing through whatever means and forums he is able to pursue. Finally, the Special Rapporteur would like to thank the Commission for its cooperation and assistance in fulfilling his mandate.**

#### Notes

<sup>1</sup> The work of the Special Rapporteur, including annual reports, country reports, statements, etc. can be found at: [www.ohchr.org](http://www.ohchr.org).

<sup>2</sup> See E/CN.4/2001/51, para. 8.

<sup>3</sup> Additional requests have been sent to Bangladesh, Canada, Israel, Nigeria and South Africa.

<sup>4</sup> E/CN.4/2002/59, paras. 37-48.

<sup>5</sup> See <http://www.unhabitat.org/unhrp>.

<sup>6</sup> See E/CN.4/2006/118, para. 75.

<sup>7</sup> E/CN.4/2006/118.

<sup>8</sup> This was done with the use of a Tool Kit developed by the Habitat International Coalition - Housing and Land Rights Network (HIC-HLRN). See [www.hlrn.org](http://www.hlrn.org).

<sup>9</sup> *Tsunami Response: A Human Rights Assessment*. People's Movement for Human Rights Learning (PDHRE), Habitat International Coalition - Housing and Land Rights Network (HIC-HLRN), and ActionAid International, January 2006.

<sup>10</sup> See *International Human Rights Standards on Post-disaster Resettlement and Rehabilitation*. Habitat International Coalition - Housing and Land Rights Network (HIC-HLRN), People's

Movement for Human Rights Learning (PDHRE), and United Nations Special Rapporteur on adequate housing. Bangalore, India: Books for Change, 2006.

<sup>11</sup> See E/CN.4/2003/55, E/CN.4/2005/43 and E/CN.4/2006/118.

<sup>12</sup> See E/CN.4/2005/48.

<sup>13</sup> E/CN.4/2002/59, paras. 37-48.

<sup>14</sup> For a list of participants at the Expert Workshop and others consulted in the process of developing the guidelines see: [www.ohchr.org](http://www.ohchr.org).

## Appendix

### Basic principles and guidelines on development-based evictions and displacement

#### I. SCOPE AND NATURE

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

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

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

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

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

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

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

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

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

10. While recognizing the wide range of contexts in which forced evictions take place, the present guidelines focus on providing guidance to States on measures and procedures to be adopted in order to ensure that development-based evictions are not undertaken in contravention of existing international human rights standards and do not thus constitute “forced evictions”. These guidelines aim at providing a practical tool to assist States and agencies in developing policies, legislation, procedures and preventive measures to ensure that forced evictions do not

take place, and to provide effective remedies to those whose human rights have been violated, should prevention fail.

## **II. GENERAL OBLIGATIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24. In order to ensure that no form of discrimination, statutory or otherwise, adversely affects the enjoyment of the human right to adequate housing, States should carry out comprehensive reviews of relevant national legislation and policy with a view to ensuring their conformity with international human rights provisions. Such comprehensive review should also ensure that

existing legislation, regulation and policy address the privatization of public services, inheritance, and cultural practices, so as not to lead to, or facilitate forced evictions.<sup>f</sup>

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

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

27. States should ensure the integration of binding human rights standards in their international relations, including through trade and investment, development assistance and participation in multilateral forums and organizations. States should implement their human rights obligations with regard to international cooperation,<sup>g</sup> whether as donors or as beneficiaries. States should ensure that international organizations in which they are represented refrain from sponsoring or implementing any project, programme or policy that may involve forced evictions, that is, evictions not in full conformity with international law, and as specified in the present guidelines.

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

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

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

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

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

32. States must give priority to exploring strategies that minimize displacement. Comprehensive and holistic impact assessments should be carried out prior to the initiation of any project that could result in development-based eviction and displacement, with a view to securing fully the human rights of all potentially affected persons, groups and communities, including their protection against forced evictions. “Eviction-impact” assessment should also include exploration of alternatives and strategies for minimizing harm.
33. Impact assessments must take into account the differential impacts of forced evictions on women, children, the elderly and marginalized sectors of society. All such assessments should be based on the collection of disaggregated data, such that all differential impacts can be appropriately identified and addressed.
34. Adequate training in applying international human rights norms should be required and provided for relevant professionals, including lawyers, law enforcement officials, urban and regional planners and other personnel involved in the design, management and implementation of development projects. This must include training on women’s rights, with an emphasis on women’s particular concerns and requirements pertaining to housing and land.
35. States should ensure the dissemination of adequate information on human rights and laws and policies relating to protection against forced evictions. Specific attention should be given to the dissemination of timely and appropriate information to groups particularly vulnerable to evictions, through culturally appropriate channels and methods.
36. States must ensure that individuals, groups and communities are protected from eviction during the period that their particular case is being examined before a national, regional or international legal body.

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

37. Urban or rural planning and development processes should involve all those likely to be affected and should include the following elements: (a) appropriate notice to all potentially affected persons that eviction is being considered and that there will be public hearings on the proposed plans and alternatives; (b) effective dissemination by the authorities of relevant information in advance, including land records and proposed comprehensive resettlement plans specifically addressing efforts to protect vulnerable groups; (c) a reasonable time period for public review of, comment on, and/or objection to the proposed plan; (d) opportunities and efforts to facilitate the provision of legal, technical and other advice to affected persons about their rights and options; and (e) holding of public hearing(s) that provide affected persons and their advocates with opportunities to challenge the eviction decision and/or to present alternative proposals and to articulate their demands and development priorities.
38. States should explore fully all possible alternatives to evictions. All potentially affected groups and persons, including women, indigenous peoples and persons with disabilities, as well as others working on behalf of the affected, have the right to relevant information, full consultation and participation throughout the entire process, and to propose alternatives that authorities should duly consider. In the event that agreement cannot be reached on a proposed

alternative among concerned parties, an independent body having constitutional authority, such as a court of law, tribunal or ombudsperson should mediate, arbitrate or adjudicate as appropriate.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

54. In order to ensure the protection of the human right to the highest attainable standard of physical and mental health, all evicted persons who are wounded and sick, as well as those with disabilities, should receive the medical care and attention they require to the fullest extent

practicable and with the least possible delay, without distinction on any non-medically relevant grounds. When necessary, evicted persons should have access to psychological and social services. Special attention should be paid to: (a) the health needs of women and children, including access to female health-care providers where necessary, and to services such as reproductive health care and appropriate counselling for victims of sexual and other abuses; (b) ensuring that ongoing medical treatment is not disrupted as a result of eviction or relocation; and (c) the prevention of contagious and infectious diseases, including HIV/AIDS, at relocation sites.

55. Identified relocation sites must fulfil the criteria for adequate housing according to international human rights law. These include:<sup>1</sup> (a) security of tenure; (b) services, materials, facilities and infrastructure such as potable drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services, and to natural and common resources, where appropriate; (c) affordable housing; (d) habitable housing providing inhabitants with adequate space, protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors, and ensuring physical safety of occupants; (e) accessibility for disadvantaged groups; (f) access to employment options, health-care services, schools, childcare centres and other social facilities, whether in urban or rural areas and (g) culturally appropriate housing. In order to ensure security of the home, adequate housing should also include the following essential elements: privacy and security; participation in decision-making; freedom from violence, and access to remedies for any violations suffered.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **A. Compensation**

59. When eviction is unavoidable, and necessary for the promotion of the general welfare, the State must provide or ensure fair and just compensation for any losses of personal, real or

other property or goods, including rights or interests in property. Compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, such as: loss of life or limb; physical or mental harm; lost opportunities, including employment, education and social benefits; material damages and loss of earnings, including loss of earning potential; moral damage; and costs required for legal or expert assistance, medicine and medical services, and psychological and social services. Cash compensation should under no circumstances replace real compensation in the form of land and common property resources.<sup>j</sup> Where land has been taken, the evicted should be compensated with land commensurate in quality, size and value, or better.

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

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

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

## **B. Restitution and return**

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

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

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

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

### **C. Resettlement and rehabilitation**

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

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

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

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

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

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

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

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

## IX. INTERPRETATION

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

### Notes

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

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

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

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

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

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

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

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

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

<sup>j</sup> See Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

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