

# THE RIGHT TO HOUSING AS AN INTERNATIONAL HUMAN RIGHTS

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Accepted 19, June 2025

Man has three fundamental basic needs: shelter, food and clothing. Therefore, the right to shelter or accommodation is one of the basic fundamental human rights of man. This right has a divine origin. It is also incorporated in the constitution of some countries such as Bolivia, Germany and Nigeria. The right to housing is in fact an international human right recognized by both international law, United Nations and regional organizations. Right to housing is an adjunct to the right to dignity, security and worth of the human person. All these rights are codified in the Charter of the United Nations as well as in the Universal Declaration of Human Rights. This right is also recognized in other UN conventions such as ICCPR, CEDAW, ICESCR, CRC, etc. Moreover, regional organizations like the African Union, European Union and the Organisation of American States have codified the right to housing in their conventions and they have passed several resolutions on it. States have an obligation under both domestic and international law to enforce the rights of their citizens to the right of housing. Individuals too have a fundamental human right to enforce this prerogative under national and international laws. The methodology adopted in this paper is doctrinal and comparative. The right to housing is a cornerstone of dignity and social justice. It is firmly established under International Law, its implementation remains inconsistent. As global challenges evolve – urbanisation, inequality, climate change – the need for secure, affordable and adequate housing is more pressing than ever.

**Keywords:** Shelter, accommodation, housing, human rights, United Nations

## INTRODUCTION

The God Almighty said in Leviticus 26:6, "I will grant peace in the land and you will lie down and no one will make you afraid" and in Psalm 4:8 King David said; "I will lie down and sleep in peace, for you alone, O Lord, make me dwell in safety". The above two Biblical passages show that God Almighty Himself recognises the importance of shelter. Housing is one of the basic necessities of man and it must go with all its appurtenances like comfort, peace, security and dignity. Housing or shelter or dwelling without its appurtenances is meaningless. The right to housing is a fundamental human right that is recognised nationally and internationally. Section 37 of the 1999 Constitution of Nigeria provides. "The privacy of citizens, their homes... is hereby guaranteed and protected". Also, Section 16(1) (d) of the same Constitution provides, "that suitable and adequate shelter... are provided for all citizens".

The housing right is also protected under the International Covenant on Economic, Social and Cultural Rights as well as in other treaties. However, despite all these constitutional and international protection. Most people in the world live in a state of homelessness, in slums, in poverty and in environment without security which is contrary to the right to dignity of a human person. Most cities in the world are characterized by street children and homeless people that sleep under bridges, market stalls, uncompleted buildings etc. According to National Planning Commission of Nigeria and UNICEF Nigeria in their joint publication entitled, "Children's and Women's Right in Nigeria:

A wake-up call" at page 213 – 214, "The phenomenon of Street children... has been on the increase in most major urban areas... whereas in 1986 children who lived and slept on the street were a rarity in Lagos, there were an estimated 8,000 of them by the early 1990s. In 1999, there were over 100 locations in Lagos in which children were found to be living on the street".

The problem of homelessness is not peculiar to Lagos alone that is the norm in all the cities of the world.

Homelessness is an affront to human dignity, housing right, embarrassment to governments and a disgrace to the human race. The purpose of this paper is to highlight the promotion and protection of housing rights under domestic laws and under treaties, obligations of states to promote and protect housing rights various violations of housing rights, ways and means of promoting and enforcing human rights and the way forward.

## EXPLANATION OF TERMINOLOGY

In international legal norms the right to housing has been variously described as "the human right to adequate housing", "the right to adequate housing", "housing rights", "the right to one's home", "the right to the city", "livelihood rights", "land rights", "the rights to shelter", "property rights", etc<sup>1</sup>. The term housing is wider than an ordinary shelter or merely having a roof over one's head. It means the right to live in peace, security, comfort and dignity. Housing rights and property rights are different from each other and at the same time overlap; housing is part of one's property. Sometimes the definition of housing rights in international human rights norm include both land right and property right. The right to land includes right to possession and to use of resources. Property rights is limited to equality rights, the right to non-interference and the prohibition against arbitrary expropriation.

Land rights and property rights are recognised under some Conventions of the United Nations. Article 7(1) of the Indigenous and Tribal Peoples Convention states that indigenous peoples "shall have the right to decide their own priorities for the process of development as it affects... lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development"<sup>2</sup>. Article 14(2) of the same Convention directs government to guarantee affective protection of those ownership and possession rights owner land. Article 17 of the Universal Declaration of human Rights<sup>3</sup> guarantees the right of everyone to own property alone or in association with others and furthermore that no one should be arbitrarily be deprived of his property.

The right to adequate housing is a term used in ICESCR<sup>4</sup> and it points to right to housing. The right to city and one's home also refer to housing right. The right to shelter means housing that gives security, decency, security, that is a structure that befits human habitation not just any structure. Thus, it could be seen that the best terminology is "right to housing". Housing rights is used in some international Covenants and Conventions. The term is a general term comprising a full range of concern to the housing process within the international human rights domain<sup>5</sup>.

## INTERNATIONAL HUMAN RIGHTS AND THE PROMOTION AND PROTECTION OF HOUSING RIGHTS

The rights to housing is an adjunct to the right to dignity, security and worth of the human person. The Preamble to the Universal Declaration of Human Rights (UDHR) provides that the inherent dignity of all members of the human family is the foundation of freedom, justice and peace in the foundation of freedom, justice and peace in the world<sup>6</sup>. The Preamble also provides that the United Nations its Charter reaffirmed faith in fundamental human rights, in dignity and worth of the human person<sup>7</sup>. The UDHR clearly spelt out the right to housing in its Article 25(1) where it provides that "everyone has the right to a standard of living adequate for health and wellbeing of himself and his family, including...housing..."

The above provision is binding on all member states of the United Nations even though the UDHR is not legally binding but it is morally binding. Member States have a moral duty to promote and enforce housing rights of their people. Moreover, since the promulgation of UDHR by the UN, the body had promulgated and adopted several other international legislations which promote and protect housing rights.

The International Covenant on Economic Social and Cultural Rights<sup>8</sup> (ICESC) in its Article 11(1) provides that "The States parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family including...housing and to the continuous improvement of living conditions. The State Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent".

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<sup>1</sup>For a full discussion of the terminology see Housing Rights Legislation. United National Housing Rights Programme, Report No. 1 pp.14-16. Available at: <https://www.unitednationhousingrightsprogramme>

<sup>2</sup>of 1989 No. 169. Available at: <https://www.indigenousandtribalpeoplesconvention.org>

<sup>3</sup>Adopted and Proclaimed by the G.A. Resolution 217 A(III) of 10<sup>th</sup> December, 1948.

<sup>4</sup>Adopted and opened for signature, ratification and accession by G.A. Resolution 2200 A (XXI) of 16 December 1966. Entered into force on 3<sup>rd</sup> January 1976 in accordance with Article 27.

<sup>5</sup>See Housing Rights legislation. P. 15. See footnote 1

<sup>6</sup>See the 1<sup>st</sup> and 5<sup>th</sup> paragraph of the Preamble of the UDHR. Available at: <https://www.universaldeclarationofhumanrights.org> (Accessed: 3 March, 2025).

<sup>7</sup>5th Paragraph of the UDHR.

<sup>8</sup>Article 11. Available at: <https://www.internationalcovenantoneconomicssocialandculturalrights> (Accessed: 4 April, 2025)

The International Covenant on Civil and Political Rights<sup>9</sup> (ICCPR) in its Article 17 (1) and (2) provides that, "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home... The International Convention on the Elimination of All Forms of Racial Discrimination<sup>10</sup>(ICERD) in its Article 5 (e) (iii) provides that. "In compliance with the fundamental obligations laid down in article 2 of this Convention. States Parties undertake to prohibit and eliminate racial discrimination in all forms and to guarantee the right to everyone, without distinction as to race, colour, or nationality or ethnic origin, to equality before the law, notably in the enjoyment of the following rights... (e) in particular...(iii) the right to housing".

The Convention on Elimination of All Forms of Discrimination Against Women<sup>11</sup> (CEDAW) in its Article 14(2) (h) provides, "States Parties shall take all appropriate measures to eliminate discrimination against women... on a basis of equality of men and women... shall ensure to such women the right... (h) to enjoy adequate living conditions, particularly in relation to housing". The Convention on the Rights of the Child<sup>12</sup> (CRC) provides in Article 27(3) that, "States Parties within their means shall take appropriate measures to assist parents and others responsible for the child to implement this and shall in the case of need provide materials assistance and support programmes, particularly with regard to... housing". Thus, the CRC makes it mandatory for State Parties to provide housing assistance for children and their families.

The International Convention on the Protection of the Rights of All Migrant Workers and Members of their families<sup>13</sup> (MWC) provides in Article 43 (1) (d) that, "Migrant workers shall enjoy equality of treatment with national of the State<sup>1</sup> of employment in relation to... (d) Access to housing, including social housing scheme and Protection against exploitation". The International Convention Relating to the Status of Refugee<sup>14</sup> provides in Article 21 that, "As regards housing, the contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstance". The above housing right is also conferred on Stateless persons under Article 21 of the Convention relating to the Status of Stateless persons<sup>15</sup>.

## UNITED NATIONS BODIES AND RESOLUTION ON HOUSING RIGHTS

Article 11(1) of the ICESCR is the spring board on which international human rights on housing gravitates. In 1991 the Committee on Economic, Social and Cultural right stated that the right to housing should not be interpreted in a narrow or restrictive sense which equate the right to a mere right to shelter but rather a right to live in security, peace and dignity. General Comment No. 4 of the Committee<sup>16</sup>stated that housing right is determined by social, economic, cultural, ecological and other factors. The Committee further stated that the right is composed of the following: legal security of tenure, availability of services, materials, facilities and infrastructure, affordability, habitability, accessibility, location and, cultural adequacy<sup>17</sup>.

In 1993 the Commission on Human Settlements made it mandatory on States to establish monitoring mechanisms to tackle the problem of homelessness, inadequate housing conditions, insecurity of tenure and other matters relating to housing rights like forced evictions<sup>18</sup>. In 1997, the Committee on Economics, Social and Cultural Rights defined the term "forced eviction" and declared that it is prima facie violations of housing rights<sup>19</sup>.

The UN on several occasions have passed series of resolutions so as to promote and protect the housing rights of members of the UN. Some of the resolutions included those passed by The General Assembly<sup>20</sup>, Committee on the

<sup>9</sup>Adopted and opened for signature, ratification and accession by G.A. Resolution 2200 A (XXI) of 16<sup>th</sup>December 1966. Entered into force on 23<sup>rd</sup> March 1976 in accordance with Article 49.

<sup>10</sup>Proclaimed by G.A Resolution 1904 (XVIII) of 20 November 1963. Available at: international convention on the elimination of all forms of racial discriminations.org (Accessed: 10 June, 2025)

<sup>11</sup> Adopted and opened for signature, ratification and accession by General Assembly Resolution 3/180 of 18 December, 1979.

<sup>12</sup>Adopted unanimously by the General Assembly on 20 November, 1989 and was open for signature on 26 January 1990.

<sup>13</sup>GA/RES/45/158 of 18th December 1990.

<sup>14</sup>Adopted on 28 July 1951 by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons convened under G.A. Resolution 429 (V) of 14<sup>th</sup>December 1950.

<sup>15</sup>Adopted on 28 September 1954 by a Conference of Plenipotentiaries convened by ECOSOC Resolution 526 A (XVII) of 26 April 1954. Available at: <https://www.conventionrelatingtothestatusofstatelesspersons> (Accessed 18 March, 2025)

<sup>16</sup>UN Doc. E/1992/23-E/C. 12/1991/4. Annex III.

<sup>17</sup>Ibid, paragraph 8

<sup>18</sup>UN Doc. A/48/8, paragraph 3

<sup>19</sup>UN Doc. E/1992/23-EK. 12/1991/4

<sup>20</sup>UN Doc. A/RES/1986/146 and A/RES/1987/146

Elimination of Racial Discrimination<sup>21</sup>, ECOSOC<sup>22</sup>, Commission on Human Rights<sup>23</sup>, UN Commission on Human Settlements<sup>24</sup>, Sub-commission on the Promotion and Protection of Human Rights<sup>25</sup>. The Habitat Agenda<sup>26</sup> made it mandatory globally for governments that they have a responsibility in the shelter sector and they should take appropriate measures to promote, protect and ensure the full and progressive realization of the right to adequate housing, adopting legislation prohibiting and guarantee in protecting from discrimination in the housing sector, mobilizing resources for housing, monitoring and evaluating housing conditions, encourage private sector participation, expansion of affordable housing, adopting policies making housing habitable, affordable and accessible, providing legal security of secure, etc<sup>27</sup>.

Moreover, the Global Strategy for Shelter to the Year 2000 stated that the right to adequate housing is recognised universally and that all citizens of the State have a right to expect their governments to be concerned about their housing rights and needs<sup>28</sup>. The United Nations had done a lot to promote housing rights of the people through the activities of UN-HABITAT and the Office of the Human Rights Commissioner for Human Rights (OHCHR). The two UN institutions have established normative framework of housing rights, promotion of housing right, provision of groundwork for developing active measures towards the protection of housing rights, Co-ordination of human rights programme within the UN system, providing individuals governments with basic information about housing rights, convening of expert group meetings on housing rights, etc. The collaboration between the two bodies led in 2002 to the establishment of United Nations Human Settlements Programme (UNHRP)<sup>29</sup>.

The UNHRP was established in response to two resolutions of the UN Commission on Human Settlements and UN Commission on Human Rights respectively. The objective of the UNHRP is to assist States and stakeholders with the implementation of their commitments in the Habitat Agenda to ensure the full and progressive realization on the right to adequate housing as provided for international instruments. The first phase of the UNHRP (2002-2004) focuses on five programme areas:

Firstly, advocacy, outreach and learning from partners. Secondly, support for UN human rights mechanisms on housing rights. Thirdly, research and analysis on housing rights, fourthly capacity-building and technical cooperation.

In 1993, Mr. Rajindar Sachar was appointed as a Special Rapporteur on promoting the realization of the right to adequate housing. He was appointed by the Sub-Commission on the Prevention of Discrimination and Protection of Minorities under the Commission on Human Rights. Mr. Sachar concluded his work in 1995 by submitting to the Commission four reports<sup>30</sup>. In 2002, the Commission also appointed Mr. Miloon Kothari as a Special Rapporteur. He was commissioned to carry out a three-year study on housing rights and the participation and activities of the Governments, private Sector, UN Bodies, NGOs, etc on the housing sector. Mr. Kothari submitted his reports to the Commission in 2001 and 2002. He called for a broad interpretation of the right to adequate housing; he reviewed all international legal instruments on the right to adequate housing. He also called for a review of matter like gender discrimination, access to land and potable water, economic globalization, poverty, forced eviction, etc., and their relationship with housing rights<sup>31</sup>.

Furthermore, the ILO's Recommendation No. 115 recognises worker's housing and the ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries guarantees certain land and property rights<sup>32</sup>.

## REGIONAL LEGISLATIONS ON HOUSING RIGHTS

The United Nations in one of its resolutions called on States to give full effect to housing rights thus at the regional levels, attempts had been made to promulgate laws to enforce and promote housing right of the people. Article 14 of the African Charter on Human and Peoples Rights<sup>33</sup> provides that, "The right to property

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<sup>21</sup>See the various Resolutions of the Committee. Available at: <https://www.committeetheeliminationofracialdiscrimination.org> (Accessed: 2 January, 2025)

<sup>22</sup>UN Docs E/RES/1987//37 and E/RES/1989/62

<sup>23</sup>UN Docs E/CN.4/RES/1986/36, EKN.4/RES/1987/22

<sup>24</sup>Commission Resolution 14/6 adopted 5th May, 1993.

<sup>25</sup>UN Docs E/CN. 4/Sub. 2/RES/1991/26, E/CN.4/Sub.2/1992/26.

<sup>26</sup>Paragraph 61 of the Agenda. Available at: <https://www.habitatagendaoftheUN.org> (Accessed, 11 April, 2026)

<sup>27</sup>Ibid, paragraph 61.d

<sup>28</sup>Point 13 of the Strategy

<sup>29</sup>UNHRP is based in Kenya

<sup>30</sup>UN Docs. E/CN. 4/Sub/1992/15, E/CN.4/Sub.2/1993/15. Available at: <https://www.specialrapporteursonpromotingtherealisationoftherighttoadequatehousing.org> (Accessed, 21 June, 2025)

<sup>31</sup>UN Docs. E/CN.4/RES/2000/9

<sup>32</sup>ILO Convention No. 169

<sup>33</sup>Charter came into effect on June 1981

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". Article 21(2) of the same Charter also provides, "In case of spoliation the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation.

In Europe, the European Convention for the Protection of Human Rights and fundamental freedoms<sup>34</sup> in Article 8 and its sub-article provides that everyone has the right to respect for his private and family life and his home. The article further provides that there shall be no interference by a public authority with the exercise of this right except in accordance with the law and is necessary in a democratic society in the interest of national security, public safety or the economic well-being of the people, for the prevention of disorder or crime, for the protection of health or morals. The First Protocol to the Convention in its Article provides that every natural or legal persons is entitled to the peaceful enjoyment of his possession. The European Social Charter, one of the greatest Social Charter in the world in its Article 31 provides, "With a view to ensuring the effective exercise of the right to housing, the parties under take to take measures designed; (1) to promote access to housing of an adequate standard (2) to prevent and reduce homelessness with a view to its gradual elimination and (3) to make the price of housing accessible to those without adequate resources. The Charter is monitored by a Committee of Independent Experts known as the Social Rights Committee.

Under the Inter-American Commission on Human Rights<sup>35</sup> housing right is not specifically mentioned rather the right to own property is mentioned and this right has been used to enforce the housing right. In the case of CARLOS GARCA SACCONI V. ARGENTINA<sup>36</sup> it was held that "in the inter-American system, the right to property is a personal right. The Commission is empowered to vindicate the rights of an individual whose property is confiscated". The American Declaration on the Rights and Duties of Man provides in Article VIII that every person has the right to fix his/her residence within the territory of the State of which he/she is a national. According to Article IX every person has the right to the inviolability of his/her home. Article XI provides that every person has the right to the preservation of his health ... and social measures relating to ...housing... to the extent permitted by public and community resources. Article XXIII provides that every person has a right to own such private property as meets the essential needs of decent living and helps to maintain the dignity of the individual and of the home. Moreover, the American Convention on Human Rights provides in Article 1 that States parties undertake to respect the rights and freedom of their citizens while Article 11 protects right to privacy in that everyone has the right to have his/her honour respected and his dignity recognized. In Article 21, it protects right to property to the extent that no one shall be deprived of his/her property except upon payment of just compensation. Despite the fact that the Convention is silent expressly on housing rights all the above Articles are related and relevant for the enforcement of the right.

## **STATES OBLIGATIONS UNDER INTERNATIONAL LAW TO PROMOTE AND PROTECT HOUSING RIGHTS**

States are under legal obligations to promote and protect and enforce obligations which they have ratified and acceded to. In other words, States have treaty obligations in respect of treaties which they have ratified. Under Article 16 of the ICESCR States, parties must submit reports on measures which they have adopted in promoting and enforcing housing rights under Article 11. Such reports shall be submitted to the Secretary - General of the UN who shall transmit such reports to the ECOSOC for consideration and to other specialised agencies of the UN. Under Article 17 of the ICESCR States parties can also submit their report directly to the ECOSOC. Under Article 19 having deliberated on the reports the ECOSOC will further transmit their recommendations to the Commission on Human Rights. Under Article 21 the ECOSOC will further transmit their recommendations to the General Assembly. Thus, it is obligatory for the States Parties to comply with their treaty obligations and to render periodic reports to the various organs of the United Nations.

The Habitat Agenda also states that States within the overall content 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. States must take all appropriate measures to enforce the housing rights of their citizens within maximum of its available resources. Any obstacle or barrier on housing rights should be removed and its incumbent and States to refrain from taken retrogressive measures towards housing rights. According to the committee, all States possess a minimum core obligation to ensure the satisfaction of at the very least, minimum essential levels of each of the rights found in the Covenant. The minimum core obligation requires that each State must address the housing needs of its people so as to provide basic shelter and housing and in any state where majority of its people are not accommodating that state has failed in its duty of providing housing for its people.

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<sup>34</sup>Came into effect in 4th November, 1950

<sup>35</sup>Came into effect in 22nd November, 1969

<sup>36</sup>Case 11.617, Report No. 8/98, Inter-Am, C.H.R.

According to UNHRP the right to housing imposes three levels or types of obligations on States. They are obligation to respect, to protect and to fulfil<sup>37</sup>. The obligation to respect requires the State and all its organs and agencies to abstain from carrying out, sponsoring or tolerating any practice, policy or measure which violates housing rights of individuals or group. Governments must desist from restricting or infringing upon individual's freedom to use those materials or other resources available to her/him in a way they find must appropriate to satisfy individual, family, household or community needs. The obligation to respect obliges States to refrain from carrying out, advocating or condoning the practice of forced or arbitrary evictions or demolitions or any other unlawful violations of these rights.

The obligation also includes States respect of a person's rights to build their own dwellings in a manner that suits their cultures, skills, needs and wishes.

The obligation to respect housing rights means that it is the duty of the state and its agents to prevent the violation of any individual's rights to housing by not only the State itself but also by individuals, and other non-State actors. The obligations to fulfil include both an obligation to facilitate and an obligation to provide. The obligation to facilitate compels governments to place sufficient legal and policy emphasis on the full and progressive realization of housing rights through a series of active measures like:

Firstly, national and/or local legislative recognition of the rights. Secondly, the incorporation of housing rights norms into housing and related policies and thirdly, the identification of incremental goals, measured by discernible indicators, towards the full enjoyment of housing rights by all sectors of society. Fourthly, define the objectives for the development of the housing sector. Fifthly, identify the resources available to meet these aspirations. Sixthly, specify the most cost-effective way of using them and seventhly, outline the responsibilities and time frame for the implementation of the necessary measures.

The obligation to fulfil is both positive and interventionary. It is the duty of the State to intervene and assist individuals and groups who are unable to enjoy adequate right to housing. The States can actively intervene for the vulnerable population in respect of the following; public expenditures and resource allocation, governmental regulation of the economy including land and housing markets, housing subsidies monitoring rent levels and other housing costs, the provision of public housing, basic services and related infrastructure, taxation and subsequent redistributive measures, etc.

The United Nations Centre for Human Rights have rightly argued that States can only fulfil their international legal obligation on housing rights through a progressive realization of the right<sup>38</sup>. What progressive realization means is that States are obliged to continuously strive to strengthen economic, social and cultural rights including the right to housing. It is an obligation to move as expeditiously and effectively as possible towards the realization of the housing right. The progressive realization clause is also explained in Article 2 ( 1 ) of ICESCR that each state party 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 recognised in the present covenant by all appropriate means including particularly the adoption of legislative measures.

## IS THE STATE OBLIGED TO BUILD HOUSES FOR EVERYONE?

The answer is no. The State may not have economic resources and capacity to do so for everyone. In 1995 the Special Rapporteur of the Sub-Commission on Human Rights in his Report stated that the housing right does not include the following<sup>39</sup>:

- \* That the State is required to build housing for the entire population
- \* That housing is to be provided free of charge by the State to all who request it.
- \* That the State must necessarily fulfil all aspects of this right immediately upon assuming duties to do so.
- \* That the State should exclusively entrust either itself or the unregulated market to ensuring this right to all or
- \* That this right will manifest itself in precisely the same manner in all circumstances and locations.
- \* The Rapporteur concluded that housing rights obligations of the State connotes the following:
  - That once such obligations have been formally accepted, the State will endeavour by all appropriate means possible to ensure everyone has access to housing resources adequate for health, well-being and security, consistent with other human rights.
  - That a claim or demand can be made upon society for the provision of or access to housing resources should a person be homeless, inadequately or generally incapable of acquiring the bundle of entitlement implicitly linked with housing rights.

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<sup>37</sup>See Housing Right Legislation (Supra) PP. 15 – 16

<sup>38</sup>Ibidem. PP 13 - 14

<sup>39</sup>UN Doc. E/CN.E/Sub.2/1995/12, Paragraphs 4 – 5. Available at:

<https://www.specialrapporteurofthesub.commissiononhumanrights.org> (Accessed: 29 January, 2025)

- That the State, directly upon assuming legal obligations will undertake a series of measures which indicate policy and legislative recognition of each of the constituent aspects of the right in questions<sup>40</sup>.

However, if the economic resources of the State permit it, there is nothing wrong for the State to oblige who ever want it. In the United Kingdom, local councils<sup>41</sup> are required to provide accommodation to homeless people. In Bolivia<sup>42</sup> the Ministry of Human Development is mandated to promote the construction of subsidized housing. Under the German Basic Law<sup>43</sup> in case of homelessness based on the rule of law it is the duty of the State to give homeless people accommodation enabling them to live a dignified existence. In Finland<sup>44</sup> it is the duty of the State to give housing to people who are physically handicapped. In the Republic of Korea<sup>45</sup> housing is provided for people who lack them. In 1996 the UN-HABITAT and OHCHR<sup>46</sup> stated that under certain conditions it may be incumbent on the State to provide housing for those that needs it. The two UN bodies stated that "in specific cases the State may have to provide direct assistance including provision of housing units to people affected provision of housing units to people affected by disaster (natural and man-made) and to the most vulnerable groups in society".

It is the duty of States to create conditions - legislative, administrative, regulatory, economic, social, policy, legal, etc so that all citizen may benefit and enjoy in full the entitlements in the right to housing as well as to remove all barriers and obstacles and retrogressive measures infringing on people's right to housing. It is not imperative for the State to build houses for everyone.

## **NATIONAL LEGISLATION AND CONSTITUTIONAL PROTECTION OF HOUSING RIGHTS**

Housing right is a crucial one. Housing is one of the basic essential to human life. Millions of people all over the world live in abject poverty and without adequate housing like living in slums, shacks and temporary shelter. As a result of this, the UN-HABITAT has called on States to provide enabling legislations to guarantee the housing rights which have been constitutionally codified. Most constitutions refer to general obligations within the housing sphere or specifically to the right of housing. Most Constitutions guaranteed individual or family rights to housing while others recognise the right as State's responsibility within the context human right and rule of law. In some, States the right is not constitutionally guaranteed. In 1995 the Special Rapporteur of the Sub-Commission made it mandatory for all states to revise and amend their constitutions and incorporate the right to housing.

Codification of housing rights in the Constitution may not necessarily lead to implementations. The problem of implementation may be due to the following: Firstly; non-justifiability of certain constitutional provisions including right to housing. Secondly; failure to ensure that law and policy threat housing rights equitably. Thirdly; lack of clear and precise identification of legal responsibilities within national law to ensure these rights, Fourthly; the legal political problems relating to the enforcement of housing rights. Apart from constitutional codification of the right it is the primarily duty of the State to incorporate the right in to their domestic laws.

The international human rights laws compel states to incorporate housing right into their domestic laws. Article 2 ( 1 ) of ICESCR makes it mandatory for States at all levels to use all appropriate measures including legislative and other measures to promote and protect the right. Non-State parties to the Covenant are also strongly advised to adopt the same legislative measure.

The principles of international human rights laws also demand that where existing legislations are in conflict with housing right such legislations must be amended to create and reflect new legal standards. The UN Secretary General had also emphasised a compelling need for States to create new legislation and effective mechanism towards the prevention of forced evictions with a view to enforcing the implementation mechanisms of the right to housing<sup>47</sup>. Codification of housing rights is of extreme importance. It enables the States to create legal, social and economic conditions necessary for the satisfaction of the right. It also provides a legal foundation for the legislative action and advocacy of the right. When a right is codified those whose rights have been infringed can enforce their right in the court. Other importance includes permanency of legislations. Mere policy decisions is not enough so that the enforcement of the right will not be at the whims of politicians and governments. Codification may be the only way of ensuring equitable access to adequate housing right for the poor, disadvantaged and marginalized people. It ensures governmental accountability to the citizen as well as international commitments by the states.

<sup>40</sup>Un Doc. E/CN/4SUB.2/1995/12, paragraph 12

<sup>41</sup>Homeless Persons Act of 1977

<sup>42</sup>Act No. 1493 of 1993

<sup>43</sup>Article 1 (1), 20(1) and 28 (1) of Basic Law

<sup>44</sup>Article 8(2) of Act. No. 380 of 1987

<sup>45</sup>Housing Construction Promotion Act of 1972

<sup>46</sup>UN Doc. HS/C/15/2/Add.2

<sup>47</sup>UN Doc. E/CN.4/1994/20, paragraph 144

Most States have incorporated housing rights into their domestic laws modelled after international laws and standards and norms. This approach described as the "best practices approach". By adopting this approach States are both fulfilling their national obligations and international obligations as well as creating legal systems that empower their citizen to enforce their rights. Incorporation of international law to domestic law will result in greater consistency of domestic recognised human rights. This approach will also confer sanctity on domestic laws. Also, States that turn to international law for guidance benefit from the process by which international law is derived. In some States-treaties and international laws cannot be enforced within domestic jurisdiction unless such treaties and international laws are first of all incorporated into domestic laws thus the importance of national legislation.

## **CONTENT OF CONSTITUTIONAL AND NATIONAL LEGISLATION ON HOUSING RIGHTS**

States wishing to incorporate housing right into their Constitutions and national legislation may be guided in doing so by following some guidelines contained in Part C of the revised guidelines regarding the form and contents of reports to be submitted by States parties under Article 16 and 17 of the Covenant on Economic, Social and Cultural Rights drafted by the Committee on Human Rights. According to the Committee, States Parties submitting reports to it must provide information on the existence of any laws affecting the realization of the housing right, including the following:

- Legislation which gives substance to the right to housing in terms of defining the content of this right
- Legislation such as housing acts, homeless person acts, municipal corporation acts, etc
- Legislation relevant to land use, land distribution, land allocation, land ceilings, expropriation including provisions for compensation, land planning including procedures for community participation.
- Legislation concerning building codes, building regulations and standards and the provision of infrastructure.
- Legislation prohibiting any and all forms of discrimination in the housing sector, including groups not traditionally protected.
- Legislation prohibiting any form of eviction
- Any legislative appeal or reform of existing laws which detracts from the fulfilment of the right to housing.
- Legislation restricting speculation on housing or property, particularly when such speculation has a negative impact on the fulfilment of housing rights for all sectors of society.
- Legislative measures conferring legal title to those living in the "illegal" sector.
- Legislation concerning environmental planning and health in housing and human settlements<sup>48</sup>.

In respect of constitutionalisation of human rights, about 40 percent of countries of the world protect housing right in their constitutions. According to UN-HABITAT<sup>49</sup> the following countries have references relating to housing rights in their Constitutions. They are as follows: Afghanistan, Argentina, Austria, Bahrain, Bangladesh, Belgium, Bolivia, Bosnia and Herzegovina, Brazil, Burkina Faso, Cambodia, China, Colombia, Costa Rica, Cuba, Democratic People's Republic of Korea, Democratic Republic of the Congo, Dominica, Dominican Republic, Ecuador, El Salvador, Equatorial Guinea, Estonia, Ethiopia, Fiji, Finland, Germany, Guatemala, Guyana, Haiti, Honduras, Hungary, Iran, Jordan, Kyrgyzstan, Mali, Mexico, Namibia, Nepal, Netherlands, Nicaragua, Nigeria, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal Republic of Korea, Russian Federation, Saint Lucia, Sao Tome and Principe, Seychelles, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Suriname, Sweden, Switzerland, Turkey, Ukraine, Uruguay, Venezuela, Vietnam.

## **LEGAL SECURITY OF TENURE**

According to the Committee on Economic, Social and Cultural Rights<sup>50</sup> all persons should possess a degree of security of tenure which guarantees legal protection against forced exaction, harassment, etc. The committee urged all State parties to take immediate measures confer legal security of tenure upon those persons and households currently lacking security of tenure. Secured tenure is the corner stone of housing right. States must make sure that all persons own their own homes or rent their homes or reside formal settlements, etc. Secured tenure not only implements a significant aspect of housing right it also creates incentive for people to invest in their housing because the fear of arbitrary loss of their housing is greatly diminished. It is a condition for sustaining urban and rural development. It enables the people to invest in their land by way of using it to get loan from financial institutions. Secured tenure

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<sup>48</sup>UN Doc. E/C. 12/1990/8, PP. 88 – 110. Available at <https://www.committeereportofcommitteeonhumanrights.org> (Accessed: 2 February, 2025)

<sup>49</sup>UN-HABITAT, 2002c. Available at: <https://www.unhabitatonhousingrights.org> (Accessed: 10 March, 2025)

<sup>50</sup>General Comment No. 4, paragraph 8(a). Available at: <https://www.committeeoneconomicsocialandculturalrights.org>; org (Accessed: 15 April, 2025)

protects against arbitrary deprivation of property. It gives access to land and it is a strategic prerequisite for the provision of shelter and for sustainable human development.

## PROTECTION FROM FORCED EVICTION

Forced eviction involves compulsory and involuntary removal of people from their homes or land directly or indirectly attributable to the State. It may be due to expropriation of land, beautification programmes, discrimination, development-based displacement, etc. It is a gross violation of human rights. It threatens livelihood and security of individuals, dismantlement of communities, erosion of social support networks, creation of homelessness and refugee problems, impoverishment of victims, disruption of socio-economic and cultural lives of victims, etc. The Committee on Economic, Social and Cultural Rights<sup>51</sup> seriously warns States to refrain from force evictions and ensure that the laws is enforced against its agents or third parties who carry out forced evictions.

The right against forced eviction is protected by Article 17 (1) ICCPR which protects the right to be protected against "arbitrary or unlawful interference with one's home". The Committee further stated that States parties must use all appropriate means including legislative measures to promote all the rights protected under the Covenant. According to the Committee such legislation should include measures which firstly, provide the greatest possible security of tenure; Secondly, conform to the Covenant and; thirdly, are designed to control strictly the circumstances under which evictions may be carried out.

## NON-DISCRIMINATION

The Committee<sup>52</sup> provide that:

"individuals as well as families are entitled to adequate housing regardless of age, economic status, group or other affiliation or status and other such factors. In particular enjoyment of this right must in accordance with Article 2 (2) of the Covenant not be subject to any form of discrimination".

The Committee<sup>53</sup> also further states:

"the non-discrimination provisions of Articles 2(2) and 3 of the Covenant impose an additional obligation upon Governments to ensure that, where evictions do occur, appropriate measures are taken to ensure that no form of discrimination is involved"

In Uganda<sup>54</sup> women are denied access to land due to discriminatory customary law and traditional practices. This defect has been ameliorated by the Ugandan Land Use Act. Section 33 of the Act provides that any decisions taken on land which deny women or children or persons with disability access to land in form of ownership, occupation, etc is void.

## PROVISION OF HOUSING FOR THE POOR

Provision of housing for the poor depends on the latter's affordability. The Committee<sup>55</sup> states that:

"personal or household financial costs associated with housing should be at such a level that the attainment, and satisfaction of other basic needs are not threatened or compromised... States Parties should establish housing subsidies for those unable to obtain affordable housing as well as forms and levels of housing"

Article 40 (1) of the Constitution of the Russian Federation<sup>56</sup> provides that everyone has a right to home. Its subsection 3 provides:

"Citizens with low incomes and citizens, defined by law, who are in need of housing shall be housed free of charge or for affordable pay from of charge or for affordable pay from the state, municipal and other housing funds in conformity with the norms established by the law".

In France<sup>57</sup>, Article 1 of Law 90 provides:

"The guarantee of a right to housing constitutes a duty of solidarity for the nation as a whole. Any person or family finding difficulties because of the inability of his (or her) resources to meet his (or her) needs has the right to collective assistance under conditions fixed by law that will ensure access to decent and independent housing where he (or she) can maintain himself".

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<sup>51</sup>General Comment No. 7, paragraph 9

<sup>52</sup>General Comment No. 4, paragraph 6

<sup>53</sup>General Comment No. 7, paragraph 11

<sup>54</sup>Land Act of 1998

<sup>55</sup>Comment No. 4, paragraph 8. C

<sup>56</sup>Constitution of the Russian Federal 1993

<sup>57</sup>Law 90/449 of 31st May 1990

## ACCESSIBILITY

The Committee provides that adequate housing should be made accessible to everyone including disadvantaged people such as the elderly, physically disabled, terminally ill, AID and HIV patients, people with medical problems, mentally ill, people with medical problems, mentally ill, victims of natural disaster, landless people, and impoverished people. In 1990 the United States Government promulgated the Disabilities Act. Section 12101(a) (1) of the Act noted that 43 million Americans have one or more physical or mental disabilities and this number is increasing. Subsection 3 of the Act provides discrimination against people with disabilities persist in such critical areas like employment, housing, transportation, public accommodations, etc. Subsection (b) provides that the State is to provide a clear and comprehensive national mandate for the elimination of discrimination against individual with disabilities and to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities.

## RESTITUTION

Restitution means redressing and provision of remedies for violations of housing rights. It includes returning refugees and displaced person back to their homeland. It is a remedy for forced eviction, forced resettlement and forms of unlawful property expropriation. Article 25 of the Constitution of South Africa<sup>58</sup> provides:

"A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of parliament, either to tenure which is legally secure or to comparable redress<sup>59</sup>"

## HABITABILITY

It is the duty of the State to make sure that the housing of the people is habitable in respect of health, amenities, safety, etc. Section 45 of The Residential Tenancies Act of New Zealand<sup>60</sup> provides:

"The Landlord shall:

- a) Provide the premises in a reasonable state of cleanliness, and,
- b) Provide and maintain the premises in a reasonable state of repair having regard to the age and character of the premises and the period during which the premises are likely to remain habitable and available for residential purposes; and,
- c) Comply with all requirements in respect of building health, and safety under any enactment so far as they apply to the premises.

## HOMELESSNESS

This is one of the extreme forms of gross violations of housing rights. Homelessness debases humanity and it violates the dignity of a human being. States should not only provide housing they should also provide social services that deal with physical and mental well-being of the people. Article 40 (1) and (2) of Constitution of Sachsen-Anhalt of Germany<sup>61</sup> provides:

- (1) The State and local authorities have responsibilities to ensure support for the construction of housing, the maintenance of existing housing supplies and through other measures to guarantee dignified living space and adequate living condition for everyone.
- (2) The state and the local authorities shall ensure that no one becomes homeless"

Under Section 189 of the Homeless Persons Act of U.K<sup>62</sup>. A homeless person must be catered for.

The section provides:

The following have a priority need for accommodation: -

- a) A pregnant woman or a person with whom she resides or might reasonably be expected to reside.
- b) A person with whom dependent children reside or might reasonably be expected to reside.
- c) A person who is vulnerable as a result of old age, mental illness or handicap or physical disability or other special reason or with whom such a person resides or might reasonably be expected to reside.

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<sup>58</sup>Civil Rights 7 Code (as amended 1990, American with Disabilities Act)

<sup>59</sup>Constitution of 1996

<sup>60</sup>The Residential Tenancies Act No. 120 of 1986

<sup>61</sup>Constitution of Sachsen-Anhalt of 1992

<sup>62</sup>Homeless Persons Act (1977 as amended 1996)

- d) A person who is homeless or threatened with homelessness as a result of an emergency such as food, fire or other disaster".

## LAND RIGHTS OF INDIGENOUS PEOPLE

The land rights of indigenous people is crucial to social and economic well-being of such people. According to the Special Rapporteur on Indigenous Peoples<sup>63</sup>:

"Indigenous people have emphasised... the fundamental nature of their relationship to their homelands...(and) the urgent need for understanding by non-indigenous societies of the spiritual, social, cultural, economic and political significance to indigenous societies of their lands, territories and resources for their continued survival and vitality".

### The I.L.O<sup>64</sup> in one of its Convention provides:

"The right of ownership and possession of the peoples concerned over the lands which they traditionally occupied shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the people concerned occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect"

Article 10 of the Draft Declaration on the Rights of Indigenous Peoples provides:

"Indigenous peoples shall not be forcibly removed from their lands or territories no relocation shall take place without the free and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return".

## JUSTIFIABILITY AND VIOLATIONS OF HOUSING RIGHTS

Housing rights falls within the domain of economic, social and cultural rights. It is, however, generally believed that economic, social and cultural rights are too expensive for State and governments to implement and therefore not justiciable. Such arguments are, however,

not supported in norms of international fundamental human rights. It should also be noted that all human rights are equal. No group is superior or inferior to the other whether it is political or civil or cultural or economic. According to the Program of Action at the World Conference on Human Rights all human rights are universal, indivisible, interdependent and interrelated and the international community must treat human rights globally in a fair and equal manner on the same footing and with the same emphasis. The mere fact that economic and social rights are expensive to implement does not mean they should therefore not be implemented at all. Also, certain civil and political rights are equally expensive yet they are implemented and made justiciable.

The State have an obligation to guarantee economic, social and cultural rights by making the right as well as fulfilment of certain obligation which are of immediate effect. Certain obligations on behalf of the State do not require financial expenditure by the State. Obligation to guarantee economic, social and cultural rights without obligation simply means that economic, social and cultural rights of the people must be protected and nobody must be discriminated against on ground of sex, religion, birth, race, colour, politics etc. Where there is an infringement on such rights especially housing rights the victims should be able to go to court to enforce his fundamental human rights and obtain justice.

Violations of housing rights can manifest itself in various ways. The Committee on several time had seriously castigated some State for violating housing rights like forced evictions, promulgation of laws which discriminate in respect of housing rights, failure of States to deal with harmful customary and traditional practices which violate housing rights. The Special Rapporteur of the Sub-Commission<sup>65</sup> have listed certain acts which among to gross violations of housing rights. Some of the acts include the following:

<sup>63</sup>UN Doc. E/CN.4/Sub.2/2001/21, paragraph 12. Available at: <https://www.specialrapporteuronindigenouspeople.org> (Accessed: 2 June, 2026)

<sup>64</sup>ILO Convention No. 169

<sup>65</sup>UN Doc. E/CN.4/Sub.2/1993/15 paragraph 144

- ❖ Carrying out, sponsoring, tolerating the practice of forced eviction.
- ❖ Demolishing or destroying homes/dwellings as a punitive measure
- ❖ Actively denying basic service such as water, heating or electricity, to sector of society, despite a proven ability to provide these.
- ❖ Acts of racial or other forms of discrimination in the housing sphere.
- ❖ Adoption of legislation or policies clearly inconsistent with housing rights obligations particularly when these result in homelessness, greater levels of inadequate housing, the inability of persons to pay for housing and forty.
- ❖ Repealing legislation consistent with and in support of housing right, unless obviously outdated or replaced with equally or more consistent laws.
- ❖ Unreasonable reductions in public expenditures on housing and other related areas in the absence of adequate compensatory measures,
- ❖ Overtly prioritizing the housing interests of high-income groups when significant portions of society live without their housing having been achieved.
- ❖ Constructing or allowing the building of housing upon unsafe or polluted sites threatening the lives and health of future occupants.
- ❖ Harassing, intimidating or preventing NGO and community-based organisations and grassroots movements and groups concerned with housing rights from operating freely.
- ❖ Failure to take appropriate steps as required under the Covenant on Economic, Social and Cultural Rights. Failing to reform or repeal legislation inconsistent with the covenant.
- ❖ Failing to enforce legislation inherent in the fulfilment and recognition of housing right.
- ❖ Failing to intervene in the housing market especially concerning rent level, rent control, rent subsidies issues of security of tenure and prevention of undue speculation
- ❖ Failing to incorporate and implement accepted international minimum standards of achievement concerning housing rights,
- ❖ Failing to provide infrastructure, basic services (water, electricity, sewage, drainage).
- ❖ Failing to prohibit or prevent individual or civil actions amounting to housing rights violations by any person capable of committing such acts.
- ❖ Failing to utilize and available resources for the fulfilment of this right.
- ❖ Failing to integrate and fully consider the implications for housing rights when developing macro-economic policies impacting upon the housing or related social spheres.
- ❖ Failing to submit reports as required under Articles 17 and 17 of the Covenant on Economic, Social and Cultural Rights as well as under treaties.

Similarly, the Commission on Human Settlements<sup>66</sup> has urged States to end violations like mass evictions, racial or other discrimination in sphere of housing, repeal, reform or amend existing legislation, policies, programme or projects which impacted negatively on housing rights. Gender discrimination against women is an extreme form of violation of housing rights of women. In some States due to traditional, customary, social altitude and discriminatory legislations women cannot own, rent, lease or inherit land, housing or property. States at times can discriminate against women through legislation. For example, the Algerian Family Code<sup>67</sup> was struck down by the Committee on ground of discrimination. The Committee observed:

“The Committee is deeply concerned about the persistent discrimination in the political, social and economic spheres of life against women in Algerian society, and women in Algerian society, and women’s inferior position under the family Code of the State party already referred to in its concluding observations on the initial report of Algeria. In this regard, the Committee express its serious concern about the considerable divergence existing in the State party between constitutional provisions on the one hand and national legislation and practice, on the other, particularly with regard to a number of discriminatory provision of the Family Code, including provisions on... gender discrimination with regard to inheritance, as well as the husband’s absolute right to keep the conjugal home in the case of divorce”.

The ICESCR in its Article 3 calls for an affirmative action or positive action to redress the injustices of violations of women's right to housing. In 2000, the Commission’s Special Rapporteur<sup>68</sup> noted gender discrimination against women in respect of access to land and control over land, properly and homing are determinative of women's overall living conditions and are necessary to the development of sustainable human settlements in the world today. The Maastrich

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<sup>66</sup>Commission’s Resolution 14/6. UN Doc. A/48/8. Available at: <https://www.commissiononhumansettlement.org> (Accessed 15 February, 2025).

<sup>67</sup>UN Doc. E/C.2/1/Add.71

<sup>68</sup>UN Doc. E/CN.4/2001/51, paragraph 66. Available at: <https://www.specialrapporteurofcommissiononhumanrights.org> (Accessed 2 March, 2025).

Guidelines<sup>69</sup> based on Article 3 of the Convention on the Elimination of All Forms of Discrimination Against Women stated that:

“Discrimination against women in relation to the rights recognised in the (ICESCR) is understood in light of the standard of equality for women under the CEDAW. That standard requires the elimination of all forms of discrimination against women including gender discrimination arising out of social, cultural and other structural disadvantages”

## REMEDIES FOR VIOLATIONS OF HOUSING RIGHTS

There are various types of remedies; it can be judicial, it can be legislative, affirmative actions by the state, it can be by quasi-judicial remedy through international bodies like the UN Human Rights Committee, UN Committee on Economic, Social and Cultural Rights etc. The Committee<sup>70</sup> have stated emphatically that housing right is justiciable and certain actions are justiciable like:

- Legal appeals aimed at preventing planned evictions or demolitions through the insurance of court-ordered injunctions.
- Legal procedures seeking compensation following an illegal eviction.
- Complaints against illegal actions carried out or supported by land lords whether public or private in relation to rent levels, dwelling maintenance and racial or other forms of discrimination.
- Allegations of any forms of discrimination in the allocation and availability of access to housing.
- Complaints against landlords concerning unhealthy or inadequate housing conditions. In some legal systems, it would also be appropriate, to explore the possibility of facilitating class action suits in situations involving significantly increased levels of homelessness.

In the case of GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA V. GROOTBOOM AND OTHERS <sup>71</sup> was a case of eviction and unlawful demolition. MS. Irese Grootboom and a group of squatters in Wallacedene, South-Africa were evicted from land earmarked for low-cost housing development. During the eviction their structures and buildings were destroyed and this eviction and destruction were challenged in court. The Constitutional court declared the action of the State as unconstitutional and unlawful and held that it was the role of the State to provide "relief for the people who have no access to land, no roof over their heads and who are living in intolerable conditions or crisis situations".

In the Indian Case of MANEKA V. UNION OF INDIA<sup>72</sup>, the Indian Supreme Court interpreted the right to life codified in the Indian Constitution to mean the right to live with dignity and a right to shelter and protection from forced eviction. In another Indian case of FRANCIS CORALIE V. UNION TERRITORY OF DELHI<sup>73</sup> the Indian Supreme Court interpreting the same right to life argued that the right include the right to live with human dignity and all that goes along with it namely basic necessities of life such as adequate nutrition, clothing and shelter, in another Indian case in OLGA TELLIS V. BOMBAY MUNICIPAL CORPORATION<sup>74</sup> the Indian Supreme Court held that forced eviction would result in a deprivation of the ability a livelihood was essential to life and thus forced eviction would result in a violation of right to life.

In MT. LAUREL CASH<sup>75</sup>, the new Jersey Supreme Court held that shelter along with food are among the basic human needs. The court voids homelessness. In CALLAHAN V. CAREY<sup>76</sup> a class-action suit was brought by some homeless men on the Lower East side of New York City demanding from the City to provide them with shelter based on the New York Constitution, New York Administrative Code and Social Services Law. The New York Supreme Court granted an injunction mandating the New York City to provide the men with beds. In France, the Paris Court of Appeal on the 17<sup>th</sup> September 1993 held that 23 homeless families were obliged by necessity to occupy premises which had been abandoned for several years because the men over the years had never obtained any tangible results from the housing applications they had addressed to the Housing Authorities of the City of Paris.

It should also be noted that apart from national courts, international and regional mechanisms can be pressed into service to correct violations of housing rights. States Parties, NGOs, etc are expected to submit periodic reports to

<sup>69</sup>Guidelines 12. Available at: <https://www.maastrichtguidelines.org> (Accessed: 15 March, 2026).

<sup>70</sup>General Comment No. 4, paragraph 17

<sup>71</sup>(200) 3 BCLR 2000

<sup>72</sup>(1978) 1 SC 746

<sup>73</sup>(1981) 1 SCR 746

<sup>74</sup>(1985) 3 SCC 545

<sup>75</sup>Judgment of New Jersey Supreme Court, 1983

<sup>76</sup>(1979) 2 NYSC 120

the Committee on Economic, Social and Cultural Rights. Regional courts and mechanisms like the European, Court, European Commission, African Court, inter-American Commission and Inter-American Court can also help at the regional levels to redress violations of housing rights.

In 1990 the Committee<sup>77</sup> seriously castigated the Dominican Republic for unlawful evictions of 15,000 families. The Committee noted that members also referred to information to the effect that 15,000 families had been expelled from their dwelling in the context of programmes intended to remodel urban housing estates in connection with the ceremonies to mark the 500<sup>th</sup> anniversary of the landing by Christopher Columbus. The Committee noted that the expulsions had been ordered without respect for the relevant legal procedures and the families were living in extremely difficult economic and social conditions. Consequently, explanations were requested about the Dominican Government's respect for the rights contained in Article 11 of the Covenant.

In the case of L.K.V. THE NETHERLANDS<sup>78</sup> the complainant filed a complaint against the State alleging that the Dutch Government did not comply with Article 5(e) (iii) of the International Convention on Racial Discrimination before the UN Committee on the Elimination of Racial Discrimination on ground that his right to housing in an environment free of racial discrimination had been infringed due to hostile reactions by neighbours to a prospective tenant in an Utrecht neighbourhood who was of non-Dutch origin. The Committee found in favour of the complainant.

In CYPRUS V. TURKEY<sup>79</sup> the European Commission condemned the Turkish Government for unlawfully evicting Greek Cypriots from their homes. The Commission stated that the evictions amount to an interference with rights guaranteed under Article 8 (i) of the European Convention. The matter was also later considered by the European Court and it held that there had been a continuing violation of Article 8 as well as Article 1 of Protocol No. 1.

In WIGGINS V. U. K.<sup>80</sup> a man was evicted from his home by a local Housing Authority due to the fact that he had been separated from his wife. The Authority argued that the occupancy of the house depends on the condition that he was a member of his wife's household. The European Commission found in his favour and declared that his eviction violated the European Convention.

In AKDIVAR AND OTHERS V. TURKEY<sup>81</sup> the complainants alleged that security forces invaded their village and burnt some houses. The Government denied responsible and attributed the arson to PKK. The Court held that burning of houses is a violation of Articles 8 and Article 1 of Protocol 1 of European Convention.

In America in CARLOS GARCIA SACCONI V. ARGENTINA<sup>82</sup>, the Inter-American Commission stated property is a personal right. The Commission is empowered to vindicate the rights of an individual whose property is confiscated..."

In COMADRES CASH<sup>83</sup> the petitioners alleged before the Inter-American Commission that the Salvadoran State violated its right to privacy under Article 11 and right to property under Article 21 when a bomb damaged windows and doors of their headquarters and also that security forces entered their headquarters and removed certain documents. The Commission declared the actions of the State as unlawful. Similar arguments canvassed above can be used to enforce housing rights.

IN MAYA INDIGENOUS COMMUNITIES AND THEIR MEMBERS<sup>84</sup>. This case involved the confiscation of lands belonging to the Mopan and Ke'ekchi Maya people by Belize State. The petitioners argued that the State had violated their rights in relation to their lands and natural resources when the State granted numerous concessions for logging and oil development to developer on a total of over half a million acres of land that, traditionally used, owned and occupied by the Maya people. The Inter-American Commission held in favour of the indigenous community and further that the State's action violated Articles I, II, XI, XVIII and XXIII of the American Declaration.

## RECENT DEVELOPMENT ON THE RIGHT TO HOUSING

In recent years the right to housing has gained renewed global attention due to rising housing crises in both developed and developing countries. Rapid urbanisation combined with soaring property prices has led to increased homelessness and housing insecurity especially in major cities. Gentrification and speculative real estate investment have displaced low-income communities, reducing access to affordable housing climate change has emerged as a major threat to housing rights. Rising sea levels, extreme weather and natural disasters have displaced millions, creating a growing class of climate refugees. Climate change affect housing rights in respect of the following. Firstly, extreme weather events that are

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<sup>77</sup>UN Doc. E/C/12/1990/8. Available at: <https://www.committeereportondominicanrepublicofeconomicsocialandculturalrights.org> (Accessed 29 January, 2025)

<sup>78</sup>Comm. No. 4/1991, opinion of 16 March 1993, 42nd Session

<sup>79</sup>Report of the Commission, Applications 6780/74 and 6950/75

<sup>80</sup>Report of the Commission, European Human Rights Report

<sup>81</sup>European Court of Human Rights Report 1996 – IV (Judgement of 16 September 1996, paragraph 88

<sup>82</sup>Inter-American Court of Human Rights OEA/Ser.L/V/II.95 Doc. 7 Rev at 193 (1997).

<sup>83</sup>Report No. 13/96

<sup>84</sup>Case No. 12.053 Inter-American Court of Human Rights.

unpredictable are created. Rising temperatures contribute to more frequent and severe floods, storms, hurricane and heat waves. These events destroy homes, displace communities and damage infrastructure. Secondly, sea level rises uncontrollably. Coastal areas are increasingly threatened by rising sea levels leading to permanent displacement and loss of homes. On December 26, 2004 during the tsunami disaster which happened in the Indian Ocean, 14 countries were badly affected in Asia and Africa. In Indonesia over 500,000 people were left homeless, in India 11,000 people died and thousands were left homeless, in Thailand tourist areas, resorts and local housing units were swept away and in Maldives 20 islands were entirely evacuated and housing infrastructure were critically destroyed. Thirdly, the devastating effects of drought and desertification. Changes in rainfall patterns and prolonged droughts reduce agricultural productivity and lead to the abandonment of homes in rural areas pushing people towards urban slums. Climate change is creating a new category of displaced people – ultimate refugees. Displaced people often settle in informal housing without secure tenure, basic services or resilience to hazards. In Bangladesh, rising sea levels and frequent flooding from cyclones have submerged thousands of homes and entire communities in the Ganges Delta are forced to move inland often settling in urban slums. In Pacific Island nations like Tuvalu and Kiribati are constantly facing existential threats to their laid becoming inhabitable. In United States, Hurricane Katrina (2005) and Hurricane Ida (2021) these disasters destroyed thousands of homes and rendered thousands homeless and as refugees. In Sub-Saharan Africa like Chad and Sudan, drought and desertification has forced rural populations to abandon homes and move to overcrowded urban slums. In Philippines during the Typhoon Haiyan (2013) over one million homes were destroyed by strong wind storms. In Australia between 2019-2020. In Australia between 2019-2020 bushfires destroyed over 3,000 homes and thousands were displaced. COVID-19 also have serious impacts on housing rights. It highlighted the link between public health and the right to adequate housing. Housing became central to personal safety, public health strategies and human dignity during the crisis. During the pandemic people were asked to “Stay at home” and social distancing was primary means of control. For the homeless and those in overcrowded housing units this became impossible. Overcrowded housing conditions especially in slums, refugee camps, etc, made self-isolation, social distancing and hygienic practices impossible. The pandemic reframed homelessness as a public health emergency. COVID-19 underscored that housing is a human right critical to health, safety and dignity. The revealed deep structural failures and offered an opportunity to reimagine housing systems that are resilient, inclusive and rights-based.

## THE WAY AHEAD AND CONCLUSION

The task of providing housing for everyone is the duty of everyone; governments, individuals, landlords, mortgage institutions, banks, Civil society, etc. The problems of homelessness and housing must be solved by various institutions at the local, national, international and regional levels.

All treaties whether at the international and regional levels which guaranteed housing rights must be fully ratified by all government so as to give a unified and consistent international protection of the right to adequate housing. Also, all reservations made by States to such treaties must all be withdrawn. Treaties must be revised and updated from time to time so that they can be models for national and local legislative reforms. It is also a high time to draft an International Convention for Housing Right. The Civil Society should actively encourage housing right advocacy, this will not only enable individuals and communities to enforce their housing right but it will further create a body of beneficial jurisprudence that will further define, support and protect housing, land and property rights. At the UN level the ICCPR should be energized to fully incorporate housing right, Housing right should not be left alone within the domain of ICESCR. Housing right should be propagated as a civil and political right also.

There should be an Optional Protocol for the ICESCR whereby individuals should be able to bring complaints to the Committee similar to that of the ICCPR. Through a means like this, individuals would be able to enforce their housing right internationally. At the regional levels it is only the Council of Europe that comprehensively protects housing rights. The two other regional bodies: African Union and Organisation of American States have a duty to strengthen the African Charter and the American Convention respectively by adoption Protocols on housing rights. At the domestic level both the civil society and governments have crucial roles to play. It is the duty of individuals and NGOs to always push for adoption of legislations favourable to housing rights.

It is also their duty to assist individuals and most especially the less privileged and the poor to champion their housing rights. The government also must provide a conducive atmosphere for housing rights by promulgating housing legislations, land and rent reforms, provision of basic infrastructural facilities that will make housing right meaningful, assistance to people to build houses as well as estate developers to build houses for the people.

I am grateful to the Office of the UN High Commissioner for Human Rights (OHCHR) for sending me a publication titled, “Housing Rights Legislation” which stimulation this article. I am most grateful.