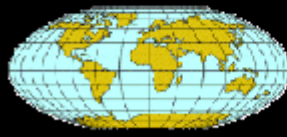




Compilation of Selected Adjudication on Housing Rights



United Nations Housing Rights Programme, Report No. 4

UNITED NATIONS HUMAN SETTLEMENTS PROGRAMME (UN-HABITAT)

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1. UN Doc. E/C.12/1992/2, Concluding Observations of the Committee on Economic, Social and Cultural Rights, at its 21st meeting (seventh session, 10 December 1992).
2. UN Doc. E/C.12/1993/19, Concluding Observations of the Committee on Economic, Social and Cultural Rights, at its 18th meeting (eighth session, 27 May 1993).
3. UN Doc. E/C.12/1993/19, Concluding Observations of the Committee on Economic, Social and Cultural Rights, at its 49th meeting (ninth session, 10 December 1993).
4. UN Doc. E/C.12/1994/20, Concluding Observations of the Committee on Economic, Social and Cultural Rights, at its 54th meeting (eleventh session, 8 December 1994).
5. UN Doc. E/C.12/1994/20, Concluding Observations of the Committee on Economic, Social and Cultural Rights, at its 52nd meeting (eleventh session, 7 December 1994).
6. UN Doc. E/C.12/1994/20, Concluding Observations of the Committee on Economic, Social and Cultural Rights, at its 27th meeting (tenth session, 20 May 1994).
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15. UN Doc. E/C.12/1/Add.27, para. 11, Concluding Observation of the Committee on Economic, Social and Cultural Rights: Israel (4 December 1998).
16. UN Doc. E/C.12/1/Add.43, para. 23, Concluding Observation of the Committee on Economic, Social and Cultural Rights: Italy (23 May 2000).
17. UN Doc. E/C.12/1/Add.66, para. 16, Concluding Observations of the Committee on Economic, Social and Cultural Rights: Nepal (31 August 2001).
18. UN Doc. E/C.12/1/Add.62, para. 15 and 39, Concluding Observations of the Committee on Economic, Social and Cultural Rights: Senegal (31 August 2001).
19. E/C.12/1990/8. Concluding observations to the initial periodic report of the Dominican Republic (December 1990).
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21. E/C.12/1991/4. Report on the sixth session of the Committee on Economic, Social and Cultural Rights, (25 November - 13 December 1991).
22. E/C.12/1994/15. Concluding Observations of the Committee on Economic, Social and Cultural Rights: Dominican Republic (19 December 1994).
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24. *Case of Akdivar v. Turkey*, Eu. Ct. Hum. Rts., Reports 1996-IV (judgement of 16 September 1996), paragraph 88.
25. *Government of the Republic of South Africa and others v. Grootboom and others*, Supreme Court of the Republic of South Africa, 2000 (3) BCLR.
26. *Case of Zubani v. Italy*, Eu. Ct. Hum. Rts., Reports 1996-IV (judgement of 7 August 1996).
31. Communication No. 161/2000: Yugoslavia, UN Doc. CAT/C/29/D/161/2000 (2 December 2002).
32. *SERAC and CESR v. Nigeria*, ACHPR, Communication 155/96 (May 2002).
33. Scott Leckie, "The Right to Housing" in *Eide, Asbjørn, Catarina Krause and Allan Rosas (eds.), (1995), Economic, Social and Cultural Rights: A Textbook*, Dordrecht, Boston, London: Martinus Nijhoff Publishers (January), 107-123, at p. 113.
34. Scott Leckie, "The Right to Housing" in *Eide, Asbjørn, Catarina Krause and Allan Rosas (eds.), (1995), Economic, Social and Cultural Rights: A Textbook*, Dordrecht, Boston, London: Martinus Nijhoff Publishers (January), 107-123, at pp. 113-114.
35. See General Comment No.7 (1997) on the right to adequate housing (Article 11.1): Forced Evictions
36. Scott Leckie, "The Right to Housing" in *Eide, Asbjørn, Catarina Krause and Allan Rosas (eds.), (1995), Economic, Social and Cultural Rights: A Textbook*, Dordrecht, Boston, London: Martinus Nijhoff Publishers (January), 107-123, at p. 113.
37. *European Roma Rights Center v. Greece*, Complaint No. 15/2003, 16 June 2003.
38. *Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan & Ors.*, 11 SCC 121 (1997).
39. *SAHAJ v. Vadora Municipal Corporation*, Supreme Court of India, 19 December 2003.
40. *Daniels v. Campbell*, Constitutional Court of South Africa, Case No. CCT40/03, 11 March 2004.
41. *Alexkor Limited v. Richtersveld Community*, Constitutional Court of South Africa, 14 October 2003.
42. *President of the Republic of South Africa & Ors. V. Modderklip Boerdery (Pty) Ltd*, Case Nos. 187/03 and 213/03, 27 May 2004.
43. *The City of Cape Town v. Rudolph*, High Court of South African [Cape of Good Hope Provincial Division], 7 July 2003.
44. Article 16 provides for the right of the family to social, legal and economic protection, including the undertaking of Parties to promote the economic, legal and social protection of family life by means including the provision of family housing.
45. The Preamble states that *the enjoyment of social rights should be secured without discrimination on the grounds of, inter alia, race...*
46. Resolution ResChS(2005)11, 8 June 2004.
47. Constitutional Court of South Africa, Case CCT 20/04, 13 May 2005.
48. S.6 PIE provides for circumstances in which a municipality may apply to evict unlawful occupiers.
49. Section 6(3)(a) PIE.
50. Section 6(3)(b) PIE.
51. Section 6(3)(c) PIE.
52. *South Bucks District Council & Anor. v. Porter (FC)*, House of Lords, United Kingdom.
53. See page 1 for an explanation of our use of the term 'gypsy'
54. European Convention on Human Rights and Fundamental Freedoms.
55. (2001) 33 EHRR 399.
56. European Court of Human Rights, Application No. 66746/01 (27 May 2004).
57. Constitutional Court of South Africa, Case No. CCT74/03, 8 October 2004.
58. European Court of Human Rights, Application Nos. 41138/98 and 64320/01 (12 July 2005).
59. Constitutional Court, 2004 (12) BCLR 1268 (CC).
60. Supreme Court of India, Civil Appeal No. 2598/1989, 31 January 1990.



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Introduction

"The States Parties to ... [the International Covenant on Economic, Social and Cultural Rights] recognise the right of everyone to an adequate standard of living for himself and his family, including ... housing...."

"Each State Party to the present Covenant undertakes to take steps ... with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures."

(The International Covenant on Economic, Social and Cultural Rights, Articles 11(1) and 2(1)).

As part of their efforts to ensure the full and progressive realization of the human right to adequate housing, the United Nations Human Settlements Programme (UN-HABITAT) and the United Nations Office of the High Commissioner for Human Rights (OHCHR) published a joint report entitled *Housing Rights Legislation* in 2002. That report was also the first output of the United Nations Housing Rights Programme, a joint programme initiated by the two agencies as mandated by resolutions of the Commission on Human Settlements (1997) and the Commission on Human Rights (2001).

The report contained a review of housing rights in international and national law, including a discussion of housing rights as progressive legal obligations and reviews of selected adjudication (e.g. how housing rights legislation is being implemented). The *Housing Rights Legislation* report illustrates that effective constitutional and legislative measures on the right to adequate housing are not only realistic but have already been in use successfully in a number of countries. The examples presented there provide guidance to the development of a model legislation framework with respect to specific components of the right to adequate housing, and legislative reforms that could be initiated to advance housing rights more effectively.

To provide States and other stakeholders with further guidance on the normative content of housing rights – and thus to support the goal of developing a model framework on housing rights, as elaborated in the *Housing Rights Legislation* report – UN-HABITAT is also publishing three supportive compilations on international and national housing rights legislation (all of which are published in electronic format only), namely:

- International Instruments on Housing Rights;
- National Housing Rights Legislation; and
- Compilation of Selected Adjudication on Housing Rights.

It is the objective of the United Nations Housing Rights Programme to prepare periodic updates of all these reports, to facilitate a knowledge base, a media for information exchange and assist the development and adoption of legislative measures to support the full and progressive realization of the human right to adequate housing.

The present report, *Compilation of Selected Adjudication on Housing Rights*, is one of these three supportive compilations. Updated in 2004 and 2005, it contains a compilation of excerpts of the text of selected housing rights case law at the international, regional and national levels, most of which are presented and discussed also in the *Housing Rights Legislation* report. It also contains relevant excerpts of national legislation critically reviewed by the United Nations Committee on Economic, Social and Cultural Rights.

These reviews are undertaken by the Committee through its Concluding Observations with respect to its review of periodic reports submitted by States Parties on the measures taken to implement the provisions of the International Covenant on Economic, Social and Cultural Rights. This examination of domestic legislation is undertaken to determine if it contravenes provisions enshrined in the Covenant or if it has the effect of implementing those provisions. Such critical analyses reveal how international human rights bodies are now playing a vital monitoring role directly relevant to housing, land and property.

The compilation is not comprehensive. The presence or absence of a particular case law or legal review, does not imply a subjective assessment. This compilation is a first effort to prepare an overview of relevant case law and other adjudication. The compilation was initially undertaken in 2001 and updated in 2004 and 2005 by the Centre on Housing Rights and Evictions (COHRE), a non-governmental organization, under contract by UN-HABITAT. The excerpts presented are compiled through research and are in some cases based on second-hand information. Elaboration on adjudications are thus not always presented *ad verbatim*.

The United Nations Housing Rights Programme appreciates comments of any kind regarding the content of this report. In particular, notifications about errors will be appreciated so that future versions of the report can be

corrected. Moreover, comments that may serve to improve the content of the report and/or to extend its coverage will also be appreciated. Any such contributions should be sent to the following e-mail address: housing.policy@unhabitat.org.



Compilation of Selected Adjudication on Housing Rights



The United Nations Committee on Economic, Social and Cultural Rights Concluding Observations

International consideration by *quasi*-judicial bodies of the compatibility of relevant domestic legislation as it relates to international sources of the human right to adequate housing is now commonplace. In some instances, certain United Nations human rights bodies have expressed concern about the inconsistencies of national laws with international human rights standards. The following excerpts from various Concluding Observations issued between 1992 and 2001 by the United Nations Committee on Economic, Social and Cultural Rights provide some indications of how such reviews have been formulated.



Compilation of Selected Adjudication on Housing Rights



United Nations Committee on Economic, Social and Cultural Rights: Concluding Observations Argentina (1999)

20. The Committee is concerned about the housing deficit in Argentina and that the initiatives taken by the Government have not been adequate in this regard. The Committee is also concerned at the lack of statistics in Argentina relating to housing.
21. The Committee reiterates its concern about the high incidence of irregular occupations of buildings, particularly in Buenos Aires, and the circumstances in which evictions are carried out.
27. The Committee suggests that the State party introduce institutional arrangements, within the government administration, to ensure that its obligations under the Covenant are taken into account at an early stage in the formulation of national policies on issues such as housing, health and education.
35. The Committee recommends that the State party continue and enhance its initiatives to overcome the housing shortage in Argentina, and that it provide the Committee in its next periodic report with detailed statistics on the housing situation in the country.
36. The Committee also recommends that the State party continue its policy of legalizing deeds to those that have possession of houses. The Committee also recommends that the existing procedures for the eviction of illegal occupants be reviewed as a matter of priority. The Committee once again draws the attention of the Government to the full text of its General Comments No. 4 (1991) and No. 7 (1997) on the right to adequate housing and urges the Government to ensure that policy, legislation and practice take due account of both general comments.



Compilation of Selected Adjudication on Housing Rights



United Nations Committee on Economic, Social and Cultural Rights: Concluding Observations

Argentina (1994) ⁴¹

237. The Committee is very concerned about the large number of illegal occupations of buildings, particularly in Buenos Aires, and the conditions in which expulsions are carried out. The Committee draws the attention of the Government to the full text of its General Comment No. 4 (1991) on the right to adequate housing and urges the Government to ensure that policy, legislation and practice take due account of that General Comment.



Compilation of Selected Adjudication on Housing Rights



United Nations Committee on Economic, Social and Cultural Rights: Concluding Observations Armenia (1999)

12. The Committee is deeply concerned about the inadequate efforts being made with regard to the crisis in the housing situation in Armenia, owing to, inter alia, the damage caused by the 1988 earthquake, as well as the influx of refugees.
13. The Committee regrets the lack of statistics with regard to the implementation of the rights to food, housing, health and education, as a result of which they could not be evaluated sufficiently by the Committee.
17. The Committee recommends that the Government of Armenia provide more specific and detailed data which are up to date and, where necessary, disaggregated by gender, relating to the rights set forth in the Covenant. The Committee requests the Government to provide the data specifically requested on housing, food, health and education within six months after the adoption of the present concluding observations.
23. The Committee would also like to draw the attention of the Government of Armenia to the need to include in their forthcoming periodic report the necessary supporting statistical data on the evolution of the economy, personal incomes, and the state of nutrition, housing, health and education in the country.



Compilation of Selected Adjudication on Housing Rights



United Nations Committee on Economic, Social and Cultural Rights: Concluding Observations Australia (2000)

15. The Committee expresses its deep concern that, despite the efforts and achievements of the State party, the indigenous populations of Australia continue to be at a comparative disadvantage in the enjoyment of economic, social and cultural rights, particularly in the field of employment, housing, health and education.
34. The Committee strongly recommends that the State party, at the federal level, develop a housing strategy in keeping with the Committee's General Comments No. 4 and 7, including provisions to protect tenants from forced eviction without reasons and from arbitrary rent increases. In addition, the Committee recommends that the State party ensure that all state and territory governments establish appropriate housing policies in accordance with this strategy.
36. The Committee requests the State party to provide additional, more detailed information, including statistical data which is disaggregated according to age, sex and minority groups, concerning the right to work, just and favourable conditions of work, social security, housing, health and education, in its fourth periodic report.



Compilation of Selected Adjudication on Housing Rights



United Nations Committee on Economic, Social and Cultural Rights: Concluding Observations

Austria (1994) ^(a)

252. ...Although the Austrian delegation has stated that its national legislation is consistent with the provisions of the Covenant, the Committee nevertheless expresses its concern that, in the event of a conflict between the provisions of the Covenant and those of domestic legislation, the international obligations entered into under the Covenant may not be fulfilled.
253. The Committee is concerned about the possible adverse consequences, for the implementation of the provisions of the Covenant concerning non-discrimination, of the regulations relating to the new law on residence and residence permits, whose purpose is to limit the number of foreigners authorized to work in Austria, and the conditions laid down - particularly in the area of housing - for the acquisition of an Austrian residence permit.



Compilation of Selected Adjudication on Housing Rights



United Nations Committee on Economic, Social and Cultural Rights: Concluding Observations

Azerbaijan (1997)

23. The Committee expresses its alarm over the prolonged decline in the standards of living. This is evident in the rising level of poverty, the large proportion of the population living without safe drinking water, the lack of affordable housing, the decline in agricultural production due to the inefficiencies of the privatization process of State farms and the consequent inadequacies in food production and distribution, the declining quality of medical care and the declining number of persons receiving medical care. The Committee seeks information on measures being taken or envisaged for the protection of vulnerable groups, including children who do not have a family, single parents, and unemployed persons.
24. The Committee expresses concern about the shortage of housing which is compounded by the influx of refugees and displaced persons, and the fact that vulnerable groups and the homeless are not given adequate protection against forced evictions.
34. The Committee recommends that the State party address in a more efficient and focused manner the housing needs of its population, especially the disadvantaged groups, and that it devote a substantial proportion of its budget to creating conditions leading to a higher number of people being adequately housed, in accordance with the Committee's General Comment No. 4.
35. The Committee draws the attention of the State party to the importance of collecting data relating to the practice of forced evictions and of enacting legislation concerning the rights of tenants to security of tenure, in monitoring the right to housing.
37. The Committee recommends that the Government address as a matter of utmost urgency the basic needs of the population, including safe drinking water, food, affordable housing and health care. The Committee requests detailed information on measures being taken or envisaged for the protection of vulnerable groups, including especially children who do not have a family, single parents, the unemployed, and women who are victims of crimes of violence.



Compilation of Selected Adjudication on Housing Rights



United Nations Committee on Economic, Social and Cultural Rights: Concluding Observations Belgium (1994) ⁽⁶⁾

154. Moreover, the Committee, while noting with satisfaction that the right to housing has been inscribed in the recently revised Constitution of Belgium, expresses concern at the adequacy of the measures taken to actually enforce that constitutional provision.
157. ...The Committee urges the Government more intensively to apply existing laws allowing the Government to requisition properties and housing left unoccupied by owners.



Compilation of Selected Adjudication on Housing Rights



United Nations Committee on Economic, Social and Cultural Rights: Concluding Observations Bolivia (2001)

14. The Committee is particularly concerned about the marginalisation of, and discrimination against, indigenous communities in Bolivia, who constitute the majority of Bolivia's rural population, and suffer from inadequate access to basic education, adequate housing, and health services. Moreover, the Committee is concerned that the State party does not acknowledge the economic, social and cultural rights of indigenous populations as a distinct group.
21. The Committee is concerned about the large housing shortage, the incidence of forced evictions with respect to peasants and indigenous populations in favour of mining and lumber concessions, and the absence of effective measures to provide social housing for low income, vulnerable and marginalised groups.
41. The Committee recommends that the State party address the problems of the large housing shortage, the high incidence of forced evictions and the lack of social housing for low income, vulnerable and marginalised groups. The Committee requests the State party, in its second periodic report, to give detailed information on the number and nature of forced evictions having taken place in Bolivia in accordance with General Comment No. 7 of the Committee.



Compilation of Selected Adjudication on Housing Rights



United Nations Committee on Economic, Social and Cultural Rights: Concluding Observations Bulgaria (1999)

18. The Committee deplores the deterioration of the housing situation in Bulgaria and regrets that only ineffective measures have been taken by the State party to alleviate overcrowding and the generally poor condition of the housing that is available.
28. The Committee recommends that the State party establish a plan of action to improve the housing situation, in particular the social housing situation. If necessary, the State party should request international assistance in this regard.



Compilation of Selected Adjudication on Housing Rights



United Nations Committee on Economic, Social and Cultural Rights: Concluding Observations Canada (1993) ⁽²⁾

106. The Committee is concerned that the right to security of tenure is not enjoyed by all tenants in Canada.
112. The Committee is concerned to learn that, in a few cases, courts have ruled that the right to security of the person in the [Canadian] Charter [of Rights and Freedoms] does not protect Canadians from social and economic deprivation, or from infringements of their rights to adequate food, clothing and housing.
113. The Committee is concerned that provincial human rights legislation has not always been applied in a manner which would provide improved remedies against violations of social and economic rights, particularly concerning the rights of families with children, and the right to an adequate standard of living, including food and housing.
116. The Committee recommends the extension of security of tenure to all tenants and draws the attention of the State party to its General Comment Number 4 on the Right to Adequate Housing (article 11, para. 1 of the Covenant), in particular paragraph 8.



Compilation of Selected Adjudication on Housing Rights



United Nations Committee on Economic, Social and Cultural Rights: Concluding Observations

China (2005)

15. The Committee notes with deep concern the de facto discrimination against internal migrants in the fields of employment, social security, health services, housing and education that indirectly result from inter alia, the restrictive national household registration system (*hukou*) which continues to be in place despite official announcements regarding reforms.
31. The Committee is concerned about the reports of forced evictions and insufficient measures to provide compensation or alternative housing to those who have been removed from their homes in the context of urban development projects as well as of rural development projects such as the Three Gorges Project. The Committee is concerned about the number of forced evictions and demolitions that have occurred in anticipation of the 2008 Olympic Games to be hosted by the State party. The Committee further expresses concern about the lack of effective consultations and legal redress for persons affected by forced evictions and demolitions, including those of historic structures, buildings and homes in Lhasa, Tibet. The Committee also regrets that insufficient information was provided on the extent and causes of homelessness in the State party.
46. The Committee calls upon the State party to implement its decision to dismantle the *hukou* system of national household registration and to ensure that in any system that replaces it, internal migrants will be able to enjoy the same work, social security, housing, health and education benefits enjoyed by those in the urban areas.
61. The Committee recommends that the State party take immediate measures to enforce laws and regulations prohibiting forced evictions and ensure that persons evicted from their homes be provided with adequate compensation or offered alternative accommodation, in accordance with the guidelines adopted by the Committee in its general comment No. 7 (1997) on forced evictions. The Committee also recommends that, prior to implementing development projects, the State party should undertake open, effective and meaningful consultations with affected residents. In this connection, the Committee wishes to draw the attention of the State party to its general comment No. 4 (1991) on the right to adequate housing and requests it to provide information in its next periodic report on progress achieved in this regard. The Committee further requests the State party to provide, in its next periodic report, detailed information on the number and nature of forced evictions and on the extent of homelessness in the State party, disaggregated by gender, age, urban/rural residence.
62. The Committee recommends that the State party undertake effective measures to guarantee access to safe drinking water to all persons under its jurisdiction.



Compilation of Selected Adjudication on Housing Rights



United Nations Committee on Economic, Social and Cultural Rights: Concluding Observations Colombia (2001)

21. The Committee is concerned about the fact that housing subsidies have been substantially reduced and that inadequacies in housing space and structural quality occur in such provinces as Sucre, Cordoba, Bolivar, and Magdalena. Back to chart
42. The Committee urges the State party to take measures to increase housing subsidies, especially in the poorest provinces. It recommends the adoption of a system for the financing of low-income dwellings to give the poorest groups access to adequate housing.



Compilation of Selected Adjudication on Housing Rights



United Nations Committee on Economic, Social and Cultural Rights: Concluding Observations Croatia (2001)

21. The Committee urges the State party to take effective measures to accelerate the return and reintegration into Croatian society of all Croatian refugees without discrimination, particularly of ethnic Serbs, by expediting the restitution of their housing, arranging for adequate alternative accommodation or providing them with compensation when restitution is not possible, as explained by the Committee in its General Comment No. 7 on the right to adequate housing.
31. The Committee urges the State party to structure its data collection efforts in the future in such a way as to be able to identify clearly the most disadvantaged and marginalized groups of society. It calls on the State party to conduct studies of all its laws, policies and practices with a view to assessing their effects on those groups, especially with regard to those areas that most directly affect their basic living conditions, such as employment, housing restitution, relocation, tenancy rights, health care, naturalization and education. All data should be disaggregated by minority groups, as well as by gender, religion, disability and any other relevant criteria that will help the State party develop targeted programmes to help those most in need.



Compilation of Selected Adjudication on Housing Rights



United Nations Committee on Economic, Social and Cultural Rights: Concluding Observations Czech Republic (2002)

19. The Committee is deeply concerned about the acute shortage of housing and the privatization of some public housing stocks which have resulted in a sharp rise in rents, forced evictions and homelessness.
38. The Committee urges the State party to take effective measures to address the problems of: a) the housing shortage by adopting housing programmes, especially for the disadvantaged and marginalized groups, b) forced evictions and homelessness by respecting the Committee's General Comments 4 and 7 and devising a comprehensive plan to combat homelessness.



Compilation of Selected Adjudication on Housing Rights



United Nations Committee on Economic, Social and Cultural Rights: Concluding Observations

Denmark (2005)

21. The Committee is concerned at the lack of constitutional or other legislative provisions in the State party guaranteeing the right to housing. The Committee is also concerned about the difficulties faced by disadvantaged and marginalized groups, in particular immigrants, in renting or obtaining public housing owing to discriminatory practices. The Committee also notes with concern the increase in homelessness among the immigrant population in the State party.
34. The Committee encourages the State party to consider enacting specific legislation providing for the right to housing. The Committee also recommends, in line with the Committee's General Comment No. 4, that the State party adopt national policies to ensure that all families have adequate housing facilities and that adequate resources are allocated for social housing, particularly for disadvantaged and marginalized groups such as immigrants. The Committee further encourages the State party to take measures to address the problem of homelessness, particularly among the immigrant population.



Compilation of Selected Adjudication on Housing Rights



United Nations Committee on Economic, Social and Cultural Rights: Concluding Observations

Dominican Republic (1997) ^[13]

8. ... concerning the right to housing, the Committee notes, among the steps taken by the Government in this field of policy and its application: the commitment of the Government to suspend all forced evictions by public organs and to adopt a policy to provide adequate alternative housing or relocation to persons evicted or displaced; the adoption of Decree 443/96, which repeals Decree 358/91, and the consequent removal of military presence in the La Cienega and Los Guandules areas in the centre of Santo Domingo; and the signing of relocation agreements between the Government and some 681 families living in the Los Alcarrizos shanty town and of the 209 evicted families who occupied three churches for a year.



Compilation of Selected Adjudication on Housing Rights



United Nations Committee on Economic, Social and Cultural Rights: Concluding Observations

Dominican Republic (1994) ²³

312. The Committee notes the housing rights provisions in article 8(15)(b) of the Constitution and that several recent amendments to the relevant provisions of the Constitution. It notes that these provisions could, if reflected fully in law and practice, assist in promoting enhanced accountability and the development of judicial procedures which would provide an effective means of recourse for those whose right to housing is threatened.
313. The Committee welcomes those aspects of decrees 76-94 of 29 March 1994 and 155-94 of 11 May 1994 which commit the State to providing the broadest protection possible for the stability of the Dominican family and to giving property titles to all families who, up to 11 May 1994, have built homes on lands declared to be public property. The Committee also welcomes the decision by the Government to create a green belt around the city, and its commitment to construct 12,500 new housing units for low-income communities.
314. The Committee also welcomes the Government's statement of its intention to amend its legislation and policy to bring them into line with the obligations arising out of the Covenant and to take measures with regard to forced evictions and to adapt relocation policies to ensure that such measures are carried out only as a last resort and that when they do occur the principle of a 'house for a house' will be respected. The indication by the Government that urgent consideration will be given to suspending decrees 358-91 and 359-91 is particularly welcomed by the Committee.
324. The Committee is also concerned at the effects Presidential decrees can and do have upon the enjoyment of the rights recognized in the Covenant. It wishes to emphasize in this regard the importance of the establishing of judicial remedies which can be invoked, including in relation to presidential decrees, in order to seek redress for housing rights violations. The Committee is not aware of any housing rights matters that have been considered by the Supreme Court in relation to article 8(15)(b) of the Constitution. In so far as this might be taken to indicate that the provision has not so far been subject to judicial review, the Committee expresses the hope that greater reliance will be placed upon it in the future as a means by which to defend the right to adequate housing.
329. The Committee notes that Presidential decrees 358-91 and 359-91 are formulated in a manner inconsistent with the provisions of the Covenant and urges the Government to consider the repeal of both of these decrees within the shortest possible time frame. The Government should seek to remove the military presence in La Cienaga-Los Guandules and allow residents the right to improve their homes and the community at large. The Government should also give careful consideration to implementing alternative development plans for the area, taking full account of plans developed by non-governmental and community-based organizations.
330. The Committee suggests that in order to promote the objectives referred to in these observations the Government might consider the establishment of commissions, comprised of representatives of all relevant sectors of society, in particular civil society, to oversee the implementation of decrees 76-94 and 155-94.
331. The Committee requests the Government to apply existing housing rights provisions in the Constitution and for that purpose to take such measures to facilitate and promote their application. Such measures could include: (a) adoption of comprehensive housing rights legislation; (b) legal recognition of the right of affected communities to information concerning any Governmental plans actually or potentially affecting their rights; (c) adoption of urban reform legislation which recognizes the contribution of civil society in implementing the Covenant and addresses questions of security of tenure, the regularization of land ownership arrangements, etc.
332. In order to achieve progressively the right to housing, the Government is requested to undertake, to the maximum of available resources, the provision of basic services (water, electricity, drainage, sanitation, refuse disposal, etc.) to dwellings and to ensure that public housing is provided to those groups of society with the greatest need. It should also seek to ensure that such measures are undertaken with the full respect for the law.
- ...
335. Subsequent to the appearance before the Committee of two representatives of the Government of the Dominican Republic, the Committee received information that, based on a recommendation by the Special Committee on Urban Affairs, decree 371-94 was promulgated on 1 December 1994, ordering the immediate eviction of two sectors situated on the banks of the Isabela River. In the implementation of this decree the Committee requests the Government to take full account of the recommendations contained in these

concluding observations.



Compilation of Selected Adjudication on Housing Rights



United Nations Committee on Economic, Social and Cultural Rights: Concluding Observations

Ecuador (2004)

11. The Committee is concerned that, despite the legal framework in place and the growing influence of indigenous grassroots community groups, indigenous people continue to suffer discrimination, particularly with regard to employment, housing, health and education.
27. The Committee is concerned about the poor housing conditions, the considerable housing shortage and the absence of effective measures to provide social housing for low-income families and the disadvantaged and marginalized groups.
28. The Committee is concerned that, despite the constitutional guarantees of the right of the indigenous people to own property communally, the State party does not provide effective protection for the indigenous people against forced evictions from their ancestral lands.
34. The Committee recommends that the State party take effective and practical steps to ensure effective protection of indigenous people against discrimination in many fields, especially with regard to employment, housing, health and education. It also requests that the State party include in the next periodic report information on the impact of programmes aimed to ensure economic, social and cultural rights to indigenous people and data regarding any progress made in this respect.
36. The Committee urges the State party to undertake immediate steps to ensure equal opportunities for Afro-Ecuadorians, particularly with regard to employment, housing, health and education and to provide detailed information in its third periodic report on progress achieved.
52. The Committee urges the State party to take all the appropriate measures to deal with the problem of homelessness, to ensure access to housing credit and subsidies for the low-income families, the disadvantaged and marginalized groups and to improve water and sanitation facilities of existing housing units.
53. The Committee calls upon the State party to ensure that indigenous people are effectively protected from forced evictions from their ancestral lands and that they are properly compensated, should such evictions take place. In this regard, the Committee brings to the State party's attention general comment No. 7 (Forced evictions) and requests that detailed information on this issue be included in its next periodic report.



Compilation of Selected Adjudication on Housing Rights



United Nations Committee on Economic, Social and Cultural Rights: Concluding Observations Egypt (2000)

22. The Committee is concerned about the massive housing problems faced by the Egyptian population, as acknowledged by the delegation of Egypt, and which have been exacerbated by the deregulation of rents and an acute shortage of low-cost housing. Furthermore, forced evictions without alternative housing or compensation being provided have been occurring in poor communities like the potters' village and the "Ayn Hilwan" area in Cairo. The Committee is particularly concerned that in Cairo people who cannot afford housing are living in cemeteries. Unofficial statistics estimate their numbers to be 500,000 - 1 million.
31. The Committee strongly urges the State party to seek assistance, including international cooperation, in order to collect the statistics and information necessary to formulate effective strategies to address problem areas such as unemployment, poverty, housing and forced evictions.
37. The Committee urges the State party to combat the acute housing shortage by adopting a strategy and a plan of action and by building or providing, low-cost rental housing units, especially for the vulnerable and low income groups. In this connection, the Committee reminds the State party of its obligations under article 11 of the Covenant and refers to its General Comments No. 4 on the right to adequate housing and No. 7 on forced evictions, to guide the Government's housing policies.
42. The Committee requests the State party to provide updated information, including statistics, on unemployment, the situation of women, including FGM, poverty, housing and homeless persons in its second periodic report, which is to be submitted by 30 June 2003.



Compilation of Selected Adjudication on Housing Rights



United Nations Committee on Economic, Social and Cultural Rights: Concluding Observations Estonia (2002)

23. The Committee is deeply concerned about the lack of social housing, as acknowledged by the State party.
24. The Committee is concerned that the measures taken by the State party to address the growing problem of homelessness are insufficient as they focus solely on providing shelter to the homeless rather than dealing with the underlying causes of homelessness.
25. The Committee expresses its concern that forced evictions may be carried out in the State party without provision for alternative lodging or adequate compensation.
41. The Committee recommends that the State party intensify its efforts to combat domestic violence, including through ensuring the availability and accessibility of crisis centres where victims of domestic violence can find safe lodging and counseling.
43. The Committee recommends that the State party address the situation of street children with a view to eliminating the underlying causes of the problem. It also requests the State party to provide detailed information and up-to-date statistics on this issue on a comparative basis in its next periodic report.
45. The Committee recommends that the State party allocate sufficient resources for the provision of social housing, especially to the disadvantaged and marginalized groups.
46. The Committee recommends that the State party intensify its efforts to combat the problem of homelessness.
47. The Committee recommends that the State party ensure that alternative lodging or adequate compensation is provided for people who are evicted from their homes and, in this regard, refers the State party to the guidelines set out in its General Comment No. 7 on forced evictions.



Compilation of Selected Adjudication on Housing Rights



United Nations Committee on Economic, Social and Cultural Rights: Concluding Observations Georgia (2002)

31. The Committee strongly recommends that the State party take effective measures, in consultation with relevant civil society organizations, to improve the situation of internally displaced persons, including the adoption of an overall comprehensive programme of action aiming to ensure more adequately their rights to adequate housing.
36. The Committee recommends that the State party implement its national plans of action on the advancement of women and on combating domestic violence, and that it adopt adequate legislation and policies to address and to ensure access to effective remedies concerning domestic violence, rape and sexual harassment. The Committee encourages the State party to develop programmes aimed at raising awareness of, and educating law enforcement officials, the judiciary and the general public on, these problems.
38. The Committee calls upon the State party to undertake urgent and effective measures to address the problems faced by children living and/or working in the streets, and to protect them against all forms of exploitation.
40. The Committee urges the State party to continue its efforts to improve the living conditions of its population, in particular by ensuring that infrastructure for water and energy provision and heating is improved, and by making the needs of the most disadvantaged and marginalized groups of society, such as older persons, persons with disabilities, internally displaced persons, prisoners and persons living in poverty, a priority concern.



Compilation of Selected Adjudication on Housing Rights



United Nations Committee on Economic, Social and Cultural Rights: Concluding Observations Georgia (2000)

17. The Committee regrets that, given that the data provided by the State party on the housing situation, including on the occurrence of forced evictions, were insufficient, it was impossible to form a clear and comprehensive picture of the matter. In addition, the Committee deplores the failure to find a satisfactory solution to the problems concerning internally displaced persons.



Compilation of Selected Adjudication on Housing Rights



United Nations Committee on Economic, Social and Cultural Rights: Concluding Observations Germany (2001)

32. The Committee suggests that the State party reviews and strengthens its institutional arrangements, within the public administration, to ensure that its obligations under the Covenant are taken into account, at an early stage, in the formulation of legislation and policy on issues relating to social welfare and assistance, housing, health and education. The State party is further encouraged to introduce "human rights impact assessments", comparable to environmental impact assessments to ensure that the provisions of the Covenant are given due attention in all legislative and administrative policy and decision-making processes.



Compilation of Selected Adjudication on Housing Rights



United Nations Committee on Economic, Social and Cultural Rights: Concluding Observations Honduras (2001)

22. The Committee regrets the lack of a national housing strategy, given the fact that the infrastructural situation in the State party was aggravated by hurricane Mitch.
23. The Committee is concerned about the occurrence of forced evictions, especially among peasants and indigenous populations and in the areas where mining activities are conducted, without adequate compensation or appropriate relocation measures.
43. The Committee requests that, in its next periodic report, the State party provide information on a national housing strategy, and on the progress made in providing adequate housing for all, especially low-income groups, vulnerable and marginalized groups and those who suffered losses as a result of hurricane Mitch. The Committee also recommends that the State party take all appropriate measures to address the problems of forced evictions and homelessness.



Compilation of Selected Adjudication on Housing Rights



United Nations Committee on Economic, Social and Cultural Rights: Concluding Observations Iceland (1999)

19. The Committee suggests that the State party review and strengthen its institutional arrangements, within the government administration, which are designed to ensure that its obligations under the Covenant are taken into account, at an early stage, in the Government's formulation of national policy on issues such as social welfare, housing, health and education.



UN-HABITAT

Compilation of Selected Adjudication on Housing Rights



UN-HABITAT

United Nations Committee on Economic, Social and Cultural Rights: Concluding Observations Ireland (2002)

20. The Committee is concerned that: (a) many new households cannot secure adequate and affordable housing; and (b) some 1,200 families of the traveller community are living in roadside encampments without access to water and adequate sanitary facilities, and are liable to be forcibly evicted.
32. The Committee further urges the State party to accelerate its social housing programmes in order to reduce the waiting time for social housing. Moreover, the State party should enhance its efforts to: (a) provide, as early as possible, alternative accommodation for the 1,200 traveller families who are living in roadside encampments without adequate facilities and to respect General Comments Nos. 4 and 7 of this Committee; and (b) meet its target of providing all necessary traveller accommodation by 2004.



Compilation of Selected Adjudication on Housing Rights



United Nations Committee on Economic, Social and Cultural Rights: Concluding Observations Ireland (1999)

20. The Committee also notes with regret that despite measures adopted by the State party the traveller community and the disabled are still discriminated against in various respects, such as employment, education and housing.



Compilation of Selected Adjudication on Housing Rights



United Nations Committee on Economic, Social and Cultural Rights: Concluding Observations

Israel (1998) [\[15\]](#)

11. The Committee notes with grave concern that the Status Law of 1952 authorises the World Zionist Organization/Jewish Agency and its subsidiaries, including the Jewish National Fund, to control most of the land in Israel, since these institutions are chartered to benefit Jews exclusively. Despite the fact that the institutions are chartered under private law, the State of Israel nevertheless has a decisive influence on their policies and thus remains responsible for their activities. A State party cannot divest itself of its obligations under the Covenant by privatising governmental functions. The Committee takes the view that large-scale and systematic confiscation of Palestinian land and property by the State and the transfer of that property to these agencies constitute an institutionalised form of discrimination because these agencies by definition would deny the use of these properties to non-Jews. Thus, these practices constitute a breach of Israel's obligations under the Covenant.



Compilation of Selected Adjudication on Housing Rights



United Nations Committee on Economic, Social and Cultural Rights: Concluding Observations Italy (2000) ⁽¹⁶⁾

23. The Committee recommends that the State party step up its efforts to improve the situation of the Roma population, *inter alia* by replacing camps with low-cost houses; by legalizing the status of Roma immigrants; by setting up employment and educational programmes for parents; by giving support to Roma families with children at school; by providing better education for Roma children; and by strengthening and implementing anti-discrimination legislation, especially in the employment and housing sectors.



Compilation of Selected Adjudication on Housing Rights



United Nations Committee on Economic, Social and Cultural Rights: Concluding Observations

Italy (1992) ¹¹

192. The Committee wished to draw the attention of the State party to a number of specific concerns resulting from the dialogue with its representatives. These concerns included the fact that:
- (a) The adoption of Act L359/92 in August 1992 seems likely to aggravate the situation of the most economically disadvantaged tenants. The Act partly goes back on Act L392/78 of 1978, which introduced the concept of a "fair rent" (*equo canone*);
 - (b) It has led to a certain paralysis in the rental market since about 5 million apartments are currently reported to be unoccupied. The scope of exceptions to the fair-rent rule has widened and freedom to set rents is contributing to rental increases;
 - (c) Given the shortage of low-income housing, which accounts for about 5 per cent of the total housing stock, and since no housing allowance system has been established or is envisaged, the situation of tenants is disturbing. The 10-year low-income housing construction plan, which was partly executed in 1988, has not been amended and remains insufficient;
 - (d) A further continuing source of concern is the precarious nature of leases, aggravated by the provisions of the Act of August 1992, given the fact that 74 per cent of evictions are based on termination of the lease and, since 1983, one out of three has been evicted.
193. The Committee reiterated the importance the Covenant attaches to the right to housing, and recommends that the Italian government should take all appropriate measures to improve the situation of tenants and to ensure that medium-term solutions are found in order to deal more satisfactorily with housing for the most disadvantaged social categories. It hopes to receive all relevant information on the occasion of Italy's submission of its third periodic report.



Compilation of Selected Adjudication on Housing Rights



United Nations Committee on Economic, Social and Cultural Rights: Concluding Observations Jamaica (2001)

15. The Committee is concerned that more than one third of the population lives in poverty despite measures taken by the State party, such as the implementation of a National Poverty Eradication Programme. The Committee has received reports from Jamaican NGOs that poverty rates are highest among women, particularly women who head single-parent households. The reports also state that while the State party has undertaken significant steps to improve the housing situation, thousands of Jamaicans continue to live in deplorable conditions in wooden and tin shacks with no running water or electricity. The Committee also expresses special concern for rural farmers who, allegedly owing to free trade agreements, are unable to compete with prices of cheaper imported foods on local markets, which has eroded their ability to provide for their families.



Compilation of Selected Adjudication on Housing Rights



United Nations Committee on Economic, Social and Cultural Rights: Concluding Observations Japan (2001)

13. The Committee is concerned about the persisting de jure and de facto discrimination against minority groups in Japanese society, and in particular against the Buraku and Okinawa communities, the indigenous Ainu people, and people of Korean descent, especially in the fields of employment, housing and education.
27. The Committee is concerned that despite large resettlement programmes planned and executed by the Hyogo Prefecture, in the aftermath of the great Hanshin-Awaji earthquake, the population most affected has not always been consulted adequately, and as a consequence many single older persons now live in environments totally unfamiliar to them with little or no personal attention. Apparently, little or no psychiatric or psychological treatment for people having lost their families is being offered. Many resettled earthquake victims who are over 60 years of age lack community centres, access to health centres and outpatient nursing.
28. The Committee notes with concern that the poorer sections of the population in the Hanshin-Awaji areas affected by the earthquake are finding it increasingly difficult to finance their building reconstruction credits. Some were forced to sell their property in order to pay off their existing mortgage without being able to rebuild their houses.
29. The Committee is concerned about the large number of homeless persons throughout the country, especially in the Osaka/Kanagawa area. The Committee is further concerned that the State party has no comprehensive plan to combat homelessness.
30. The Committee is also concerned about the forced evictions, especially of the homeless from their temporary abode and those who have been in occupation of houses for a long time in the Utoro district. In this regard, the Committee is particularly concerned about the summary procedure whereby provisional eviction orders are granted by the courts without any reasons given, under the Court Order of Provisional Disposition Procedure, without being subject to any stay of execution, thus rendering any right of appeal meaningless and in effect transforming the provisional eviction orders into permanent ones, in breach of the guidelines of the Committee established in its General Comments Nos. 4 and 7.
40. While noting that the State party is currently in the process of consultations with Koreans living in the Utoro area, regarding their unresolved situation, the Committee recommends that the State party continue to undertake necessary measures to combat patterns of de jure and de facto discrimination against all minority groups in Japanese society, including the Buraku people, the people of Okinawa, and the indigenous Ainu, particularly in the fields of employment, housing and education.
55. The Committee recommends that the State party, in line with its obligations under Article 11 of the Covenant, speedily take effective measures to assist poorer earthquake victims in meeting their credit obligations, financed through public housing funds or through bank loans, undertaken to reconstruct their destroyed houses, in order to avoid having to sell their properties to meet continuing mortgage payments.
56. The Committee urges the State party to carry out an investigation on its own and jointly with the prefectures, assessing the extent and causes of homelessness in Japan. The State party should also take adequate measures to ensure full application of the existing laws, such as the Livelihood Protection Law, ensuring an adequate standard of living for the homeless.
57. The Committee recommends that the State party take remedial action to ensure that all eviction orders, and in particular the Court Order of Provisional Disposition Procedure, conform to the guidelines of the Committee specified in General Comments Nos. 4 and 7.



Compilation of Selected Adjudication on Housing Rights



United Nations Committee on Economic, Social and Cultural Rights: Concluding Observations

Jordan (2000)

22. The Committee expresses its concern regarding incidents of forced eviction particularly in the principal urban areas of the country.
37. In accordance with article 11 of the Covenant, the Committee encourages the State party to prevent any occurrence of forced eviction. The Committee recommends that resettlement procedures and programmes include registration, facilitate comprehensive family rehabilitation and ensure access to basic services. The Committee recommends that the State party take due regard of the Committee's General Comments 7 and 4, concerning forced evictions and the right to housing.



Compilation of Selected Adjudication on Housing Rights



United Nations Committee on Economic, Social and Cultural Rights: Concluding Observations Kenya (1993)

82. With regard to the right to adequate housing, the Committee notes with great concern that practices of forced evictions without consultation, compensation or adequate resettlement appear to be widespread in Kenya, particularly in Nairobi.



Compilation of Selected Adjudication on Housing Rights



United Nations Committee on Economic, Social and Cultural Rights: Concluding Observations Kyrgyzstan (2000)

21. The Committee is concerned that the right to adequate housing is hampered in Kyrgyzstan by the decrease in housing construction, the lack of living space for rural migrants arriving in cities, and the insufficient provision of sanitation and potable water.
32. The Committee recommends that the right to housing be ensured to all and that problems of the lack of housing be solved in the most expedient manner possible. In this regard, the Committee wishes to draw the attention of the State party to its General Comment No. 4 on the right to adequate housing. The Committee also requests the State party to provide, in its second periodic report, information on the extent of homelessness in Kyrgyzstan.



Compilation of Selected Adjudication on Housing Rights



United Nations Committee on Economic, Social and Cultural Rights: Concluding Observations

Libyan Arab Jamahiriya (1997)

17. The Committee also expresses its concern at reports that during the second half of 1995 thousands of foreign workers were arbitrarily expelled from the State party and were not given adequate compensation. It further regrets that there was no possibility for a legal or judicial remedy against those expulsions. The Committee is alarmed that the justification given by the delegation for this action was that foreign workers were the cause of many of the State Party's social problems such as violent crime, immoral activities, black market transactions, drug trafficking, trafficking in women, and the spread of communicable diseases. Such a rationale is unacceptable to the Committee and a clear violation of the Covenant. In this regard, the Committee draws attention of the State party to the case of approximately 200 Palestinian families who were forcibly evicted to a point near the Egyptian border and who had to live in utterly degrading conditions for two years before they were allowed to reenter the State party.
18. The Committee is concerned that the State party's delegation views HIV/AIDS as a problem essentially relating to foreign workers. It is also concerned that the delegation of the State party has indicated that foreign workers who are working in the State party with valid work permits and subsequently become HIV-positive are usually deported. The Committee is of the view that this action is discriminatory and inconsistent with the provisions of the Covenant.
24. The Committee recommends that foreign workers who are employed in the State party with valid work permits should not be deported if they become HIV-positive while in the country. It further recommends that the State party not treat the HIV/AIDS problem as one essentially relating to foreigners, and that it take energetic steps by way of a publicity campaign in the media to inform its population of the nature of the disease, its modes of transmission, and what steps can be taken to avoid contracting it.



Compilation of Selected Adjudication on Housing Rights



United Nations Committee on Economic, Social and Cultural Rights: Concluding Observations Mauritius (1994)

14. Regarding the right to housing, the Committee expresses its concern about the discontinuation of the Government's programme for providing low cost housing in Mauritius. In this regard, the Housing Development Company Ltd, established in 1992, is in no position to replace the former Central Housing Authority, as was sadly demonstrated after the recent cyclone Hollanda. Further, concern is expressed with regard to Government harassment of hundreds of homeless people who built shacks on state land.



Compilation of Selected Adjudication on Housing Rights



United Nations Committee on Economic, Social and Cultural Rights: Concluding Observations Mexico (1999)

18. The Committee is concerned about the persisting plight of indigenous populations, particularly those of Chiapas, Guerrero, Veracruz and Oaxaca, who have limited access to, inter alia, health services, education, work, adequate nutrition and housing.
27. The Committee regrets the lack of a satisfactory response to its previous concluding observations, as well as to the written and oral questions put to the delegation, concerning forced evictions. The Committee to date has not received a satisfactory answer to its queries about the extent of the problem and the measures taken by the Government to protect all citizens against forced evictions. Moreover, the Committee remains concerned about the housing shortage and the unsatisfactory condition of a high percentage of the housing stock, especially in rural areas where a significant number of dwellings lack electricity, adequate sewage disposal and piped water.
41. The Committee urges the State party to increase its efforts to provide adequate housing at affordable prices, particularly to the poorest segments of society. The Committee wishes to receive more detailed information on the number of forced evictions and the manner in which these are carried out. The Committee recommends that the State party establish mechanisms that record evictions and their follow-up, take immediate remedial action against forced evictions, and report back on this issue to the Committee in its fourth periodic report.



UN-HABITAT

Compilation of Selected Adjudication on Housing Rights



UN-HABITAT

United Nations Committee on Economic, Social and Cultural Rights: Concluding Observations

Mexico (1993) ^(a)

238. The Committee recommends that steps should be taken urgently to overcome the grave housing crisis in the country. It further recommends the speedy adoption of policies and measures designed to ensure adequate civic services, security of tenure and the availability of resources to facilitate access by low-income communities to affordable housing. The Committee also recommends the increased construction of rental housing, as well as the adoption of other measures to enable Mexico to comply fully with its obligations under article 11 of the Covenant, as dealt with in General Comment No. 4 of the Committee.
239. The Committee urges that State party to desist from policy measures that lead to large-scale evictions. It recalls General Comment No. 4 in which it noted that "the Committee considers that instances of forced eviction are *prima facie* incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law.



Compilation of Selected Adjudication on Housing Rights



United Nations Committee on Economic, Social and Cultural Rights: Concluding Observations Nepal (2001) [\(17\)](#)

16. The Committee urges the State party to enforce effectively legislation and programmes to put an end to discrimination, in particular with regard to access to housing, work and education, against persons belonging to the Dalits and the liberated Kamaiyas.



Compilation of Selected Adjudication on Housing Rights



United Nations Committee on Economic, Social and Cultural Rights: Concluding Observations

Nicaragua (1994) ^(a)

207. The Committee is also concerned about the lack of consistency and effectiveness of the programmes to regularize land ownership and to deal adequately with the problems of housing. In particular, the non-observance of ownership of low-cost housing under Acts Nos. 85 and 86, and the slowness of the procedures instituted by the Planning Office creates a situation of legal insecurity for the occupants of such housing.
211. The Committee suggests that the State party ensure the effective implementation of laws 85 and 86 of 1990 with a view to guaranteeing security of tenure and property title. The Committee recommends that the State party develop and implement urgently a comprehensive housing policy consistent with the State party's obligations under international instruments.



Compilation of Selected Adjudication on Housing Rights



United Nations Committee on Economic, Social and Cultural Rights: Concluding Observations Nicaragua (1993)

207. The Committee is also concerned about the lack of consistency and effectiveness of the programmes to regularize land ownership and to deal adequately with the problems of housing. In particular, the non-observance of ownership of low-cost housing under Acts Nos. 85 and 86, and the slowness of the procedures instituted by the Planning Office creates a situation of legal insecurity for the occupants of such housing.
208. The information received by the Committee concerning the eviction of several hundred families by police (particularly in the cases of the communities of Extensión La Primavera and El Boer in Managua), with no offer alternative housing, is very worrying. Eviction appears to be a common practice, and the Committee has received no answers to specific questions on concrete examples.
209. The Committee requests the government Nicaragua to provide precise information on the incidents involving the expulsion of persons who have occupied land to inform it, before May 1994, of the measures it has adopted, in accordance with the undertakings of the Covenant, to deal with the problems of irregular settlements. In this regard, the Committee considers that instances of forced evictions are *prima facie* incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in conformity with relevant principles of international law.
210. The Committee asks to be provided with written replies to the concerns raised during its dialogue with the State party which, owing to time constraints, remain unanswered. In particular, the Committee wishes to receive clarification as regards the situation of the removal and threatened eviction of squatters from different settlement communities.
211. The Committee suggests that the State party ensure the effective implementation of laws 85 and 86 of 1990 with a view to guaranteeing security of tenure and property title. The Committee recommends that the State party develop and implement urgently a comprehensive housing policy consistent with the State party's obligations under international instruments.



Compilation of Selected Adjudication on Housing Rights



United Nations Committee on Economic, Social and Cultural Rights: Concluding Observations Nigeria (1998)

42. The Committee urges the Government to cease forthwith the massive and arbitrary evictions of people from their homes and take such measures as are necessary in order to alleviate the plight of those who are subject to arbitrary evictions or are too poor to afford a decent accommodation. In view of the acute shortage of housing, the Government of Nigeria should allocate adequate resources and make sustained efforts to combat this serious situation.



Compilation of Selected Adjudication on Housing Rights



United Nations Committee on Economic, Social and Cultural Rights: Concluding Observations Norway (2005)

18. The Committee notes with concern the increasing number of evictions carried out in the State party, especially in Oslo, mainly as a consequence of unpaid rent. The Committee is also concerned that the disadvantaged and marginalized groups in society are particularly affected by the privatization of municipal social housing and rising housing prices. Despite the assistance provided through the State Housing Bank, the Committee is particularly concerned that the number of social housing units for low income individuals and families is far from adequate. It regrets in this regard the lack of information on the number of people living in illegal settlements and whether they are liable to forced evictions and the number of persons on waiting lists for municipal social housing.
19. The Committee notes with concern that an estimated 5,200 people are homeless in the State party. Furthermore, the Committee is concerned that rejected asylum-seekers who cannot be sent home to their countries of origin are not offered accommodation in reception centres after the deadline set for departure.
37. The Committee urges the State party to ensure that evictions of tenants who cannot pay their rents and of squatters comply with the guidelines established by the Committee in its General Comment No. 7 (1997) on the right to adequate housing (article 11, paragraph 1, of the Covenant). Furthermore, the State party should take effective measures, in line with the Committee's General Comment No. 4 (1991) on the right to adequate housing (article 11, paragraph 1, of the Covenant), to provide in sufficient numbers housing units to cater for the needs of low-income families and the disadvantaged and marginalized groups. The Committee requests the State party to provide, in its next report, disaggregated data on the number of persons on waiting lists for municipal social housing and information on progress made to improve the overall housing situation.
38. The Committee urges the State party to strengthen measures to deal with the problem of homelessness and to ensure that rejected asylum seekers who cannot be sent home to their countries of origin be offered alternative accommodation.



Compilation of Selected Adjudication on Housing Rights



United Nations Committee on Economic, Social and Cultural Rights: Concluding Observations Panama (2001)

19. The Committee is concerned about the reported lack of social housing and in particular about the many different programmes and initiatives that exist in the field of housing, which are not integrated into a coherent national strategy. The Committee is also concerned about the lack of information concerning the extent to which its 1995 recommendations have been implemented, especially with regard to the need to take into account the opinions of those affected by forced evictions, in line with its General Comment No. 7.
35. The Committee recommends that the State party collect comprehensive data and establish a coherent national strategy on housing, especially on social housing. In this regard, the Committee urges the State party to take all appropriate measures in order to ensure the availability of affordable housing units, especially for the low-income, disadvantaged and marginalised groups
36. The Committee requests the State party to provide detailed information in its third periodic report about the number and nature of forced evictions, in accordance with General Comment No. 7 of the Committee. It requests that information be provided on the implementation of recommendations formulated by the Committee as a result of its 1995 technical assistance mission.



Compilation of Selected Adjudication on Housing Rights



United Nations Committee on Economic, Social and Cultural Rights: Concluding Observations Panama (1991)

135. Several detailed questions had been asked concerning both housing rights and evictions to which the responses provided by the delegation of Panama were viewed by the Committee as unsatisfactory for the following reasons:
- a - First, the Government's claim that 3,000 persons had been affected by the bombing of El Chorillo differed substantially from all other sources available on this issue, which placed the figure between 12,500 and 20,000 persons. The absence of reliable census figures as to the population of El Chorillo prior to the bombing of the community could be a reason for the disparity of estimates. The Committee viewed with alarm the disparity in persons in view of the obligations incumbent upon the Government under the Covenant;
 - b - Secondly, the responses given to questions concerning the current living conditions of residents of El Chorillo made homeless by the bombing differed substantially from other information available to the Committee. The residents that had received information which pointed to many complaints by the residents that had received alternative accommodation and which concerned the long distance which now had to be traveled to and from places of employment on relatively expensive public transportation and the overall poor quality of the housing in the resettlement sites. Moreover, two years after the invasion, a large number of persons had yet to be rehoused;
 - c - Thirdly, the justification for the action carried out by the Panamanian and United States forces Tocumen, San Miguelito and Panama Viejo in early 1990, which affected over 5,000 persons, was unacceptable under the terms of the Covenant as a ground for forcibly removing people from their homes. During the actions concerned, a large number of houses were demolished, in spite of the affected persons having lived in the area for more than two years. Additionally, these evictions had not been accompanied by legal eviction orders. The Committee was of the view that evictions carried out in this way not only infringed upon the right to adequate housing but also on the inhabitants' rights to privacy and security of the home.



Compilation of Selected Adjudication on Housing Rights



United Nations Committee on Economic, Social and Cultural Rights: Concluding Observations

Paraguay (1996) ⁽¹²⁾

71. The Committee is very concerned at the plight of the indigenous population, as well as the estimated 200,000 landless mestizo peasant families. The main reason for hunger and malnutrition among the indigenous population and the deprivation of their rights is linked to the severe problem of obtaining access to traditional and ancestral lands. Though recognized by Law 904/81 and other subsequent laws, this right remains in abeyance. Eighty documented claims for legalizing indigenous land have been pending for a number of years. All indigenous groups in the Chaco were expelled from their traditional land by cattle ranchers or industrial enterprises. The Committee is also concerned about the situation of landless peasant families, of whom 50,000, on 15 March 1996, marched on the capital, Asunción, demanding adoption of legislative measures with respect to the land promises of agrarian reform. In Paraguay today, 5 per cent of the population owns between 60 to 80 per cent of the national territory, a situation fraught with danger peace and stability.



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United Nations Committee on Economic, Social and Cultural Rights: Concluding Observations

Peru (1997) [\(44\)](#)

13. The Committee notes with concern that the 1993 Constitution has not incorporated the provisions of the Covenant, which consequently do not constitute a part of domestic law and therefore cannot be invoked before Peruvian courts. ... Among the rights contained in the Covenant which were recognized and incorporated in the 1979 Constitution, but which have so far been left out of the 1993 Constitution, are: ...

b - the right to food and adequate housing (article 18)



Compilation of Selected Adjudication on Housing Rights



United Nations Committee on Economic, Social and Cultural Rights: Concluding Observations Philippines (1995) [↗](#)

15. The Committee expresses particular concern at the use of criminal law provisions to deal with problems arising from the inadequacy of housing. It notes in this regard that Presidential Decree (PD) 772 has been used in some cases as a basis for the criminal conviction of squatters and that PD 1818 restricts the right to due process in the case of evictees. While the Committee does not condone the illegal occupation of land nor the usurpation of property rights by persons otherwise unable to obtain access to adequate housing, it believes that in the absence of concerted measures to address these problems resort should not be had in the first instance to measures of criminal law or to demolition.

31.The Government should promote greater security of tenure in relation to housing in accordance with the principles outlined in the Committee's General Comment No. 4 and should take the necessary measures, including prosecutions wherever appropriate, to stop violations of laws such as R.A. 7279. In general, the Committee urges that consideration be given to the repeal of PD 772 and PD 1818, and recommends that all existing legislation relevant to the practice of forced evictions should be reviewed so as to ensure its compatibility with the provisions of the Covenant. The Committee considers that, when relocating evicted or homeless persons or families, attention should be paid to the availability of job opportunities, schools, hospitals, health centres, and transport facilities in the areas selected.



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United Nations Committee on Economic, Social and Cultural Rights: Concluding Observations Poland (2002)

25. The Committee is concerned about the high number of reported cases of domestic violence. It also notes with regret that insufficient information was provided on this issue by the State party.
26. The Committee is concerned that, under existing legislation, forced evictions may be carried out in the State party without provision for alternative lodging, as provided for in the Committee's General Comment No. 7 on forced evictions.
36. The Committee urges the State party to provide updated information on the Romani population and to adopt a comprehensive programme to address the obstacles to the advancement of the Romani population, including measures to ensure effective remedy for cases of discrimination against Roma in ... housing.
47. The Committee recommends that the State party strengthen programmes and increase budget allocations for combating domestic violence, including ensuring the availability and accessibility of crisis centres where victims of domestic violence can find safe accommodation and counselling.
48. The Committee reiterates its previous recommendation that the conditions for permissible forced evictions be specified in law, with provisions that address the need for alternative lodging for those evicted, as provided for in the Committee's General Comment No. 7 on forced evictions.



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United Nations Committee on Economic, Social and Cultural Rights: Concluding Observations Poland (1998)

16. The Committee draws the attention of the Government to article 11, paragraph 1 of the Covenant and to its General Comment Number 7 (1997) on the right to adequate housing. The Committee is concerned about existing legal provisions under which forced evictions may be carried out without provision for alternative lodging. The Committee also views with concern the problem of homeless people in Poland caused by the acute shortage of housing, the relatively high number of poor families living below the poverty line, floods and forced evictions.
25. The Committee recommends that the conditions for permissible forced evictions be specified in law, with provisions addressing the need for alternative lodging for those evicted. The Committee urges the State party to take all appropriate measures in addressing the problems of the acute shortage of housing and of homelessness. It further recommends that the basis for determining rental rates be managed in a way that protects the rights of both property owners and tenants, especially those among the most vulnerable groups of society. The Committee suggests that information on one's rights, responsibilities and public and private avenues of assistance in a market economy be provided to all consumers, in this case tenants. The Committee emphasizes that respect for the right to housing should include, when appropriate, the taking of measures to assist those whose homes are put into jeopardy or who are rendered homeless by dramatic rent increases due to the elimination of rental subsidies.



Compilation of Selected Adjudication on Housing Rights



United Nations Committee on Economic, Social and Cultural Rights: Concluding Observations Republic of Korea (2001)

11. The Committee notes that the “economy-first” approach adopted by the State party has resulted in a low priority placed on the protection of economic, social and cultural rights. This has led to the marginalization of certain groups in society in such matters as housing, social welfare, and health care.
25. The Committee regrets the lack of accurate information concerning the number of forced evictions and the specific conditions under which they can occur, in accordance with the Committee General Comment No.7. The Committee is also concerned that victims of private construction projects are not provided with compensation or temporary lodging, unlike private homeowners who are evicted as a result of public projects. Moreover, the Committee is concerned about the affordability of housing for lower income groups, especially the vulnerable and marginalized groups; about the use of “vinyl houses” for dwellings, which pose grave risks to their dwellers; and about the increasing number of the homeless.
41. The Committee recommends that the State party establish a focal point within the Government for dealing with complaints or appeals for assistance on housing matters. It recommends that protection be provided, such as compensation and temporary housing, to victims of forced evictions resulting from private development projects. The State party should also ensure that adequate housing is available to members of vulnerable or marginalized groups. Moreover, the State party should take immediate measures to assist all those who are homeless or living in exceptionally sub-standard conditions, such as “vinyl houses”.



Compilation of Selected Adjudication on Housing Rights



United Nations Committee on Economic, Social and Cultural Rights: Concluding Observations

Republic of Korea (1995)

77. The Committee is concerned by the housing situation in the Republic of Korea and considers that it has not been given adequate information on the subject, especially with regard to unsuitable housing, the number of homeless people and forcible evictions. It notes that, according to international non-governmental sources, 720,000 persons were evicted on the occasion of the Olympic Games in Seoul and that no information has been provided on their subsequent situation, while 16,000 are said to have been evicted since February 1992. Lastly, according to national non-governmental sources, 4,000 evictions took place in 1994. Despite the Committee's concerns, there has been no response to its questions or, more generally, to problems relating to the right to housing.
83. The Committee recommends that appropriate measures should be taken in order more effectively to guarantee the right to housing and, in particular, to ensure that no evictions are carried out without offers of alternative housing, in accordance with the Committee's General Comment No. 4 (1991). It would also like further information on the application of article 11 of the Covenant in the Republic of Korea and, in particular, on the right to housing.



Compilation of Selected Adjudication on Housing Rights



United Nations Committee on Economic, Social and Cultural Rights: Concluding Observations St. Vincent and the Grenadines (1997)

22. With respect to article 11 of the Covenant, the Committee notes with concern that the number of squatter households has grown rapidly in Saint Vincent and the Grenadines in recent years, and that many squatters reside in dwellings which fall short of the conditions listed in paragraph 8 of the Committee's General Comment No. 4. The Committee notes that the absence of a national housing policy and the halt of all public housing construction has aggravated these problems.
23. The Committee also notes with regret reports received of occurrences of forced evictions, in particular a case where 150 persons were forced to leave their traditional homes and land as a result of the construction of a cruise ship berth. The Committee was informed that although the persons thus evicted received some cash compensation, they were not offered alternative accommodation. The Committee recalls in this respect its General Comment No. 7.



Compilation of Selected Adjudication on Housing Rights



United Nations Committee on Economic, Social and Cultural Rights: Concluding Observations

Senegal (2001) ⁽¹⁸⁾

15. The Committee expresses its concern about the *de jure* and *de facto* inequality that exists between men and women in Senegalese society. For example, article 152 of the Family Code discriminates against women, notably in the fields of taxation, allocation of seeds and family allowances. The Committee is particularly concerned about the lack of progress made by the State party in eradicating the enduring discriminatory practices against women and girls. Such practices include polygamy, restricted access to land, property, housing, credit facilities and the inability to inherit land.
39. The Committee urges the State party to enact or enforce legislation, as the case may be, prohibiting customary practices such as polygamy, FGM, restricted access by women to land, property, housing, credit facilities and the inability to inherit land and to take measures to combat such practices by all means, including national education programs.



Compilation of Selected Adjudication on Housing Rights



United Nations Committee on Economic, Social and Cultural Rights: Concluding Observations

Serbia and Montenegro (2005)

31. The Committee is deeply concerned that many refugees, internally displaced persons and Roma are being evicted from illegal collective centres and informal settlements which are being closed down without sufficient provision of adequate alternative housing.
58. The Committee urges the State party to ensure that adequate alternative housing is provided whenever forced evictions take place, in line with the Committee's General Comment No. 7, and to include updated statistical data on an annual basis on the number of forced evictions, arrangements for alternative housing and the extent of homelessness in its next report.
59. The Committee recalls the State party's obligation to ensure access to safe drinking water within, or in the immediate vicinity, of each household. It invites the State party to identify disaggregated indicators and appropriate national benchmarks in relation to the right to water, in line with the Committee's General Comment No.15, and to include information on the process of identifying such indicators and benchmarks in its next report.



Compilation of Selected Adjudication on Housing Rights



United Nations Committee on Economic, Social and Cultural Rights: Concluding Observations Slovakia (2002)

9. The Committee is deeply concerned about discrimination against Roma people in the fields of employment, housing, health-care and education. Although the State party acknowledges this fact, the legislative and administrative measures undertaken by the State party to improve the socio-economic conditions of the Roma are still insufficient to address the problem. The Committee is also concerned about the absence of a comprehensive anti-discrimination law.
20. The Committee recommends that the State party take into account its obligations under the Covenant in the formulation of its ... housing ... policies.



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United Nations Committee on Economic, Social and Cultural Rights: Concluding Observations

Solomon Islands (1999)

20. The Committee, while acknowledging the State party's need to raise financial resources to subsidize its economic reform and development programme, expresses its concern about the Government's plans to privatize communal land with a view to making it accessible for commercial use and urban development. The Committee recalls that approximately 90 per cent of the land in Solomon Islands is held under customary land tenure, meaning that the land belongs to the community as such rather than to individuals. The Committee would like to draw the Government's attention to the fact that the envisaged privatization of land under customary tenure may undermine the foundations of Solomon Islands society and could lead to the dispossession of the majority of people, thereby depriving them of their basic source of income. With regard to the Government's plans to privatize housing completely, the Committee is concerned that the number of homeless people in the urban areas will increase considerably.



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UN-HABITAT

United Nations Committee on Economic, Social and Cultural Rights: Concluding Observations Spain (2004)

20. The Committee is concerned about the growing problem of homelessness in the State party, as described in the report of the State party (para. 386), and of people affected by forced evictions.
38. The Committee calls upon the State party to strengthen its efforts under the National Plan of Action for Social Inclusion to provide assistance to homeless persons and to undertake a study on the problem of homelessness so as to acquire a more accurate picture of the problem and its root causes. It also requests the State party to provide disaggregated and comparative data on the number of people affected by forced evictions, and to ensure that any forced evictions carried out comply with the guidelines set out in the Committee's general comment No. 7.



Compilation of Selected Adjudication on Housing Rights



United Nations Committee on Economic, Social and Cultural Rights: Concluding Observations Syrian Arab Republic (2001)

42. The Committee urges the State party to provide detailed information about the housing situation in the Syrian Arab Republic, including the provision of social housing for lower income, disadvantaged and marginalized groups, the number of forced evictions and whether those evictions comply with the guidelines set out by the Committee in its General Comment No. 7.



Compilation of Selected Adjudication on Housing Rights



United Nations Committee on Economic, Social and Cultural Rights: Concluding Observations Trinidad and Tobago (2002)

28. The Committee is deeply concerned about the lack of housing programs for providing the poorest members of society with appropriate accommodation. The Committee is also concerned at the number of urban squatter communities which are exposed to forced evictions, in the light of the highly restrictive legal conditions governing their right to tenure.
51. The Committee urges the State party to devise a housing strategy for disadvantaged and marginalized groups and provide low-cost housing units to them. The Committee also urges the State party to provide more disaggregated data on squatters as well as to adopt measures to improve their legal position with regard to their security of tenure. In addition, the Committee recommends that the State party take into account the Committee's General Comments 4 and 7 in relation to the right to adequate housing and on forced evictions.



Compilation of Selected Adjudication on Housing Rights



United Nations Committee on Economic, Social and Cultural Rights: Concluding Observations Ukraine (2001)

9. The Committee is concerned about the high level of poverty in the country and the inadequate measures of the State party to combat it. This is exacerbated by, among other things, the privatisation policies that the State party has implemented, high unemployment, low level of pensions and wages, a legal minimum wage which is below the recognised subsistence level, and the scarcity of adequate housing.



Compilation of Selected Adjudication on Housing Rights



United Nations Committee on Economic, Social and Cultural Rights: Concluding Observations United Kingdom (2002)

14. The Committee is concerned about the persistence of de facto discrimination in relation to some marginalized and vulnerable groups in society, especially ethnic minorities and persons with disabilities, in various fields including employment, housing and education. The Committee regrets the unwillingness of the State party to adopt comprehensive legislation on equality and protection from discrimination, in accordance with Articles 2(2) and 3 of the Covenant.
20. The Committee notes with concern that poor quality housing and "fuel poverty" continue to be a problem for a large number of families and individuals.
25. The Committee further recommends, recalling its previous recommendation (paragraph 33 of its 1997 concluding observations), that the State party review and strengthen its institutional arrangements, within the government administration, which are designed to ensure that its obligations under the Covenant are taken into account, at an early stage, in the Government's formulation of national legislation and policy on issues such as poverty reduction, social welfare, housing, health and education. Given that its General Comments are based upon experience gained over many years, including the examination of numerous States parties' reports, the Committee urges the State party to give careful consideration to its General Comments and Statements when formulating policies that bear upon economic, social and cultural rights.
31. The Committee urges the State party to take more effective steps to combat de facto discrimination, in particular against ethnic minorities and people with disabilities, especially in relation to employment, housing and education. The Committee strongly recommends that the State party enact comprehensive legislation on equality and non-discrimination in UK law, in conformity with Articles 2(2) and 3 of the Covenant.
39. The Committee recommends that the State party take immediate measures to improve the situation of the large number of families and individuals who live in poor housing conditions and to relieve the situation of those who are "fuel poor".



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UN-HABITAT

United Nations Committee on Economic, Social and Cultural Rights: Concluding Observations

United Kingdom (1994) [\[a\]](#)

274. The Committee is concerned about difficulties faced in the implementation of article 11 of the Covenant. In this context, it regrets that a large number of households have experienced harassment or illegal eviction and notes that the national housing policy is not adequate to address this problem which particularly affects private tenants who are single parents, have low incomes, or, in general, are the among the most vulnerable groups of society. The Committee also notes with concern that serious difficulties continue to be faced regarding the enforcement of improvements to unsafe housing in England and Wales as well as in the handling by the authorities of the growing problem of homelessness.



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United Nations Committee on Economic, Social and Cultural Rights: Concluding Observations

United Kingdom (Hong Kong) (1994) [\(10\)](#)

302. The Committee urges the Government to take immediate steps, as a matter of high priority, to eradicate the phenomenon of "cage homes", and to ensure that those currently living in such accommodation are provided with adequate and affordable rehousing. The Committee also urges the Government seriously to consider the embodiment into domestic law of the right to housing.



Compilation of Selected Adjudication on Housing Rights



United Nations Committee on Economic, Social and Cultural Rights: Concluding Observations Uruguay (1997)

16. The Committee continues to be concerned by the shortage of housing, the high levels of rent, and the conditions under which forced evictions may be carried out, particularly for the most vulnerable groups.
22. The Committee considers that the efforts made by the State party to implement an adequate housing policy remain insufficient and urges it to increase its efforts in this respect. It also wishes to receive more detailed information on the number of forced evictions and the manner in which these are carried out.



Compilation of Selected Adjudication on Housing Rights



United Nations Committee on Economic, Social and Cultural Rights: Concluding Observations Venezuela (2001)

12. The Committee deplores the discrimination against indigenous people, particularly with regard to access to landownership, housing, health services and sanitation, education, work and adequate nutrition. The Committee is particularly concerned about the adverse effects of the economic activities connected with the exploitation of natural resources, such as mining in the Imataca Forest Reserve and coal-working in the Sierra de Perijá, on the health, living environment and way of life of the indigenous populations living in these regions.
31. The Committee urges the State party to develop a more elaborate system of national statistics on all the rights enshrined in the Covenant. In particular, the Committee requests the State party to provide, in its next periodic report, information including relevant statistics on the incidence of violence, the general housing situation, forced evictions and on the status of land reform in Venezuela. The Committee further recommends that the State party provide information on the steps taken in these respects.



Compilation of Selected Adjudication on Housing Rights



United Nations Committee on Economic, Social and Cultural Rights: Concluding Observations Zimbabwe (1997)

13. Despite the fact that the "extended family" provides a safety net for some of the homeless, the Committee notes that the situation in relation to the right to housing remains clearly inadequate. The Committee is particularly concerned about the precarious situation of persons living in illegal structures or unauthorized housing (par. 107 of the report). Persons should not be subjected to forced eviction unless this is done under conditions compatible with the Covenant.
21. The Committee recommends that appropriate measures be taken in order more effectively to guarantee the right to housing and, in particular, to ensure that no forced evictions are carried out without alternative housing being offered, in accordance with the Committee's General Comment No. 4 (1991). It would also like to receive further information on the number of forced evictions carried out and on the application of article 11 of the Covenant in Zimbabwe, in particular with respect to the right to housing.



Compilation of Selected Adjudication on Housing Rights



United Nations Committee on Economic, Social and Cultural Rights: Concluding Observations Zambia (2005)

46. The Committee reiterates the recommendation made by the Committee on the Rights of the Child (CRC/C/15/Add.206, para, 69) and, in particular, that street children be provided with preventive, rehabilitative services for physical and sexual abuse, as well as adequate food, clothing, housing, health care and educational opportunities. In this regard, the Committee requests the State party to provide further information about the District Street Children Committees and the programme for rehabilitation of street children under the Zambian National Services in its next periodic report.



Compilation of Selected Adjudication on Housing Rights



Committee on Economic, Cultural and Social Rights

The case of the Dominican Republic

December 1990: Concluding Observations to the Initial Periodic Report of the Dominican Republic [...](#)

234. Members also referred to information to the effect that 15,000 families had been expelled from their dwellings in the context of programmes intended to remodel urban housing estates in connection with the ceremonies to mark the 500th anniversary of the landing by Christopher Columbus. These 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.
249. ...The information that had reached members of the Committee concerning the massive expulsions of nearly 15,000 families in the course of the last five years, the deplorable conditions in which the families had had to live, and the conditions in which the expulsions had taken place were deemed sufficiently serious for it to be considered that the guarantees in article 11 of the Covenant had not been respected.
250. The Committee consequently requested an additional report on those issues which called for more detailed development as well as answers to those questions which had been kept pending.



Compilation of Selected Adjudication on Housing Rights



Committee on Economic, Cultural and Social Rights

The case of the Dominican Republic

3 December 1991: written statement submitted by Habitat International Coalition, a non-governmental organization on the roster [a](#)

7. In view of the deep concern expressed by the Committee at its fifth session in relation to past evictions and taking account of the fact that the Committee specifically requested the Government to provide it with further information, which it so far failed to do, it is essential for the Committee to reinforce its earlier expressions of concern. It should therefore call upon the State Party, as a matter of urgency, to provide it with a detailed response to the allegations that have already been made as well as to those which are alluded to in the information below. It is submitted that, in the absence of such action by the Committee, the credibility of the Committee's supervisory procedures would be entirely undermined.
8. A dossier of detailed information about this recent decree and the evictions which includes analyses, photographs and a copy of the decree itself has been provided to the Secretariat and is available for consultation by members of the Committee. Since the largest part of the eviction has not yet been carried out, the Committee can play a preventive and constructive role in officially addressing this intended large-scale violation of housing rights in a State Party which appeared before the Committee only one year ago.
9. An official request for information sent urgently by the Committee directly to the President of the Dominican Republic expressing its concern at decree 358-91, and requesting that no further evictions are carried out, could encourage the Government to reconsider its current plans.



Compilation of Selected Adjudication on Housing Rights



Committee on Economic, Cultural and Social Rights

The case of the Dominican Republic

6 December 1991: Committee on Economic, Social and Cultural Rights, Report of the Sixth Session ²⁰

330. The Committee notes that its request for additional report on those issues has not evoked a response from the Government. It notes that in the meantime it has received additional information from several sources, including that contained in E/C.12/1991/NGO/1, which, if accurate, would give rise to serious concern on the part of the Committee. The Committee thus requests the State Party to suspend any actions which are not clearly in conformity with the provisions of the Covenant, and requests the Government to provide additional information to it as a matter of urgency.

The Committee requests the Secretary-General of the United Nations to inform the Government of the Dominican Republic of the Committee's decision as soon as possible.



Compilation of Selected Adjudication on Housing Rights



Committee on Economic, Cultural and Social Rights

The case of the Dominican Republic

19 December 1994: Concluding observations on the reports submitted by the Dominican Republic pursuant to the 6 December 1991 request ²²

1. On 30 November 1994, at its 43rd meeting, the Committee examined matters arising out of the requests to the Government of the Dominican Republic for the provision of additional information, in particular relating to the right to adequate housing. The Committee has devoted ongoing attention to these issues since its fifth session (1990), with particular concern about alleged instances of large-scale forced evictions. At its tenth session the Committee urged the Government to "take all appropriate measures in the meantime to ensure full respect for all economic, social and cultural rights, in particular in relation to the right to housing" (E/C.12/1994/SR.5).
4. The Committee notes the housing rights provisions in article 8 (15) (b) of the Constitution and several recent amendments to the relevant provisions of the Constitution. It notes that these provisions could, if reflected fully in law and practice, assist in promoting enhanced accountability and the development of judicial procedures which would provide an effective means of recourse for those whose right to housing is threatened.
5. The Committee welcomes those aspects of decrees 76-94 of 29 March 1994 and 155-94 of 11 May 1994 which commit the State to providing the broadest possible protection to the stability of the Dominican family and to giving property titles to all families who, up to 11 May 1994, have built homes on lands declared to be public property. The Committee also welcomes the decision by the Government to create a green belt around the city, and its commitment to construct 12,500 new housing units for low-income communities.
6. The Committee also welcomes the Government's statement of its intention to amend its legislation and policy to bring them into line with the obligations arising out of the Covenant and to take measures with regard to forced evictions and to adapt relocation policies to ensure that such measures are carried out only as a last resort and that when they do occur the principle of a "house for a house" will be respected. The indication by the Government that urgent consideration will be given to suspending decrees 358-91 and 359-91 is particularly welcomed by the Committee.
8. The Committee reiterates the importance it attaches to the right to housing and reaffirms its long-standing view that forced evictions are *prima facie* incompatible with the requirements of the Covenant and can only be justified in truly exceptional circumstances. The situation regarding forced evictions within the country continues to be viewed with concern by the Committee.
9. The Committee has received, over the course of several years, detailed and precise information relating to the housing situation in the Dominican Republic. This information has systematically been provided to the Government with a request for comments as to its accuracy.
10. While the Government presented the Committee with information as to the achievements and shortcomings of its various policies in relation to housing, the Committee did not receive any information which would lead it to conclude that these problems do not exist or have been adequately addressed.
11. It therefore expresses its serious concern at the nature and magnitude of the problems relating to forced evictions and calls upon the Government of the Dominican Republic to take urgent measures to promote full respect for the right to adequate housing. In this regard, the Committee notes that whenever an inhabited dwelling is either demolished or its inhabitants evicted, the Government is under an obligation to ensure that adequate alternative housing is provided. In this context "adequacy" requires relocation within a reasonable distance from the original site, and in a setting which has access to essential services such as water, electricity, drainage and garbage removal. Similarly, persons who are housed in conditions which threaten their life and health should, to the maximum of available resources, be adequately rehoused.
16. The Committee is also concerned at the effects Presidential decrees can and do have upon the enjoyment of the rights recognized in the Covenant. It wishes to emphasize in this regard the importance of establishing judicial remedies which can be invoked, including in relation to Presidential decrees, in order to seek redress for housing rights violations. The Committee is not aware of any housing rights matters that have been considered by the Supreme Court in relation to article 8 (15) (b) of the Constitution. In so far as this might be taken to indicate that the provision has not so far been subject to judicial review, the Committee expresses the hope that greater reliance will be placed upon it in future as a means by which to defend the right to adequate housing.
17. The Committee draws the attention of the Government to the full text of its General Comment No. 4 on "The

right to adequate housing (article 11 (1) of the Covenant)" and urges the Government to ensure that policy, legislation and practice take due account of that General Comment.

18. The Government should ensure that forced evictions are not carried out except in truly exceptional circumstances, following consideration of all possible alternatives and in full respect for the rights of all persons affected. On the basis of the information available to it, the Committee has no reason to conclude that existing plans for forced eviction in Santo Domingo, to which its attention has been drawn, are necessitated by any such exceptional circumstances.
19. All persons residing in extremely precarious conditions such as those residing under bridges, on cliff sides, in homes dangerously close to rivers, ravine dwellers, residents of Barrancones and Puente Duarte, and the more than 3,000 families evicted between 1986-1994 who have yet to receive relocation sites (from Villa Juana, Villa Consuelo, Los Frailes, San Carlos, Guachupita, La Fuente, Zona Colonial, Maquiteria, Cristo Rey, La Cuarenta, Los Ríos and La Zurza), should all be ensured, in a rapid manner, the provision of adequate housing in full conformity with the provisions of the Covenant.
20. The Government should confer security of tenure on all dwellers lacking such protection at present, with particular reference to areas threatened with forced eviction.
21. The Committee notes that Presidential decrees 358-91 and 359-91 are formulated in a manner inconsistent with the provisions of the Covenant and urges the Government to consider the repeal of both of these decrees within the shortest possible time frame. The Government should seek to remove the military presence in La Cienaga-Los Guandules and allow residents the right to improve their homes and the community at large. The Government should also give careful consideration to implementing alternative development plans for the area, taking full account of plans developed by non-governmental and community-based organizations.
27. Subsequent to the appearance before the Committee of two representatives of the Government of the Dominican Republic, the Committee received information that, based on a recommendation by the Special Committee on Urban Affairs, Decree No. 371-94 was promulgated on 1 December 1994, ordering the immediate eviction of two sectors situated on the banks of the Isabela River. In the implementation of this decree the Committee requests the Government to ensure its compliance with the terms of the Covenant and to take full account of the recommendations contained in these concluding observations. The Committee has also learned that the problem of evictions is attracting attention in the country's press and is aware of the polarization which the issue is currently causing in Dominican society. The Committee feels that it could make a more comprehensive assessment of the problem of evictions if the Government of the Dominican Republic were to invite one or two Committee members to make an *in situ* visit. The Committee therefore renews its request to the Government to send a two-person mission to the country and recalls that this request has already been endorsed clearly on two occasions by the Economic and Social Council.

[Upon receiving the views of the Committee, the Government of the Dominican Republic halted the evictions.]



Compilation of Selected Adjudication on Housing Rights



Committee on Economic, Cultural and Social Rights

The case of the Dominican Republic

December 1996: Concluding Observations to the Second Periodic Report of the Dominican Republic [a](#)

6. The Committee notes with satisfaction, from the information available to it from other sources, that the Government has repealed Decree No. 358-91, the application of which had previously negatively affected the realization of the right to adequate housing, and that it has provided a solution to the cases of eviction pronounced under previous governments.



Compilation of Selected Adjudication on Housing Rights



Human Rights Committee: Concluding Observations

Brazil (2005)

6. The Committee is concerned about the slow pace of demarcation of indigenous lands, the forced evictions of indigenous populations from their land and the lack of legal remedies to reverse these evictions and compensate the victimized populations for the loss of their residence and subsistence (Arts. 1 and 27).

The State party should accelerate the demarcation of indigenous lands and provide effective civil and criminal remedies for deliberate trespass on those lands.



Compilation of Selected Adjudication on Housing Rights



Human Rights Committee: Concluding Observations

Canada (2005)

17. The Committee is concerned about information that, in some provinces and territories, people with mental disabilities or illness remain in detention because of the insufficient provision of community-based supportive housing. (articles 2, 9, 26)

The State party, including all governments at provincial and territorial level, should increase its efforts to ensure that sufficient and adequate community based housing is provided to people with mental disabilities, and ensure that the latter are not under continued detention when there is no longer a legally-based medical reason for such detention.



Compilation of Selected Adjudication on Housing Rights



Human Rights Committee: Concluding Observations

Greece (2005)

18. The Committee is concerned that the Roma people remain disadvantaged in many aspects of life covered by the Covenant (Arts. 26 and 27).
 - (a) The State party should intensify its efforts to improve the situation of the Roma people in a manner that is respectful of their cultural identity, in particular, through the adoption of positive measures regarding housing, employment, education and social services.



Compilation of Selected Adjudication on Housing Rights



Human Rights Committee: Concluding Observations

Italy (2005)

21. The Committee is concerned by the State party's policy to consider Roma as "nomads" as well as its camp-based policy towards them. It expresses concern about widespread reports that the Roma population is living in poor, unhygienic housing conditions on the margins of Italian society. (articles 12 and 26)

The State party, in consultation with the Roma, should reconsider its policy towards this community, put an end to their residential segregation, and develop programmes to ensure their full participation in mainstream society at all levels.



Compilation of Selected Adjudication on Housing Rights



Human Rights Committee: Concluding Observations

Kenya (2005)

22. While noting the delegation's explanations on the issue, the Committee remains concerned about reports of the forcible eviction of thousands of inhabitants from so-called informal settlements, both in Nairobi and other parts of the country, without prior consultation with the populations concerned and/or without adequate prior notification. This practice arbitrarily interferes with the Covenant rights of the victims of such evictions, especially their rights under Article 17 of the Covenant.

The State party should develop transparent policies and procedures for dealing with evictions and ensure that evictions from settlements do not occur unless those affected have been consulted and appropriate resettlement arrangements have been made.



Compilation of Selected Adjudication on Housing Rights



Human Rights Committee: Concluding Observations

Thailand (2005)

24. The Committee expresses its concern about the structural discrimination by the State party against minority communities, in particular the Highlanders with regard to citizenship, land rights, freedom of movement and the protection of their way of life. The Committee notes with concern the treatment of the Highlanders by law enforcement officials, in particular their forced eviction and relocation in the context of the 1992 Master Plan on Community Development, Environment and Narcotic Crop Control in Highland Areas, which gravely affected their livelihood and way of life, as well as the reports of extrajudicial killings, harassment and confiscation of property in the context of the “war on drugs” campaign. The Committee is also concerned about the construction of the Thai-Malaysian Gas Pipeline and other development projects which have been carried out with minimal consultation with the concerned communities. In addition, the Committee is concerned about violent suppression of peaceful demonstrations by law enforcement officers in contravention of articles 7, 19, 21 and 27 of the Covenant (Arts. 2, 7, 19, 21 and 27).

The State party should guarantee the full enjoyment of the rights of persons belonging to minorities that are set out in the Covenant, in particular with respect to the use of land and natural resources, through effective consultations with local communities. The State party should respect the rights of persons belonging to minorities to enjoy their own culture, to profess and practice their own religion, and to use their own language in community with other members of their group.



Compilation of Selected Adjudication on Housing Rights



Committee Against Torture: Concluding Observations

Greece (2004)

5. The Committee notes that many of the concerns it expressed during the consideration of the third periodic report (A/56/44, para. 87) have not been adequately addressed, and will be reiterated in the present concluding observations. Consequently, the Committee expresses its concern at:
 - (j) Ill-treatment of Roma by public officials in situations of forced eviction or relocation. The fact that these may be carried out pursuant to judicial orders cannot serve as a justification for ill-treatment, numerous allegations of which have been reported by national and international bodies alike;
6. The Committee recommends that the State party:
 - (k) Ensure that all actions of public officials, in particular where the actions affect the Roma (such as evictions and relocations) or other marginalized groups, are conducted in a non-discriminatory fashion and that all officials are reminded that racist or discriminatory attitudes will not be permitted or tolerated;



Compilation of Selected Adjudication on Housing Rights



Committee Against Torture: Concluding Observations

Israel (2001)

6. The Committee expresses concern about the following matters:

- j) Israeli policies on house demolitions, which may, in certain instances, amount to cruel, inhuman or degrading treatment or punishment (Article 16 of the Convention).

7. The Committee makes the following recommendations:

- g) The State party should desist from the policies of closure and house demolition where they offend article 16 of the Convention.



Compilation of Selected Adjudication on Housing Rights



Committee Against Torture: Individual Complaint Procedure

Communication No.31/2003: Slovakia (CERD/C/66/D/31/2003)

Facts:

The case concerned a resolution adopted by the Dobšiná municipal council, under pressure from right wing anti Roma groups, to cancel a previous resolution in which the council had approved a plan to construct low cost social housing for Roma inhabitants living in very poor conditions. The petitioners contended, *inter alia*, that the State party had failed to safeguard their right to adequate housing, thereby violating Article 5(e)(iii) of the International Convention on the Elimination of all forms of Racial Discrimination (ICERD).

Decision:

The Committee ruled that, taken together, the council resolutions in question – which consisted of an important practical and policy step towards realisation of the right to adequate housing, followed by its revocation and replacement with a weaker measure – amounted to an impairment of the recognition, or exercise on an equal basis, of the human right to housing. This right is protected by Article 5(e)(iii) of ICERD and Article 11 of the International Covenant on Economic, Social and Cultural Rights. The Committee also found that the State Party was in breach of its obligation to guarantee the right of everyone to equality before the law in the enjoyment of the right to housing, contrary to Article 5(e)(iii) of CERD. The Committee ruled that Slovakia should, *inter alia*, take measures to ensure that the petitioners be restored to the position that they were in upon adoption of the initial resolution by the municipal council.



Compilation of Selected Adjudication on Housing Rights



Committee Against Torture

Hijrizi v. Yugoslavia⁽³¹⁾

[This case involved the forced eviction and destruction of the Bozova Glavica settlement in the city of Danilovgrad by private residents who lived nearby. Earlier, the perpetrators threatened to “exterminate” the community and “burn down” their houses. The Danilovgrad Police Department reacted by telling the Romani community that they should evacuate the settlement immediately as they, the police, would be unable to protect them. Most of the Romani residents fled their homes, leaving a few behind to protect their housing and other possessions. During the afternoon of 15 April 1995, the non-Romani residents entered Bozova Glavica shouting slogans such as “we shall evict them” and “we shall burn down the settlement.” The crowd soon began to break windows and set fire to the housing, resulting in the entire settlement being levelled and all properties belonging to its Roma residents completely destroyed. Several days later the debris of Bozova Glavica was completely cleared away by municipal construction equipment, leaving no trace of the community.]

Article 16 of the Convention Against Torture states in relevant part that “Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in Article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”

The Committee found that the Police Department did not take any appropriate steps in order to protect the residents of Bazova Glavica, thus implying acquiescence in the sense of Article 16 of the Convention, and that the burning and destruction of their homes constituted acts of cruel, inhuman or degrading treatment or punishment within the meaning of Article 16. Consequently, the Committee held that the Government of Serbia and Montenegro had violated Article 16 of the Torture Convention by not protecting the rights of the residents of Bozova Glavica. For the first time, and although the right to compensation is not expressly provided in the Convention for victims of acts of ill-treatment other than torture, the Committee concluded that the State Party should compensate the victims of this violation.]



Compilation of Selected Adjudication on Housing Rights



Committee on the Elimination of Racial Discrimination: Concluding Observations Nigeria (2005)

18. The Committee is concerned about the persistence of discrimination against persons belonging to various ethnic groups in the fields of employment, housing and education, including discriminatory practices by people who consider themselves to be the original inhabitants of their region against settlers from other states. While noting the efforts taken by the State party to improve the representation of different ethnic groups in the public service, most notably by the Federal Character Commission, the Committee remains concerned about the reports of continuing practices of patronage and traditional linkages based on ethnic origin, leading to the marginalization of certain ethnic groups in Government, legislative bodies and the judiciary (Arts. 2 and 5).

The Committee recommends that the State party continue to promote equal opportunities for all persons without discrimination in order to ensure their full enjoyment of their rights, in accordance with article 2, paragraph 2, and article 5 of the Convention. In this connection, the Committee urges the State party to strengthen its Affirmative Action Plans in favour of underrepresented or marginalized groups, including women, in its employment policies with regard to the public service, and to submit in its next periodic report more detailed information on achievements under these programmes.



African Commission on Human and Peoples' Rights

SERAC and CESR v. Nigeria⁽³²⁾

[This case involved, inter alia, forced evictions by the Government of Nigeria and a transnational oil company. With this case, the African Commission on Human and Peoples' Rights read the right to adequate housing into the African Charter on Human and Peoples' Rights, finding that such a right was implicitly contained in Articles 14 (right to property), 16 (right to the best attainable standard of health) and 18(1) (rights of the family).]

“60. Although the right to housing or shelter is not explicitly provided for under the African Charter, the corollary of the combination of the provisions protecting the right to enjoy the best attainable state of mental and physical health, cited under Article 16 above, the right to property, and the protection accorded to the family forbids the wanton destruction of shelter because when housing is destroyed, property, health, and family life are adversely affected. It is thus noted that the combined effect of Articles 14, 16 and 18(1) reads into the Charter a right to shelter or housing which the Nigerian Government has apparently violated.”

“61. At a very minimum, the right to shelter obliges the Nigerian government not to destroy the housing of its citizens and not to obstruct efforts by individuals or communities to rebuild lost homes. The State's obligation to respect housing rights requires it, and thereby all of its organs and agents, to abstain from carrying out, sponsoring or tolerating any practice, policy or legal measure violating the integrity of the individual or infringing upon his or her freedom to use those material or other resources available to them in a way they find most appropriate to satisfy individual, family, household or community housing needs.⁽³³⁾ Its obligations to protect obliges it to prevent the violation of any individual's right to housing by any other individual or non-state actors like landlords, property developers, and land owners, and where such infringements occur, it should act to preclude further deprivations as well as guaranteeing access to legal remedies.⁽³⁴⁾ The right to shelter even goes further than a roof over ones head. It extends to embody the individual's right to be let alone and to live in peace - whether under a roof or not.”

“62. The protection of the rights guaranteed in Articles 14, 16 and 18 (1) leads to the same conclusion. As regards the earlier right, and in the case of the Ogoni People, the Government of Nigeria has failed to fulfil these two minimum obligations. The government has destroyed Ogoni houses and villages and then, through its security forces, obstructed, harassed, beaten and, in some cases, shot and killed innocent citizens who have attempted to return to rebuild their ruined homes. These actions constitute massive violations of the right to shelter, in violation of Articles 14, 16, and 18(1) of the African Charter.”

“63. The particular violation by the Nigerian Government of the right to adequate housing as implicitly protected in the Charter also encompasses the right to protection against forced evictions. The African Commission draws inspiration from the definition of the term "forced evictions" by the Committee on Economic Social and Cultural Rights which defines this term as "the permanent removal against their will of individuals, families and/or communities from the homes and/or which they occupy, without the provision of, and access to, appropriate forms of legal or other protection".⁽³⁵⁾ Wherever and whenever they occur, forced evictions are extremely traumatic. They cause physical, psychological and emotional distress; they entail losses of means of economic sustenance and increase impoverishment. They can also cause physical injury and in some cases sporadic deaths.... Evictions break up families and increase existing levels of homelessness.⁽³⁶⁾ In this regard, General Comment No. 4 (1991) of the Committee on Economic, Social and Cultural Rights on the right to adequate housing states that "all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats" (E/1992/23, annex III. Paragraph 8(a)). The conduct of the Nigerian government clearly demonstrates a violation of this right enjoyed by the Ogonis as a collective right.”



Compilation of Selected Adjudication on Housing Rights



European Court of Human Rights

Akdivar and Others v. Turkey

App. no. 00021893/93, Judgment of 16 September 1996 ⁽²⁴⁾

AS TO THE FACTS

12. The facts are based on the Commission's findings of fact as set out and developed in its report of 26 October 1995.

I. Particular circumstances of the case

A. The situation in the South-East of Turkey

13. Since approximately 1985, serious disturbances have raged in the South-East of Turkey between the security forces and the members of the PKK (Workers' Party of Kurdistan). This confrontation has so far, according to the Government, claimed the lives of 4,036 civilians and 3,884 members of the security forces. It appears from information submitted by the applicants and by the amicus curiae that a large number of villages, estimated at more than 1,000, have been destroyed and evacuated during this conflict (see paragraph 7 above).
14. Since 1987, ten of the eleven provinces of south-eastern Turkey have been subjected to emergency rule which was in force at the time of the facts complained of.

B. Destruction of the applicants' houses

15. The applicants (see paragraph 1 above), Turkish nationals, were residents in the village of Kelekçi in the Dicle district of the province of Diyarbakir. The village of Kelekçi and the surrounding areas have been the centre of intense PKK terrorist activity. It is undisputed that the PKK launched serious attacks on Kelekçi on 17 or 18 July 1992, and the neighbouring village of Bogazköy on 1 November 1992. As a result of the first attack, three Kelekçi villagers were killed and three others wounded. The second attack on 1 November 1992 was directed at the Bogazköy gendarme station, which was destroyed, with one gendarme being killed and eight others injured. Thereafter security forces were reinforced in the area and extensive searches were carried out for terrorists. The applicants alleged that on 10 November 1992 State security forces launched an attack on the village of Kelekçi, burnt nine houses, including their homes, and forced the immediate evacuation of the entire village.
16. The Government categorically denied these allegations, contending that the houses had been set on fire by the PKK. Initially they stated that the village had merely been searched and that no damage had been caused. Subsequently, it was maintained that no soldiers had entered Kelekçi on 10 November 1992, and, if they had been in the vicinity, they had stopped on the outskirts of the village to take a rest.
17. On 6 April 1993 houses in Kelekçi were set on fire and the village was almost completely destroyed. It is disputed, however, whether this destruction was caused by terrorists or by security forces.
18. The Commission established that nine houses, including those of the applicants, were destroyed or seriously damaged by fire not long after the attack on the Bogazköy gendarme station on 1 November 1992. Although noting that there was some uncertainty as to the exact date when the nine houses were burnt, it accepted the applicants' claims that this occurred on 10 November 1992.

AS TO THE LAW

III. The merits of the applicants' complaints

A. The Court's assessment of the facts

[The Court] finds it established that security forces were responsible for the burning of the applicants' houses on 10 November 1992 and that the loss of their homes caused them to abandon the village and move elsewhere. However, it has not been established that the applicants were forcibly expelled from Kelekçi by the security forces.

82. It is against this background that the Court must examine the applicants' complaints under the Convention.

B. Alleged violation of Article 8 of the Convention (Art. 8) and Article 1 of Protocol No. 1 (P1-1)

83. Article 8 of the Convention (Art. 8) provides as follows:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

84. Article 1 of Protocol No. 1 (P1-1) provides:

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

85. The applicants submitted that in the light of all the evidence they had adduced, they have convincingly established that they were victims of a governmental policy of forced eviction which constitutes a practice in violation of Article 8 (Art. 8). In addition, they maintained that the burning of their houses amounted to a very serious violation of their rights under Article 1 of Protocol No. 1 (P1-1).

86. The Government submitted that it had not been shown that there had been any interference by the Turkish authorities with the applicants' rights under these provisions (Art. 8, P1-1). Moreover, the Commission had found that it had not been proved that the applicants had been deliberately removed from the village.

87. The Commission maintained that there had been a breach of both of these provisions (Art. 8, P1-1).

88. The Court is of the opinion that there can be no doubt that the deliberate burning of the applicants' homes and their contents constitutes at the same time a serious interference with the right to respect for their family lives and homes and with the peaceful enjoyment of their possessions. No justification for these interferences having been proffered by the respondent Government - which have confined their response to denying involvement of the security forces in the incident -, the Court must conclude that there has been a violation of both Article 8 of the Convention (Art. 8) and Article 1 of Protocol No. 1 (P1-1).

FOR THESE REASONS, THE COURT

3. Holds by nineteen votes to two that there has been a violation of Article 8 of the Convention (Art. 8) and Article 1 of Protocol No. 1 (P1-1);

9. Holds by nineteen votes to two

(a) that the respondent State is to pay the applicants, within three months, in respect of costs and expenses, £20,810 (twenty thousand eight hundred and ten pounds sterling) less 14,095 (fourteen thousand and ninety-five) French francs to be converted into pounds sterling at the rate of exchange applicable on the date of delivery of the present judgment;

As for compensation, the Court subsequently awarded the following:

FOR THESE REASONS, THE COURT

2. Holds by seventeen votes to one that the respondent State is to pay to the applicants, within three months, the following sums to be converted into Turkish liras at the rate applicable on the date of settlement

(a) in respect of pecuniary damage:

- (i) 6,057 (six thousand and fifty-seven) pounds sterling and 85 (eighty-five) pence to Ahmet Akdivar,
- (ii) 7,205 (seven thousand two hundred and five) pounds sterling and 99 (ninety-nine) pence to Ali Akdivar,
- (iii) 32,578 (thirty-two thousand five hundred and seventy-eight) pounds sterling and 79 (seventy-nine) pence to Zülfükar Çiçek,
- (iv) 16,173 (sixteen thousand one hundred and seventy-three) pounds sterling and 44 (forty-four) pence to Abdurrahman Akdivar,
- (v) 14,533 (fourteen thousand five hundred and thirty-three) pounds sterling and 23 (twenty-three) pence to Abdurrahman Aktas,
- (vi) 12,539 (twelve thousand five hundred and thirty-nine) pounds sterling and 36 (thirty-six) pence to Mehmet Karabulut,

(vii) 25,974 (twenty-five thousand nine hundred and seventy-four) pounds sterling and 10 (ten) pence to Ahmet Çiçek;

(b) in respect of non-pecuniary damage the sum of 8,000 (eight thousand) pounds sterling each;



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European Court of Human Rights

Akkus v. Turkey

App. no. 00019263/92, Judgment 24 June 1997

(Involving the expropriation of land and mass evictions by the Government of Turkey in order to construct a dam. The Court held that there had been a violation of Article 1 of Protocol No. 1 and ordered the Government of Turkey to pay compensation.)

AS TO THE FACTS

I. Circumstances of the case

6. In September-October 1987, the National Water Board (Devlet Su isleri), a State body responsible for dam construction, expropriated land belonging to Mrs Akkus and her husband, who died in 1992, in order to build the Altinkaya hydro-electric dam in the Kizilirmak Valley. The land, which was located in the village of Gökdoğan (Sinop) had been used for growing rice. It now lies under water.

More than 3,000 families (17,000 people in all) were affected by the expropriations resulting from the dam construction scheme.
7. According to the applicant, a scientific study commissioned by the National Water Board and carried out by the Aegean Faculty of Agronomy found the land to be worth between 3,200 and 3,500 Turkish liras (TRL) per square metre whereas the amount paid in 1987 was between TRL 800 and 850.
8. A committee of experts of the National Water Board assessed the value of the applicant's land at TRL 122,000. That amount was paid to her when the expropriation took place.
9. On 12 October 1987 the applicant lodged an application with the Duragan Court of First Instance for increased compensation and requested that the rate of inflation be taken into account when determining the additional loss. On 22 June 1989 the court awarded her additional compensation of TRL 271,039 and simple default interest at the rate of 30% per annum from 4 September 1987, the date of the expropriation. The total compensation thus came to TRL 393,039. She was also awarded TRL 61,123 for legal costs.
10. The Board appealed to the Court of Cassation on points of law. Mrs Akkus filed a cross-appeal based on Article 105 of the Code of Obligations (see paragraph 14 below), in which she sought a ruling that the basis for calculating the additional loss should be the rate of inflation and not the rate of statutory interest for delay. On 17 September 1990 the Court of Cassation upheld the judgment at first instance.
11. The additional compensation was paid in February 1992, that is to say six months after the application was lodged with the European Commission of Human Rights and approximately seventeen months after the Court of Cassation's decision.
12. Mrs Akkus now lives with her son-in-law, who provides for her needs.

PROCEEDINGS BEFORE THE COMMISSION

17. Mrs Akkus applied to the Commission on 26 August 1991. She complained of an infringement of her right to the peaceful enjoyment of her possessions on account of the Water Board's delay in paying the additional compensation for expropriation. She alleged a violation of Article 1 of Protocol No. 1 (P1-1).
18. The Commission declared the application (no. 19263/92) admissible on 10 January 1994. In its report of 27 February 1996 (Article 31) (Art. 31), it expressed the opinion by twenty-two votes to six that there had been a violation of Article 1 of Protocol No. 1 (P1-1). The full text of the Commission's opinion and of the dissenting opinion contained in the report is reproduced as an annex to this judgment (1).

AS TO THE LAW

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 (P1-1)

24. The applicant complained that, at a time when the annual rate of inflation in Turkey had been 70%, she had been paid insufficient interest on additional compensation received following the expropriation of her land and the authorities had delayed in paying her the relevant amounts. She relied on Article 1 of Protocol No. 1 (P1-1), which provides:

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for

by law and by the general principles of international law.

The preceding provisions (P1-1) shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

She complained that the authorities had calculated her compensation on the basis of the value her land had had when it was expropriated or when the court proceedings were commenced (see paragraphs 6 and 9 above). She criticised the Court of Cassation for refusing to take Article 105 of the Code of Obligations into consideration and for applying, in order to calculate the additional compensation, the statutory rate of default interest instead of the rate of inflation. She pointed out that she was paid the additional compensation in February 1992 - four years and four months after the proceedings commenced and more particularly, seventeen months after the Court of Cassation's judgment - whereas before 1980 payment was being made in similar cases within at most two months. In addition, she said that in recent years the time taken for payment had depended on the good will of the administrative bureaucracy, which had sought by deferring payment to reduce the value of compensation for expropriation through the effect of inflation. Lastly, she regretted the lack of provisions in Turkish law enabling private persons to take enforcement measures in respect of debts owed to them by the State.

25. The Commission concluded that there had been a violation of Article 1 of Protocol No. 1 (P1-1) because of the extent of the applicant's loss; it estimated that Mrs Akkus had received TRL 390,000 whereas, if the national authorities had taken full account of the monetary depreciation during the seventeen months which elapsed between determination of the additional compensation and its actual payment, she would have received approximately TRL 594,000.
26. The Government disagreed. They pointed out that the State had paid Mrs Akkus compensation of TRL 122,000 before entering into possession of the land, and additional compensation of TRL 271,039 with 30% interest after the proceedings to reassess the value of the land (see paragraph 9 above). Even supposing that inflation had not been taken into account when calculating those amounts, the Government relied on the Court's case-law to the effect that if the compensation was reasonably proportional to the value of the expropriated property, the conditions laid down in Article 1 of Protocol No. 1 (P1-1) were satisfied. That was particularly so where large-scale schemes for the benefit of thousands of people were concerned; requiring the State to provide compensation in full would hinder it in the realisation of such schemes. Further, the applicant could not claim in the instant case that she had borne an "individual and excessive burden", as it had been her decision, at her own risk, not to take advantage of the possibility afforded her by Article 105 of the Code of Obligations; what was more, even her lawyer had admitted in an article published in a Turkish daily newspaper that the expropriation value of certain properties, including the applicant's, as assessed by the valuations committee and determined by the courts, was considerably higher than their market value.

Lastly, the Government relied on their wide margin of appreciation in setting and applying interest rates, which were an integral part of their policy for the creation and sound management of public services. The high rate of interest payable on debts owed to the State was intended to ensure that there was no disruption of public services and was also a form of indirect taxation intentionally decided upon by the legislature in the exercise of its powers.

27. As the situation of which the applicant complains concerns her "entitle[ment] to the peaceful enjoyment of [her] possessions", the Court must examine whether a fair balance has been maintained between the demands of the general interest and the requirements of the protection of the individual's fundamental rights; in that regard, the terms and conditions on which compensation is payable under domestic legislation and the manner in which they were applied in the applicant's case must be considered (see the *Lithgow and Others v. the United Kingdom* judgment of 8 July 1986, Series A no. 102, p. 50, para. 120).
28. The Court notes at the outset that the applicant, whose land was expropriated to enable a hydro-electric dam to be built, was awarded compensation that was paid to her when the expropriation took place (see paragraph 8 above). The Duragan Court of First Instance subsequently awarded her additional compensation plus interest at the rate of 30% per annum from the date of expropriation (see paragraph 9 above).

It is not the Court's task here to rule on the valuation of the land carried out by the committee of experts of the National Water Board or on the amount of the additional compensation. The scope of the dispute is determined by the Commission's decision on admissibility and solely concerns the alleged damage sustained by Mrs Akkus because of the authorities' delay in paying her the compensation due.

29. In that respect, the Court has previously held that the adequacy of compensation would be diminished if it were to be paid without reference to various circumstances liable to reduce its value, such as unreasonable delay (see, *mutatis mutandis*, the *Stran Greek Refineries and Stratis Andreadis v. Greece* judgment of 9 December 1994, Series A no. 301-B, p. 90, para. 82). Abnormally lengthy delays in the payment of

compensation for expropriation lead to increased financial loss for the person whose land has been expropriated, putting him in a position of uncertainty especially when the monetary depreciation which occurs in certain States is taken into account. The Court notes on this subject that in Turkey the rate of interest payable on debts owed to the State - 84% per annum - is such as to encourage debtors to pay promptly; on the other hand, individual creditors of the State risk substantial loss if the State fails to pay or delays payment.

30. In the instant case, the additional compensation together with interest at the rate of 30% per annum was paid to the applicant in February 1992, that is to say seventeen months after the Court of Cassation's judgment, at a time when inflation rates in Turkey had reached 70% per annum.

This difference - due solely to delay on the part of the authorities - between the value of the applicant's compensation as finally determined by the Court of Cassation and its value when actually paid caused Mrs Akkus to sustain separate loss in addition to the loss deriving from the expropriation of her land.

31. By deferring payment of the compensation for seventeen months, the national authorities rendered that compensation inadequate and, consequently, upset the balance between the protection of the right to property and the requirements of the general interest.

There has therefore been a violation of Article 1 of Protocol No. 1 (P1-1).

III. APPLICATION OF ARTICLE 50 OF THE CONVENTION (Art. 50)

32. Article 50 of the Convention (Art. 50) provides:

If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party.

A. Pecuniary damage

33. Mrs Akkus claimed 50,000 US dollars (USD) for pecuniary damage. In her submission, on 17 September 1990 when the Court of Cassation delivered its judgment the total amount payable to her would have been TRL 739,162 if year-on-year inflation of 70% had been taken into account. She asserted in her memorial that by paying her a total of TRL 758,200 in February 1992 the national authorities had paid her less than half the sum due.
34. The Government considered the claim to be "totally unreasonable" as it exceeded the value of all the expropriated land, of which the applicant had owned only a fifth. They also pointed out that the average rate of inflation in Turkey between 1988 and 1992 was 61% per annum.
35. The Court notes that on 17 September 1990 the Court of Cassation upheld the judgment of the Duragan Court of First Instance. The Court of First Instance had awarded Mrs Akkus additional compensation of TRL 271,039 plus simple interest at the rate of 30% per annum from 4 September 1987 and TRL 61,123 for legal costs (see paragraph 9 above). On the date of the Court of Cassation's judgment, or within a reasonable period (for instance three months) thereafter, the applicant ought therefore to have received TRL 576,097. As, however, the payment was made in February 1992 (seventeen months later) she in fact received approximately TRL 772,276 according to the Court's calculations.

Having regard to the conclusions it reached in paragraphs 30 and 31 above, the Court considers that the damage sustained by the applicant is equal to the difference between the amount actually paid in February 1992 and the amount she would have received if the sum of TRL 576,097 she was owed had been adjusted to take account of depreciation over a period of at least fourteen months; on the basis of a rate of inflation in the region of 70% per annum, the sum due to her when payment was made was TRL 1,046,192. Consequently, the total amount of her loss comes to TRL 273,916, or approximately USD 48, Mrs Akkus having formulated her claim in that currency and the Government having raised no objection to her so doing.

36. In the circumstances, the Court therefore considers it appropriate to award the applicant compensation of USD 48, to be converted into Turkish liras at the rate applicable at the date of payment.

B. Non-pecuniary damage

37. Mrs Akkus maintained that her position had become extremely precarious because the compensation she had received for the expropriation of her land was insufficient. Not only had she lost all means of subsistence, her memories and the security which the protective environment of the village had provided, she had also been obliged to seek refuge in her son-in-law's home and his financial support, a humiliating position to be in under Turkish family tradition. She claimed by way of reparation for her non-pecuniary damage, to the

extent that it could be made good, USD 50,000.

38. The Government and the Delegate of the Commission expressed no views.

39. The Court considers that the applicant has definitely sustained non-pecuniary damage, which it assesses on an equitable basis at USD 1,000.



Compilation of Selected Adjudication on Housing Rights



European Court of Human Rights

*Connors v. United Kingdom*⁵⁶¹

Facts:

Several gypsy persons were evicted by local authorities from a halting site. The local authorities relied on a law that allowed them to obtain an eviction order based solely on the fact that the local authority could show that it had withdrawn permission to occupy the land and had issued a notice to quit.

Decision:

The European Court held that an interference with the home in the context of Article 8 of the European Convention will be considered “necessary in a democratic society” for a legitimate aim if it answers a “pressing social need” and, in particular, if it is proportionate to the legitimate aim pursued. In this regard there is a “margin of appreciation” left to the national authorities who are better placed than an international court to evaluate local needs and conditions. The Court stated that “this margin will vary considerably according to the nature of the Convention rights at issue, its importance for the individual and the nature of the activities restricted, as well as the nature of the aim pursued by the restrictions. The margin will tend to be narrower where the right at stake is crucial to the individual’s effective enjoyment of intimate or key rights. The Court went on to state that Article 8 concerns rights of central importance to the individual’s identity, self-determination, physical and moral integrity, maintenance of relationships with others and a settled and secure place in the community. The serious interference with the applicant’s rights under Article 8 requires, in the Courts opinion, particularly weighty reasons of public interest by way of justification, and the margin of appreciation to be afforded to the national authorities must be regarded as correspondingly narrowed. The procedural safeguards available to the individual will be especially important in determining whether a State has remained within its margin of appreciation.

The European Court held that the mere fact that “anti-social behaviour” occurs on local authority gypsy sites cannot, in itself, justify a summary power of eviction. The existence of procedural safeguards is a crucial consideration in the Court’s assessment of the proportionality of the interference. Finding a violation of Article 8, the Court held that the eviction of the applicant was not attended by the requisite procedural safeguards, namely the requirement to establish proper justification for the serious interference with his rights. Consequently, it could not be regarded as justified by “pressing social need” or proportionate to the legitimate aim being pursued.



European Court of Human Rights

Mentes and Others v. Turkey

App. no. 00023186/94, Judgment 28 November 1997.

(Involving the destruction of housing by the Government of Turkey. The Court held that there had been a violation of Article 8 of the Convention and ordered Turkey to pay compensation to the Petitioners.)

AS TO THE FACTS

I. Particular circumstances of the case

A. Introduction

11. The applicants, Ms Azize Mentes, Ms Mahile Turhalli and Ms Sulhiye Turhalli and Ms Sariye Uvat are Turkish citizens of Kurdish origin from the village of Saggöz (which is the official Turkish name) or Riz (which is the older, Kurdish or Ottoman name) in the Genç district in the province of Bingöl in south-east Turkey. At present they live in Diyarbakir.
12. Since approximately 1985, serious disturbances have raged in the south-east of Turkey between the security forces and the members of the PKK (Workers' Party of Kurdistan). This confrontation has so far, according to the Government, claimed the lives of 4,036 civilians and 3,884 members of the security forces.

At the time of the Court's consideration of the case, ten of the eleven provinces of south-eastern Turkey had since 1987 been subjected to emergency rule.
13. Saggöz is situated in a mountainous area which was subject to significant PKK terrorist activity. Due to the events in the region in 1993 and 1994, many of the villages in the district have been evacuated by the villagers and the houses destroyed. By the summer of 1994, the village of Saggöz and its surrounding hamlets were deserted, the villagers having left for Diyarbakir, Genç and other places, and the houses ruined.
14. The Saggöz village was evacuated as a whole by the villagers in or about October 1993, following pressure from the PKK in the area. Some of the villagers in the outer hamlets stayed beyond October 1993 but had all left by summer 1994 due to PKK presence. Shortly after the villagers began leaving, the PKK moved into the empty houses. Clashes with security forces ensued, one in October or November 1993, another in April/May 1994. It is probable that houses in the village were burned or destroyed in the course of these clashes, including possibly through bombing from helicopters. However, whether the PKK or the security forces set fire to the houses intentionally or accidentally is not established.

D. The Commission's findings of fact

26. The Commission conducted an investigation, with the assistance of the parties, and accepted documentary evidence, including written statements, and oral evidence of eleven witnesses taken by three delegates of the Commission in Ankara from 10 to 12 July 1995. This included two local public prosecutors and four villagers whom they had investigated in connection with the applicants' allegations (see paragraphs 27–30 below); another villager; the first three applicants; and the commander of the gendarmerie of the Bingöl province who had taken up his duties after the alleged events.

In relation to the oral evidence, the Commission had been aware of the difficulties attached to assessing evidence obtained orally through interpreters (in some cases via Kurdish and Turkish into English). It therefore paid careful attention to the meaning and significance which should be attributed to the statements of witnesses appearing before its delegates. In respect of both written and oral evidence, the Commission was aware that the cultural context of the applicants and the witnesses made it inevitable that dates and other details lacked precision (in particular, numerical matters) and did not consider that this by itself impinged on the credibility of the testimony.

It assessed the evidence and its findings could be summarised as follows.

2. Concerning the alleged events of 25 June 1993

34. The Commission was satisfied that Sulhiye and Mahile Turhalli were still living in their houses in the lower neighbourhood of the village of Saggöz in the summer of 1993 and were present on 25 June 1993. However, as appeared to be a not uncommon pattern of life in this region, these two applicants left the village in the winter for Diyarbakir and returned in the summer to tend to their gardens and crops. As regards Azize Mentes, while she probably did not own a house herself, she lived in the house of her father-in-law when she returned in the summer months to the village. The Commission found that on the balance of the

evidence, she was also living in the lower neighbourhood on 25 June 1993.

As regards the events in Saggöz the Commission accepted in its principal elements the oral evidence of Azize Mentés, Mahile Turhalli and Sulhiye Turhalli. Considering that their oral evidence was more consistent, more credible and more convincing than the evidence given by the four villagers, it found as follows.

On the evening of 24 June 1993, a large force of gendarmes had arrived in the vicinity of Saggöz village. On 25 June 1993, the gendarmes had entered both upper and lower neighbourhoods and carried out searches. At some point, the villagers in the upper neighbourhood (with the exception of the younger men who were out working) had been gathered in front of the school, probably to be questioned about the PKK in the area. In the lower neighbourhood, the women, including the applicants, had been required by the soldiers to leave their houses and their houses had been set on fire, with all their belongings and property inside, including the clothing and footwear of children. The burning had been restricted to the lower neighbourhood. Around midday, a helicopter had arrived in the village in the upper neighbourhood, probably bringing a senior officer, a colonel, and his arrival had been associated by the applicants and some of the other villagers with an order to cease the burning. The gendarmes left that day. Shortly afterwards, the three applicants, with their children or other members of their family, had to walk for up to ten hours to the Lice-Diyarbakir road from where they were given rides in vehicles into Diyarbakir.

AS TO THE LAW

II. THE MERITS OF THE APPLICANTS' COMPLAINTS

A. Establishment of the facts

66. The Court reiterates that under its case-law the establishment and verification of the facts are primarily a matter for the Commission (Articles 28 § 1 and 31 of the Convention). While the Court is not bound by the Commission's findings of fact and remains free to make its own appreciation in the light of all the material before it, it is only in exceptional circumstances that it will exercise its powers in this area (see, *inter alia*, the above-mentioned Aksoy judgment, p. 2272, § 38). Such exceptional circumstances may arise in particular if the Court, following a careful examination of the evidence on which the Commission has based its facts, finds that those facts have not been proved beyond reasonable doubt (see the Aydin v. Turkey judgment of 25 September 1997, Reports 1997-VI, pp. 1888–89, § 70). In this connection it is recalled that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences (see the Ireland v. the United Kingdom judgment of 18 January 1978, Series A no. 25, pp. 64–65, § 161; and the above-cited Aydin judgment, p. 1889, § 73).

67. In the case under consideration the Commission reached its findings of fact on the basis of an investigation, in the course of which documentary evidence, including written statements, was submitted and oral evidence of eleven witnesses was taken by three delegates at hearings in Ankara from 10 to 12 July 1995. The witnesses included the two public prosecutors who had investigated the matter, the four villagers whom they had heard, another villager and the first three applicants (see paragraph 26 above).

In the course of the above-mentioned adversarial hearings the witnesses were questioned and cross-examined in detail by all sides and confronted with the inconsistencies and weaknesses in their evidence. The delegates were thus in a position to observe the witnesses' reactions and demeanour and, hence, to assess the veracity and probative value of the evidence of both sides.

68. The establishment of the facts by the Commission was based on the appropriate evidentiary requirement, namely proof beyond reasonable doubt. In reaching its conclusions, the Commission had regard to the inconsistencies and contradictions in the evidence, notably differences between the written and oral statements, and for reasons which appear convincing (see paragraph 33 above), attached more weight to the latter. After hearing the witnesses, the Commission accepted in its principal elements the oral evidence of the first three applicants. This was supported in its essential aspects by that of Ms Gündogan and was in the Commission's view more consistent and convincing and therefore more credible than that of the four villagers supporting the Government's version of the events (see paragraph 34 above). The Commission also bore in mind the cultural and linguistic context, as well as the Government's uncooperative conduct when failing to provide certain documentary material requested by it and to identify and serve a summons on a key witness whom the delegates sought to question (see paragraphs 26 and 31 above).

69. The Court, having itself carefully examined the evidence gathered by the Commission, is satisfied that the facts as established by the latter (see paragraph 33 above) were proved beyond reasonable doubt as far as concerns the first three applicants' allegations, but not those of the fourth applicant.

B. Complaints by Azize Mentés, Mahile Turhalli and Sulhiye Turhalli

1. Alleged violation of Article 8 of the Convention

70. The first three applicants, Azize Mentés, Mahile Turhalli and Sulhiye Turhalli, maintained that the destruction of their homes by the security forces and their expulsion from their village constituted violations of Article 8 of the Convention, which reads:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

71. The Government denied that there had been any security operation in the village on 25 June 1993. They submitted that damage to the village had been caused after that date by PKK terrorists. There was no evidence to substantiate the applicants' allegations against the security forces. There had therefore been no violation of Article 8 of the Convention.

72. The Commission considered that there had been a breach of this provision in respect of the first three applicants.

73. The Court sees no reason to distinguish between the first applicant, Ms Azize Mentés, and the second and third applicants. While it was in all probability her father-in-law and not she who owned the house in question, the first applicant did live there for significant periods on an annual basis when she visited the village (see paragraph 34 above). Given her strong family connection and the nature of her residence, her occupation of the house on 25 June 1993 falls within the scope of the protection guaranteed by Article 8 of the Convention.

Furthermore, the Court observes that the facts established by the Commission (see paragraph 34 above) and which it has accepted disclose a particularly grave interference with the first three applicants' right to respect for private life, family life and home, as guaranteed by Article 8 and that the measure was devoid of justification.

In these circumstances the Court finds that there has been a breach of Article 8 of the Convention with respect to the first three applicants.

FOR THESE REASONS, THE COURT

2. *Holds* by sixteen votes to five that there has been a violation of Article 8 of the Convention with respect to the first three applicants;

[In a subsequent ruling the court ordered the following:]

1. *Holds* by fifteen votes to four that the respondent State is to pay the first three applicants, within three months, the following sums to be converted into Turkish liras at the rate applicable on the date of settlement:

(a) in respect of pecuniary damage

(i) 18,000 (eighteen thousand) pounds sterling to
Azize Mentés,

(ii) 26,000 (twenty-six thousand) pounds sterling to
Mahile Turhalli,

(iii) 24,000 (twenty-four thousand) pounds sterling to
Sulhiye Turhalli;

(b) in respect of non-pecuniary damage the sum of 8,000 (eight thousand) pounds sterling each;

2. *Holds* by seventeen votes to two that simple interest at an annual rate of 7.5% shall be payable on the above amounts from the expiry of the above-mentioned three months until settlement;



European Court of Human Rights

*Moldovan and others v. Romania*⁶⁸¹

Facts:

The applicants lived in Hadareni, in the district of Mures (Romania) where they were agricultural workers. In September 1993 a row broke out between three Roma men and a non-Roma villager in Hadareni that led to the villager's son, who had tried to intervene, being stabbed in the chest by one of the Roma men. The three Roma men fled to a nearby house. A large, angry crowd gathered outside, including the local police commander and several officers. The house was set on fire. Two of the Roma men managed to escape from the house, but were pursued by the crowd and beaten to death. The third was prevented from leaving the building and burnt to death. The applicants alleged that the police had encouraged the crowd to destroy more Roma property in the village. By the following day, 13 Roma houses had been completely destroyed including the homes of all seven applicants. Much of the applicants' personal property was also destroyed.

Decision:

The Court noted that it could not examine the applicants' complaints about the destruction of their houses and possessions or their expulsion from the village, because those events took place in September 1993, before the ratification of the Convention by Romania in June 1994.

However, it was clear from the evidence submitted by the applicants and the civil court judgments, that police officers were involved in the burning of the Roma houses and tried to cover up the incident. Having been hounded from their village and homes, the applicants were then obliged to live, and some of them still live, in crowded and unsuitable conditions – cellars, hen-houses, stables, etc. - and frequently changed address, moving in with friends or family in extremely overcrowded conditions. Having regard to the direct repercussions of the acts of State agents on the applicants' rights, the Court considered that the Government's responsibility was engaged regarding the applicants' subsequent living conditions.

There was no doubt that the question of the applicants' living conditions fell within the scope of their right to respect for family and private life, as well as their homes. Article 8 was thus clearly applicable to those complaints.

Considering whether the national authorities took adequate steps to put a stop to breaches of the applicants' rights, the Court noted that:

- despite the involvement of State agents in the burning of the applicants' houses, the Public Prosecutors' Office failed to institute criminal proceedings against them, preventing the domestic courts from establishing the responsibility of those officials and punishing them;
- the domestic courts refused for many years to award pecuniary damages for the destruction of the applicants' belongings and furniture;
- it was only ten years after the events that compensation was awarded for the destroyed houses, although not for the loss of belongings;
- in the judgment in the criminal case against the accused villagers, discriminatory remarks about the applicants' Roma origin were made;
- the applicants' requests for non-pecuniary damages were also rejected at first instance, the civil courts considering that the events - the burning of their houses and the killing of some of their family members - were not of a nature to create any moral damage;
- when dealing with a request from one of the Applicants for a maintenance allowance for her minor child, whose father was burnt alive during the incident, the regional court awarded an amount equivalent to a quarter of the statutory minimum wage, and decided to halve that amount on the ground that the deceased victims had provoked the crimes;
- three houses were not rebuilt and the houses rebuilt by the authorities were uninhabitable; and
- most of the applicants did not return to their village, and lived scattered throughout Romania and Europe.

In the Court's view, those elements taken together indicated a general attitude on the part of the Romanian authorities which perpetuated the applicants' feelings of insecurity after June 1994 and affected their rights to respect for their private and family life and their homes. The Court concluded that that attitude, and the repeated failure of the authorities to put a stop to breaches of the applicants' rights, amounted to a serious violation of Article 8 of a continuing nature.



Compilation of Selected Adjudication on Housing Rights



European Court of Human Rights

Zubani v. Italy

App. no. 00014025/88, Judgment 7 August 1996.

(Involving the taking of a farm and eviction of its occupants by a municipal government in order that the land could be used for the construction of low-cost and social housing. The Court held that there had been a violation of Article 1 of Protocol No. 1 due to inadequate compensation and ordered the Government of Italy to pay additional compensation.) ⁽²⁶⁾

AS TO THE FACTS

I. Circumstances of the case

7. The applicants, three sisters and a brother, own a farmhouse and adjoining land, which they use for agricultural purposes.
8. On 21 August 1979, as part of the implementation of the general development plan adopted pursuant to Law no. 167/62, the Municipality of Brescia ("the Municipality") issued an order, under an expedited procedure, for the possession of the applicants' land, which was located in a zone intended for the construction of low-cost and social housing ("*edilizia economica e popolare*").
9. On 16 July 1980 the Municipality took physical possession of the land, aided by the police. On 6 October 1981 the Lombardy Regional Council issued an expropriation order.
10. From the outset the applicants challenged the lawfulness of the measures taken by the authorities; they brought several actions in the administrative courts and in the ordinary civil courts.

PROCEEDINGS BEFORE THE COMMISSION

36. The applicants applied to the Commission on 26 January 1988. Relying on Articles 6 § 1 and 8 of the Convention, and Article 1 of Protocol No. 1, they complained of the following: (1) the length of the proceedings in the ordinary civil and administrative courts; (2) violation of their right to respect for their home; and (3) violation of their right to the peaceful enjoyment of their possessions.
37. On 6 December 1993 the Commission declared the application (no. 14025/88) admissible as regards the third complaint and inadmissible for the rest. In its report of 21 February 1995 (Article 31), it expressed the unanimous opinion that there had been a violation of Article 1 of Protocol No. 1.

AS TO THE LAW

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

44. The applicants complained that their right to peaceful enjoyment of their possessions had been breached by the authorities' unlawful occupation of their land. They relied on Article 1 of Protocol No. 1, which provides:

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

45. The Court observes that in the view of both the Government and the Commission the interference in issue was a deprivation of property within the meaning of the second sentence of Article 1, was provided for in section 3 of the 1988 Law (see paragraph 32 above) and pursued a public-interest aim, namely the construction of housing for a category of disadvantaged persons.
46. The only outstanding issue is therefore whether a fair balance was struck between the demands of the general interest of the community and the requirements of the individual's fundamental rights (see, among other authorities, the *Sporrong and Lönnroth v. Sweden* judgment of 23 September 1982, Series A no. 52, p. 26, § 69).
47. The Government maintained that, in enacting the 1988 Law, the Italian legislature had struck an appropriate balance between the relevant interests by making the provision that the "victims" of unlawful expropriation

should be entitled to full compensation. Indeed the applicants' objection that section 3 of the Law was unconstitutional had been dismissed on 12 July 1990 on that ground (see paragraphs 25 and 35 above). The Commission's argument that the authorities would be encouraged to commit abuses if they knew in advance that any unlawful act would be legalised retrospectively was based on a rather superficial understanding of the expropriation procedures. An official responsible for an unlawful administrative act could be called upon to reimburse the State for the damage that his conduct had caused.

The Government also drew attention to the size of the amount awarded to the applicants in relation to the total surface occupied by the buildings erected by the cooperatives (1,015,255,000 lire for only 8,670 square metres). Moreover, the applicants had not claimed compensation for the loss of their land until May 1993.

In conclusion, the Government submitted that the Italian State had not overstepped the margin of appreciation left to it under the second paragraph of Article 1 of Protocol No. 1.

48. The applicants complained of the theft of which they had been the victims on 16 July 1980 and the Municipality's refusal to comply with the decisions of the administrative and the civil courts ordering it either to return the disputed land or to pay compensation. They also criticised the Municipality's attempt to apply to the dispute between them, a dispute that had lasted more than sixteen years, Law no. 549 of 28 December 1995 ("the 1995 Law"), which authorised a 40% reduction of the compensation awarded for unlawful expropriations. The legislature's action in this respect was in blatant conflict with the spirit of the 1988 Law and the interpretation of section 3 given by the Constitutional Court in 1990.
49. The Court shares the view of the Delegate of the Commission that the legislature might reasonably choose to give preference to the interests of the community in cases of unlawful expropriation or occupation of land. Full compensation for the damage sustained by the proprietors concerned constitutes sufficient reparation as the authorities are required to pay an additional sum corresponding to monetary depreciation since the day of the unlawful action. Nevertheless the Law in question did not enter into force until 1988, when the litigation concerning the applicants' property had already lasted eight years (see paragraph 11 above) and although the Municipality had initially, on 29 September 1995, agreed to pay to the persons concerned the sums awarded by the Brescia District Court, it now appears reluctant to pay the whole amount. Furthermore, and even though this is not a circumstance that is directly material, the minutes of the session of Brescia Municipal Council held on that date indicate that the proposal to ask the Audit Court to determine the administrative responsibility for the loss incurred for the municipal budget was rejected by twenty-four votes to six, with one abstention.

As regards finally the remaining argument of the respondent Government, the Court considers that the size of the sum awarded by the Brescia District Court cannot be decisive in this case in view of the length of the proceedings instituted by the Zubanis.

The Court confines itself to noting that, although the sum of 1,015,255,000 lire may appear enormous in relation to the surface area actually occupied by the buildings, an additional factor to be borne in mind was that a new road was laid through the applicant's property -21,960 square metres which they used to raise livestock - and this rendered access to the plots returned to them difficult.

50. Having regard to all these considerations, the Court finds that a "fair balance" between protecting the right of property and "the demands of the general interest" has not been struck. Accordingly, there has been a violation of Article 1 of Protocol No. 1.

FOR THESE REASONS, THE COURT UNANIMOUSLY

2. *Holds* that there has been a violation of Article 1 of Protocol No. 1;

[The Court subsequently ruled on the damages portion of the case:]

A. Damage and costs and expenses

18. The applicants asked the Court to award them 2,000,000,000 Italian lire (ITL) for the damage they had sustained and the costs and expenses they had incurred as a result of the violation of Article 1 of Protocol No. 1. In support of their claim they pointed to the fact that they had had to bring several sets of what had been lengthy proceedings before the national courts. They added that the Brescia municipal authority's refusal to comply with the domestic courts' orders for the return of their land had left them feeling anxious and powerless. Lastly, they maintained that the sum received in 1995 was insufficient.
19. The Government stressed that the Municipality's occupation of the applicants' land in 1980 had been in the public interest and asserted that as a result of the urban-development works carried out on the site the applicants had made a substantial capital gain, as they had been able to sell as building land some of the plots that had been returned, and it would in practice be possible to build on the remaining plots. Consequently, they invited the Court to find that the alleged loss had been sufficiently compensated for by the amount paid pursuant to the Brescia District Court's order of 26 April 1995. Even if the Court did not

fully accept those arguments, it should nonetheless take them into account when determining how much, if anything, to award as just satisfaction.

20. The Court observes that in its principal judgment (p. 1078, § 49) it based its finding of a violation of Article 1 of Protocol No. 1 on the following considerations:

The Court shares the view ... that the legislature might reasonably choose to give preference to the interests of the community in cases of unlawful expropriation or occupation of land. Full compensation for the damage sustained by the proprietors concerned constitutes sufficient reparation as the authorities are required to pay an additional sum corresponding to monetary depreciation since the day of the unlawful action. Nevertheless the Law in question did not enter into force until 1988, when the litigation concerning the applicants' property had already lasted eight years....

After noting that the Municipality appeared reluctant to pay the compensation in full, the Court went on to say:

As regards finally the remaining argument of the respondent Government, the Court considers that the size of the sum awarded by the Brescia District Court cannot be decisive in this case in view of the length of the proceedings instituted by the Zubanis.

The Court confines itself to noting that, although the sum of 1,015,255,000 lire may appear enormous in relation to the surface area actually occupied by the buildings, an additional factor to be borne in mind was that a new road was laid through the applicant's property – 21,960 square metres which they used to raise livestock – and this rendered access to the plots returned to them difficult.

21. The Court considers that it must also take into account the fact that the applicants had brought a large number of proceedings over an eighteen-year period and had had to bring fresh proceedings in January 1996 for the recovery of part of the sum in issue that had been wrongfully withheld by the Municipality (see paragraph 6 above). However, while the urban-development works on the land concerned and the applicants' recent sale of some of the plots returned do not suffice to negate the consequences of the violation of Article 1 of Protocol No. 1 either, they must be taken into consideration when assessing the amount of just satisfaction to be awarded to the applicants.
22. In the light of all the foregoing, the Court finds that the applicants, who are all aged over eighty, have undoubtedly sustained losses that were compounded by the length of time for which they were deprived of possession of their property, their reduced ability over a long period to use it as they wished and the feelings of frustration and anxiety caused by uncertainty over the outcome of the national proceedings and by the conduct of the Municipality of Brescia.

As the respondent Government have not made sufficient reparation for those losses, the Court, ruling on an equitable basis in accordance with Article 41 of the Convention, awards the four applicants an overall sum of ITL 1,000,000,000 for pecuniary and non-pecuniary damage.

23. As regards costs and expenses, the Court notes, firstly, that the applicants were in receipt of legal aid before the Court. It adds that under its case-law an award can be made in respect of costs and expenses only in so far as they have been actually and necessarily incurred by the applicant and are reasonable as to quantum (see, among other authorities, the *Musial v. Poland* judgment of 25 March 1999, § 61). Furthermore, by Rule 60 § 2 of the Rules of Court, itemised particulars of any claim made under Article 41 of the Convention must be submitted, together with the relevant supporting documents or vouchers, failing which the Court may reject the claim in whole or in part (see the *Buscarini and Others v. San Marino* judgment of 18 February 1999, § 48). As the applicants have not furnished the relevant details and evidence, the Court dismisses their claim for reimbursement of their costs and expenses.

B. Default interest

24. According to the information available to the Court, the statutory rate of interest applicable in Italy at the date of adoption of the present judgment is 2.5% per annum.

FOR THESE REASONS THE COURT UNANIMOUSLY

1. *Holds*

- (a) that the respondent Government is to pay the applicants, within three months, for pecuniary and non-pecuniary damage, 1,000,000,000 (one thousand million) Italian lire;
- (b) that simple interest at an annual rate of 2.5% shall be payable from the expiry of the above-mentioned three months until settlement;



Compilation of Selected Adjudication on Housing Rights



European Social Committee *European Roma Rights Center v. Greece*⁽³⁷⁾

Facts:

The complaint claimed that the Roma in Greece were denied an effective right to housing due to: (i) the insufficient number of permanent dwellings of an acceptable quality to meet the needs of settled Roma; (ii) the insufficient number of stopping places for Roma who choose to follow an itinerant lifestyle or who are forced to do so; and (iii) the systematic eviction of Roma from sites or dwellings unlawfully occupied by them. The Complainants alleged that this constituted a violation of Article 16 of the Charter⁽⁴⁴⁾ or Article 16 in light of the Preamble⁽⁴⁵⁾ of the European Social Charter by Greece.

Decision:

The European Committee of Social Rights ('Committee') noted that the right to housing permits the exercise of many other rights (civil and political as well as economic, social and cultural) and is of central importance to the family. The Committee recalled its previous case law to the effect that in order to satisfy Article 16 states must promote the provision of an adequate supply of housing for families, take the needs of families into account in housing policies and ensure that existing housing be of an adequate standard and include essential services. Furthermore, 'adequate housing' also requires a dwelling of suitable size. Finally, the obligation to promote and provide housing extends to security from unlawful eviction.

The Committee held that the implementation of Article 16 as regards nomadic groups including itinerant Roma implies that adequate stopping places be provided, stating that in this respect Article 16 contains similar obligations to Article 8 of the European Convention of Human Rights.

With regard to the first aspect of the complaint, the Committee found that Greece had failed to take sufficient measures to improve the living conditions of the Roma and that the measures taken had not yet achieved what is required by the Charter (notably by reason of the insufficient means for constraining local authorities or sanctioning them). It found on the evidence submitted that a significant number of Roma were living in conditions that fail to meet minimum standards and therefore the situation was in breach of the obligation to promote the right of families to adequate housing laid down in Article 16.

With regard to (ii), the Committee noted that the conditions for temporary encampment as well as the conditions regarding the amenities set out in law were extremely strict and that, in the absence of the diligence on the part of the local authorities on one hand to select appropriate sites and on the other the reluctance to carry out the necessary works to provide the appropriate infrastructure, Roma have an insufficient supply of appropriate camping sites. This constituted a violation of Article 16 of the Charter.

With regard to (iii), the Committee stated that illegal occupation of a site or dwelling may justify the eviction of the illegal occupants. However the criteria of illegal occupation must not be unduly wide, the eviction should take place in accordance with the applicable rules of procedure and these should be sufficiently protective of the rights of the persons concerned. Here, these grounds were not met, thus violating Article 16.

The Council of Ministers subsequently adopted a resolution⁽⁴⁶⁾ in which they noted, inter alia, the extension and revision of the housing loans programme for Greek Roma and that a Commission for the social integration of Greek Roma had been established. The Council, therefore, decided not to accede to the request for the reimbursement of costs incurred by the complainants in preparing the complaint that has been transmitted to it by the Committee.



Compilation of Selected Adjudication on Housing Rights



Supreme Court of India

Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan & Ors.⁽³⁸⁾

[In this case, the Supreme Court of India held that it is ‘the duty of the State to construct houses at reasonable rates and make them easily accessible to the poor. The State has the constitutional duty to provide shelter to make the right to life meaningful.’ The Court went on to state that ‘the mere fact that encroachers have approached this Court would be no ground to dismiss their cases. Where the poor have resided in an area for a long time, the State ought to frame schemes and allocate land and resources for rehabilitating the urban poor.’]



Compilation of Selected Adjudication on Housing Rights



Supreme Court of India

SAHAJ v. Vadora Municipal Corporation⁽³⁸⁾

[The Supreme Court of India accepted that public interest petitioners had made a prima facie case that a judgment of the High Court of Ahmedabad, permitting the demolition of ‘hutments’ without requiring the provision of any alternative accommodation, violated the rights to shelter and housing enshrined in the constitution of India.]



Compilation of Selected Adjudication on Housing Rights



Supreme Court of India

Shantistar Builders v. Narayan Khimatai Tomtame⁽⁶⁰⁾

Keywords:

Housing rights – right to life – integrated approach

Facts:

The State Government exempted under Sections 20 and 21 of the Urban Land Ceiling and Regulation Act, 1976 certain excess land from the provisions of the Act on the condition that the land be used by the builders for the purpose of providing housing for the ‘weaker sections of society.’ It was alleged that the builders had not done so.

Decision:

The Court stated that “*Basic needs of man have traditionally been accepted to the three - food, clothing and shelter. The right to life is guaranteed in any civilized society. That would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in.*” The Court iterated that shelter for a human being has to be a suitable accommodation which would allow him to grow and develop in every aspect - physical, mental and intellectual. A reasonable residence is an indispensable necessity for fulfilment of the constitutional goal in the matter of development of man and should be taken as included in ‘life’ in Article 21.

The Court ordered, *inter alia*, the builders not to make any allotment of flats until the claim of the complainants (who belonged to the ‘weaker sections’) were scrutinised and the allotment of accommodation for such number of persons as were found to belong to the ‘weaker sections’ was provided.



Compilation of Selected Adjudication on Housing Rights



South African Constitutional Court *Alexkor Limited v. Richtersveld Community*⁽⁴¹⁾

[The Constitutional Court held that a community dispossessed of land as a result of racially discriminatory laws or practices was entitled to have ownership on the land restored pursuant to the Restitution of Land Rights Act 22 of 1994.]



Compilation of Selected Adjudication on Housing Rights



South African Constitutional Court

Daniels v. Campbell⁽⁴⁰⁾

[In *Daniels v. Campbell*, the Constitutional Court of South Africa held that the constitutional values of equality and non-discrimination require that a woman married in accordance with Muslim rites be considered a 'spouse' for the purpose of various succession statutes.]



Compilation of Selected Adjudication on Housing Rights



South African Constitutional Court

Government of the Republic of South Africa and others v. Grootboom and others (25)

A. Introduction

- [1] The people of South Africa are committed to the attainment of social justice and the improvement of the quality of life for everyone. The Preamble to our Constitution records this commitment. The Constitution declares the founding values of our society to be "[h]uman dignity, the achievement of equality and the advancement of human rights and freedoms." This case grapples with the realisation of these aspirations for it concerns the state's constitutional obligations in relation to housing: a constitutional issue of fundamental importance to the development of South Africa's new constitutional order.
- [2] The issues here remind us of the intolerable conditions under which many of our people are still living. The respondents are but a fraction of them. It is also a reminder that unless the plight of these communities is alleviated, people may be tempted to take the law into their own hands in order to escape these conditions. The case brings home the harsh reality that the Constitution's promise of dignity and equality for all remains for many a distant dream. People should not be impelled by intolerable living conditions to resort to land invasions. Self-help of this kind cannot be tolerated, for the unavailability of land suitable for housing development is a key factor in the fight against the country's housing shortage.
- [3] The group of people with whom we are concerned in these proceedings lived in appalling conditions, decided to move out and illegally occupied someone else's land. They were evicted and left homeless. The root cause of their problems is the intolerable conditions under which they were living while waiting in the queue for their turn to be allocated low-cost housing. They are the people whose constitutional rights have to be determined in this case.
- [4] Mrs Irene Grootboom and the other respondents were rendered homeless as a result of their eviction from their informal homes situated on private land earmarked for formal low-cost housing. They applied to the Cape of Good Hope High Court (the High Court) for an order requiring government to provide them with adequate basic shelter or housing until they obtained permanent accommodation and were granted certain relief. The appellants were ordered to provide the respondents who were children and their parents with shelter. The judgment provisionally concluded that "tents, portable latrines and a regular supply of water (albeit transported) would constitute the bare minimum." The appellants who represent all spheres of government responsible for housing challenge the correctness of that order.
- [5] At the hearing of this matter an offer was made by the appellants to ameliorate the immediate crisis situation in which the respondents were living. The offer was accepted by the respondents. This meant that the matter was not as urgent as it otherwise would have been. However some four months after argument, the respondents made an urgent application to this Court in which they revealed that the appellants had failed to comply with the terms of their offer. That application was set down for 21 September 2000. On that day the Court, after communication with the parties, crafted an order putting the municipality on terms to provide certain rudimentary services.
- [6] The cause of the acute housing shortage lies in apartheid. A central feature of that policy was a system of influx control that sought to limit African occupation of urban areas. Influx control was rigorously enforced in the Western Cape, where government policy favoured the exclusion of African people in order to accord preference to the coloured community: a policy adopted in 1954 and referred to as the "coloured labour preference policy." In consequence, the provision of family housing for African people in the Cape Peninsula was frozen in 1962. This freeze was extended to other urban areas in the Western Cape in 1968. Despite the harsh application of influx control in the Western Cape, African people continued to move to the area in search of jobs. Colonial dispossession and a rigidly enforced racial distribution of land in the rural areas had dislocated the rural economy and rendered sustainable and independent African farming increasingly precarious. Given the absence of formal housing, large numbers of people moved into informal settlements throughout the Cape peninsula. The cycle of the apartheid era, therefore, was one of untenable restrictions on the movement of African people into urban areas, the inexorable tide of the rural poor to the cities, inadequate housing, resultant overcrowding, mushrooming squatter settlements, constant harassment by officials and intermittent forced removals. The legacy of influx control in the Western Cape is the acute housing shortage that exists there now. Although the precise extent is uncertain, the shortage stood at more than 100 000 units in the Cape Metro at the time of the inception of the interim Constitution in 1994. Hundreds of thousands of people in need of housing occupied rudimentary informal settlements providing for minimal shelter, but little else.
- [7] Mrs Grootboom and most of the other respondents previously lived in an informal squatter settlement called

Wallacedene. It lies on the edge of the municipal area of Oostenberg, which in turn is on the eastern fringe of the Cape Metro. The conditions under which most of the residents of Wallacedene lived were lamentable. A quarter of the households of Wallacedene had no income at all, and more than two thirds earned less than R500 per month. About half the population were children; all lived in shacks. They had no water, sewage or refuse removal services and only 5% of the shacks had electricity. The area is partly waterlogged and lies dangerously close to a main thoroughfare. Mrs Grootboom lived with her family and her sister's family in a shack about twenty metres square.

- [8] Many had applied for subsidised low-cost housing from the municipality and had been on the waiting list for as long as seven years. Despite numerous enquiries from the municipality no definite answer was given. Clearly it was going to be a long wait. Faced with the prospect of remaining in intolerable conditions indefinitely, the respondents began to move out of Wallacedene at the end of September 1998. They put up their shacks and shelters on vacant land that was privately owned and had been earmarked for low-cost housing. They called the land "New Rust."
- [9] They did not have the consent of the owner and on 8 December 1998 he obtained an ejection order against them in the magistrates' court. The order was served on the occupants but they remained in occupation beyond the date by which they had been ordered to vacate. Mrs Grootboom says they had nowhere else to go: their former sites in Wallacedene had been filled by others. The eviction proceedings were renewed in March 1999. The respondents' attorneys in this case were appointed by the magistrate to represent them on the return day of the provisional order of eviction. Negotiations resulted in the grant of an order requiring the occupants to vacate New Rust and authorising the sheriff to evict them and to dismantle and remove any of their structures remaining on the land on 19 May 1999. The magistrate also directed that the parties and the municipality mediate to identify alternative land for the permanent or temporary occupation of the New Rust residents.
- [10] The municipality had not been party to the proceedings but it had engaged attorneys to monitor them on its behalf. It is not clear whether the municipality was a party to the settlement and the agreement to mediate. Nor is it clear whether the eviction was in accordance with the provisions of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 19 of 1998. The validity of the eviction order has never been challenged and must be accepted as correct. However, no mediation took place and on 18 May 1999, at the beginning of the cold, windy and rainy Cape winter, the respondents were forcibly evicted at the municipality's expense. This was done prematurely and inhumanely: reminiscent of apartheid-style evictions. The respondents' homes were bulldozed and burnt and their possessions destroyed. Many of the residents who were not there could not even salvage their personal belongings.
- [11] The respondents went and sheltered on the Wallacedene sports field under such temporary structures as they could muster. Within a week the winter rains started and the plastic sheeting they had erected afforded scant protection. The next day the respondents' attorney wrote to the municipality describing the intolerable conditions under which his clients were living and demanded that the municipality meet its constitutional obligations and provide temporary accommodation to the respondents. The respondents were not satisfied with the response of the municipality and launched an urgent application in the High Court on 31 May 1999. As indicated above, the High Court granted relief to the respondents and the appellants now appeal against that relief.
- [12] In the remainder of this judgment, I first outline the reasoning adopted in the High Court judgment. Consideration is then given to the right of access to adequate housing in section 26 of the Constitution and the proper approach to be adopted to the application of that section. This is followed by evaluation of the housing programme adopted by the state in the light of the obligations imposed upon it by section 26. The respondents' claim in terms of the rights of children in section 28 of the Constitution is thereafter considered. Finally, the respondents' arguments concerning the conduct of the appellants towards them will be examined.

B. The case in the High Court

- [13] Mrs Grootboom and the other respondents applied for an order directing the appellants forthwith to provide:
- (i) adequate basic temporary shelter or housing to the respondents and their children pending their obtaining permanent accommodation;
 - (ii) or basic nutrition, shelter, healthcare and social services to the respondents who are children.

The respondents based their claim on two constitutional provisions. First, on section 26 of the Constitution which provides that everyone has the right of access to adequate housing. Section 26(2) imposes an obligation upon the state to take reasonable legislative and other measures to ensure the progressive realisation of this right within its available resources. The section is fully considered later in this judgment. The second basis for their claim was section 28(1)(c) of the Constitution which provides that children have the right to shelter.

[14] After conducting an inspection *in loco*, Josman AJ ordered that, pending the final determination of the application, temporary accommodation be provided for those of the respondents who were children and for one parent of each child who required supervision. Appellants furnished comprehensive answering affidavits to demonstrate that the state housing programme complied with their constitutional obligations. On the return day, the matter came before two judges. The High Court judgment consists of two separate parts. The first, under the heading "Housing" considered the claim in terms of section 26 of the Constitution. On this part of the claim the High Court concluded:

"In short [appellants] are faced with a massive shortage in available housing and an extremely constrained budget. Furthermore in terms of the pressing demands and scarce resources [appellants] had implemented a housing programme in an attempt to maximise available resources to redress the housing shortage. For this reason it could not be said that [appellants] had not taken reasonable legislative and other measures within its available resources to achieve the progressive realisation of the right to have access to adequate housing."

The court rejected an argument that the right of access to adequate housing under section 26 included a minimum core entitlement to shelter in terms of which the state was obliged to provide some form of shelter pending implementation of the programme to provide adequate housing. This submission was based on the provisions of certain international instruments that are discussed later.

[15] The second part of the judgment addressed the claim of the children for shelter in terms of section 28(1)(c). The court reasoned that the parents bore the primary obligation to provide shelter for their children, but that section 28(1)(c) imposed an obligation on the state to provide that shelter if parents could not. It went on to say that the shelter to be provided according to this obligation was a significantly more rudimentary form of protection from the elements than is provided by a house and falls short of adequate housing. The court concluded that:

"an order which enforces a child's right to shelter should take account of the need of the child to be accompanied by his or her parent. Such an approach would be in accordance with the spirit and purport of section 28 as a whole."

[16] In the result the court ordered as follows:

"(2) It is declared, in terms of section 28 of the Constitution that;

(a) the applicant children are entitled to be provided with shelter by the appropriate organ or department of state;

(b) the applicant parents are entitled to be accommodated with their children in the foregoing shelter; and

(c) the appropriate organ or department of state is obliged to provide the applicant children, and their accompanying parents, with such shelter until such time as the parents are able to shelter their own children;

(3) The several respondents are directed to present under oath a report or reports to this Court as to the implementation of paragraph (2) above within a period of three months from the date of this order;

(4) The applicants shall have a period of one month, after presentation of the foregoing report, to deliver their commentary thereon under oath;

(5) The respondents shall have a further period of two weeks to deliver their replies under oath to the applicants' commentary;

(6) There will be no order as to costs of these proceedings up to the date of this judgment;

(7) The case is postponed to a date to be fixed by the Registrar for consideration and determination of the aforesaid report, commentary and replies;

(8) The order of Josman AJ dated 4 June 1999 will remain in force until such time as the further proceedings contemplated by the preceding paragraph have been completed."

C. Argument in this Court

[17] After the application for leave to appeal had been granted by this Court but before argument had been filed by any of the parties, the Human Rights Commission and the Community Law Centre of the University of the Western Cape applied to be admitted as *amici curiae*. That application was granted and the *amici* were permitted to present written and oral argument. Mr Budlender of the Legal Resources Centre submitted written argument and appeared on behalf of the *amici* at the hearing. We are grateful to him, the Human Rights Commission and the Community Law Centre for a detailed, helpful and creative approach to the difficult and sensitive issues involved in this case.

[18] Written argument submitted on behalf of the appellants and the respondents concentrated on the meaning and import of the shelter component and the obligations imposed upon the state by section 28(1)(c). The written argument filed on behalf of the *amici* sought to broaden the issues by contending that all the respondents, including those of the adult respondents without children, were entitled to shelter by reason of the minimum core obligation incurred by the state in terms of section 26 of the Constitution. It was further contended on behalf of the *amici* that the children's right to shelter had been included in section 28(1)(c) to place the right of children to this minimum core beyond doubt. Respondents' counsel filed further written contentions in which they supported and adopted these submissions. No objection was taken to the issues having been thus broadened.

D. The relevant constitutional provisions and their justiciability

[19] The key constitutional provisions at issue in this case are section 26 and section 28(1)(c). Section 26 provides:

"(1) Everyone has the right to have access to adequate housing.

(2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.

(3) No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions."

Section 28(1)(c) provides:

"(1) Every child has the right -

... .

(c) to basic nutrition, shelter, basic health care services and social services".

These rights need to be considered in the context of the cluster of socio-economic rights enshrined in the Constitution. They entrench the right of access to land, to adequate housing and to health care, food, water and social security. They also protect the rights of the child and the right to education.

[20] While the justiciability of socio-economic rights has been the subject of considerable jurisprudential and political debate, the issue of whether socio-economic rights are justiciable at all in South Africa has been put beyond question by the text of our Constitution as construed in the Certification judgment. During the certification proceedings before this Court, it was contended that they were not justiciable and should therefore not have been included in the text of the new Constitution. In response to this argument, this Court held:

"[T]hese rights are, at least to some extent, justiciable. As we have stated in the previous paragraph, many of the civil and political rights entrenched in the [constitutional text before this Court for certification in that case] will give rise to similar budgetary implications without compromising their justiciability. The fact that socio-economic rights will almost inevitably give rise to such implications does not seem to us to be a bar to their justiciability. At the very minimum, socio-economic rights can be negatively protected from improper invasion."

Socio-economic rights are expressly included in the Bill of Rights; they cannot be said to exist on paper only. Section 7(2) of the Constitution requires the state "to respect, protect, promote and fulfil the rights in the Bill of Rights" and the courts are constitutionally bound to ensure that they are protected and fulfilled. The question is therefore not whether socio-economic rights are justiciable under our Constitution, but how to enforce them in a given case. This is a very difficult issue which must be carefully explored on a case-by-case basis. To address the challenge raised in the present case, it is necessary first to consider the terms and context of the relevant constitutional provisions and their application to the circumstances of this case. Although the judgment of the High Court in favour of the appellants was based on the right to shelter (section 28(1)(c) of the Constitution), it is appropriate to consider the provisions of section 26 first so as to facilitate a contextual evaluation of section 28(1)(c).

E. Obligations imposed upon the state by section 26

i) Approach to interpretation

[21] Like all the other rights in Chapter 2 of the Constitution (which contains the Bill of Rights), section 26 must be construed in its context. The section has been carefully crafted. It contains three subsections. The first confers a general right of access to adequate housing. The second establishes and delimits the scope of the positive obligation imposed upon the state to promote access to adequate housing and has three key elements. The state is obliged: (a) to take reasonable legislative and other measures; (b) within its available resources; (c) to achieve the progressive realisation of this right. These elements are discussed later. The

third subsection provides protection against arbitrary evictions.

- [22] Interpreting a right in its context requires the consideration of two types of context. On the one hand, rights must be understood in their textual setting. This will require a consideration of Chapter 2 and the Constitution as a whole. On the other hand, rights must also be understood in their social and historical context.
- [23] Our Constitution entrenches both civil and political rights and social and economic rights. All the rights in our Bill of Rights are inter-related and mutually supporting. There can be no doubt that human dignity, freedom and equality, the foundational values of our society, are denied those who have no food, clothing or shelter. Affording socio-economic rights to all people therefore enables them to enjoy the other rights enshrined in Chapter 2. The realisation of these rights is also key to the advancement of race and gender equality and the evolution of a society in which men and women are equally able to achieve their full potential.
- [24] The right of access to adequate housing cannot be seen in isolation. There is a close relationship between it and the other socio-economic rights. Socio-economic rights must all be read together in the setting of the Constitution as a whole. The state is obliged to take positive action to meet the needs of those living in extreme conditions of poverty, homelessness or intolerable housing. Their interconnectedness needs to be taken into account in interpreting the socio-economic rights, and, in particular, in determining whether the state has met its obligations in terms of them.
- [25] Rights also need to be interpreted and understood in their social and historical context. The right to be free from unfair discrimination, for example, must be understood against our legacy of deep social inequality. The context in which the Bill of Rights is to be interpreted was described by Chaskalson P in *Soobramoney*:

"We live in a society in which there are great disparities in wealth. Millions of people are living in deplorable conditions and in great poverty. There is a high level of unemployment, inadequate social security, and many do not have access to clean water or to adequate health services. These conditions already existed when the Constitution was adopted and a commitment to address them, and to transform our society into one in which there will be human dignity, freedom and equality, lies at the heart of our new constitutional order. For as long as these conditions continue to exist that aspiration will have a hollow ring."

ii) *The relevant international law and its impact*

- [26] During argument, considerable weight was attached to the value of international law in interpreting section 26 of our Constitution. Section 39 of the Constitution obliges a court to consider international law as a tool to interpretation of the Bill of Rights. In *Makwanyane* Chaskalson P, in the context of section 35(1) of the interim Constitution, said:

"... public international law would include non-binding as well as binding law. They may both be used under the section as tools of interpretation. International agreements and customary international law accordingly provide a framework within which [the Bill of Rights] can be evaluated and understood, and for that purpose, decisions of tribunals dealing with comparable instruments, such as the United Nations Committee on Human Rights, the Inter-American Commission on Human Rights, the Inter-American Court of Human Rights, the European Commission on Human Rights, and the European Court of Human Rights, and, in appropriate cases, reports of specialised agencies such as the International Labour Organisation, may provide guidance as to the correct interpretation of particular provisions of [the Bill of Rights]."
(Footnotes omitted)

The relevant international law can be a guide to interpretation but the weight to be attached to any particular principle or rule of international law will vary. However, where the relevant principle of international law binds South Africa, it may be directly applicable.

- [27] The *amici* submitted that the International Covenant on Economic, Social and Cultural Rights (the Covenant) is of significance in understanding the positive obligations created by the socio-economic rights in the Constitution. Article 11.1 of the Covenant provides:

"The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent."

This Article must be read with Article 2.1 which provides:

"Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its

available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures."

- [28] The differences between the relevant provisions of the Covenant and our Constitution are significant in determining the extent to which the provisions of the Covenant may be a guide to an interpretation of section 26. These differences, in so far as they relate to housing, are:
- (a) The Covenant provides for a *right to adequate housing* while section 26 provides for the *right of access* to adequate housing.
 - (b) The Covenant obliges states parties to take *appropriate* steps which must include legislation while the Constitution obliges the South African state to take *reasonable* legislative and other measures.
- [29] The obligations undertaken by states parties to the Covenant are monitored by the United Nations Committee on Economic, Social and Cultural Rights (the committee). The *amici* relied on the relevant general comments issued by the committee concerning the interpretation and application of the Covenant, and argued that these general comments constitute a significant guide to the interpretation of section 26. In particular they argued that in interpreting this section, we should adopt an approach similar to that taken by the committee in paragraph 10 of general comment 3 issued in 1990, in which the committee found that socio-economic rights contain a minimum core:
- "10. On the basis of the extensive experience gained by the Committee, as well as by the body that preceded it, over a period of more than a decade of examining States parties' reports the Committee is of the view that minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party. Thus, for example, a State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education, is prima facie, failing to discharge its obligations under the Covenant. If the Covenant were to be read in such a way as not to establish such a minimum core obligation, it would be largely deprived of its raison d'être. By the same token, it must be noted that any assessment as to whether a State has discharged its minimum core obligation must also take account of resource constraints applying within the country concerned. Article 2(1) obligates each State party to take the necessary steps "to the maximum of its available resources". In order for a State party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources it must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations."*
- [30] It is clear from this extract that the committee considers that every state party is bound to fulfil a minimum core obligation by ensuring the satisfaction of a minimum essential level of the socio-economic rights, including the right to adequate housing. Accordingly, a state in which a significant number of individuals is deprived of basic shelter and housing is regarded as *prima facie* in breach of its obligations under the Covenant. A state party must demonstrate that every effort has been made to use all the resources at its disposal to satisfy the minimum core of the right. However, it is to be noted that the general comment does not specify precisely what that minimum core is.
- [31] The concept of minimum core obligation was developed by the committee to describe the minimum expected of a state in order to comply with its obligation under the Covenant. It is the floor beneath which the conduct of the state must not drop if there is to be compliance with the obligation. Each right has a "minimum essential level" that must be satisfied by the states parties. The committee developed this concept based on "extensive experience gained by [it] . . . over a period of more than a decade of examining States parties' reports." The general comment is based on reports furnished by the reporting states and the general comment is therefore largely descriptive of how the states have complied with their obligations under the Covenant. The committee has also used the general comment "as a means of developing a common understanding of the norms by establishing a prescriptive definition." Minimum core obligation is determined generally by having regard to the needs of the most vulnerable group that is entitled to the protection of the right in question. It is in this context that the concept of minimum core obligation must be understood in international law.
- [32] It is not possible to determine the minimum threshold for the progressive realisation of the right of access to adequate housing without first identifying the needs and opportunities for the enjoyment of such a right. These will vary according to factors such as income, unemployment, availability of land and poverty. The differences between city and rural communities will also determine the needs and opportunities for the enjoyment of this right. Variations ultimately depend on the economic and social history and circumstances of a country. All this illustrates the complexity of the task of determining a minimum core obligation for the progressive realisation of the right of access to adequate housing without having the requisite information on the needs and the opportunities for the enjoyment of this right. The committee developed the concept of minimum core over many years of examining reports by reporting states. This Court does not have

comparable information.

[33] The determination of a minimum core in the context of "the right to have access to adequate housing" presents difficult questions. This is so because the needs in the context of access to adequate housing are diverse: there are those who need land; others need both land and houses; yet others need financial assistance. There are difficult questions relating to the definition of minimum core in the context of a right to have access to adequate housing, in particular whether the minimum core obligation should be defined generally or with regard to specific groups of people. As will appear from the discussion below, the real question in terms of our Constitution is whether the measures taken by the state to realise the right afforded by section 26 are reasonable. There may be cases where it may be possible and appropriate to have regard to the content of a minimum core obligation to determine whether the measures taken by the state are reasonable. However, even if it were appropriate to do so, it could not be done unless sufficient information is placed before a court to enable it to determine the minimum core in any given context. In this case, we do not have sufficient information to determine what would comprise the minimum core obligation in the context of our Constitution. It is not in any event necessary to decide whether it is appropriate for a court to determine in the first instance the minimum core content of a right.

iii) *Analysis of section 26*

[34] I consider the meaning and scope of section 26 in its context. Its provisions are repeated for convenience:

"(1) Everyone has the right to have access to adequate housing.

(2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.

(3) No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions."

Subsections (1) and (2) are related and must be read together. Subsection (1) aims at delineating the scope of the right. It is a right of everyone including children. Although the subsection does not expressly say so, there is, at the very least, a negative obligation placed upon the state and all other entities and persons to desist from preventing or impairing the right of access to adequate housing. The negative right is further spelt out in subsection (3) which prohibits arbitrary evictions. Access to housing could also be promoted if steps are taken to make the rural areas of our country more viable so as to limit the inexorable migration of people from rural to urban areas in search of jobs.

[35] The right delineated in section 26(1) is a right of "access to adequate housing" as distinct from the right to adequate housing encapsulated in the Covenant. This difference is significant. It recognises that housing entails more than bricks and mortar. It requires available land, appropriate services such as the provision of water and the removal of sewage and the financing of all of these, including the building of the house itself. For a person to have access to adequate housing all of these conditions need to be met: there must be land, there must be services, there must be a dwelling. Access to land for the purpose of housing is therefore included in the right of access to adequate housing in section 26. A right of access to adequate housing also suggests that it is not only the state who is responsible for the provision of houses, but that other agents within our society, including individuals themselves, must be enabled by legislative and other measures to provide housing. The state must create the conditions for access to adequate housing for people at all economic levels of our society. State policy dealing with housing must therefore take account of different economic levels in our society.

[36] In this regard, there is a difference between the position of those who can afford to pay for housing, even if it is only basic though adequate housing, and those who cannot. For those who can afford to pay for adequate housing, the state's primary obligation lies in unlocking the system, providing access to housing stock and a legislative framework to facilitate self-built houses through planning laws and access to finance. Issues of development and social welfare are raised in respect of those who cannot afford to provide themselves with housing. State policy needs to address both these groups. The poor are particularly vulnerable and their needs require special attention. It is in this context that the relationship between sections 26 and 27 and the other socio-economic rights is most apparent. If under section 27 the state has in place programmes to provide adequate social assistance to those who are otherwise unable to support themselves and their dependants, that would be relevant to the state's obligations in respect of other socio-economic rights.

[37] The state's obligation to provide access to adequate housing depends on context, and may differ from province to province, from city to city, from rural to urban areas and from person to person. Some may need access to land and no more; some may need access to land and building materials; some may need access to finance; some may need access to services such as water, sewage, electricity and roads. What might be appropriate in a rural area where people live together in communities engaging in subsistence farming may

not be appropriate in an urban area where people are looking for employment and a place to live.

- [38] Subsection (2) speaks to the positive obligation imposed upon the state. It requires the state to devise a comprehensive and workable plan to meet its obligations in terms of the subsection. However subsection (2) also makes it clear that the obligation imposed upon the state is not an absolute or unqualified one. The extent of the state's obligation is defined by three key elements that are considered separately: (a) the obligation to "take reasonable legislative and other measures"; (b) "to achieve the progressive realisation" of the right; and (c) "within available resources."

Reasonable legislative and other measures

- [39] What constitutes reasonable legislative and other measures must be determined in the light of the fact that the Constitution creates different spheres of government: national government, provincial government and local government. The last of these may, as it does in this case, comprise two tiers. The Constitution allocates powers and functions amongst these different spheres emphasising their obligation to co-operate with one another in carrying out their constitutional tasks. In the case of housing, it is a function shared by both national and provincial government. Local governments have an important obligation to ensure that services are provided in a sustainable manner to the communities they govern. A reasonable programme therefore must clearly allocate responsibilities and tasks to the different spheres of government and ensure that the appropriate financial and human resources are available.
- [40] Thus, a co-ordinated state housing programme must be a comprehensive one determined by all three spheres of government in consultation with each other as contemplated by Chapter 3 of the Constitution. It may also require framework legislation at national level, a matter we need not consider further in this case as there is national framework legislation in place. Each sphere of government must accept responsibility for the implementation of particular parts of the programme but the national sphere of government must assume responsibility for ensuring that laws, policies, programmes and strategies are adequate to meet the state's section 26 obligations. In particular, the national framework, if there is one, must be designed so that these obligations can be met. It should be emphasised that national government bears an important responsibility in relation to the allocation of national revenue to the provinces and local government on an equitable basis. Furthermore, national and provincial government must ensure that executive obligations imposed by the housing legislation are met.
- [41] The measures must establish a coherent public housing programme directed towards the progressive realisation of the right of access to adequate housing within the state's available means. The programme must be capable of facilitating the realisation of the right. The precise contours and content of the measures to be adopted are primarily a matter for the legislature and the executive. They must, however, ensure that the measures they adopt are reasonable. In any challenge based on section 26 in which it is argued that the state has failed to meet the positive obligations imposed upon it by section 26(2), the question will be whether the legislative and other measures taken by the state are reasonable. A court considering reasonableness will not enquire whether other more desirable or favourable measures could have been adopted, or whether public money could have been better spent. The question would be whether the measures that have been adopted are reasonable. It is necessary to recognise that a wide range of possible measures could be adopted by the state to meet its obligations. Many of these would meet the requirement of reasonableness. Once it is shown that the measures do so, this requirement is met.
- [42] The state is required to take reasonable legislative *and* other measures. Legislative measures by themselves are not likely to constitute constitutional compliance. Mere legislation is not enough. The state is obliged to act to achieve the intended result, and the legislative measures will invariably have to be supported by appropriate, well-directed policies and programmes implemented by the executive. These policies and programmes must be reasonable both in their conception and their implementation. The formulation of a programme is only the first stage in meeting the state's obligations. The programme must also be reasonably implemented. An otherwise reasonable programme that is not implemented reasonably will not constitute compliance with the state's obligations.
- [43] In determining whether a set of measures is reasonable, it will be necessary to consider housing problems in their social, economic and historical context and to consider the capacity of institutions responsible for implementing the programme. The programme must be balanced and flexible and make appropriate provision for attention to housing crises and to short, medium and long term needs. A programme that excludes a significant segment of society cannot be said to be reasonable. Conditions do not remain static and therefore the programme will require continuous review.
- [44] Reasonableness must also be understood in the context of the Bill of Rights as a whole. The right of access to adequate housing is entrenched because we value human beings and want to ensure that they are afforded their basic human needs. A society must seek to ensure that the basic necessities of life are provided to all if it is to be a society based on human dignity, freedom and equality. To be reasonable, measures cannot leave out of account the degree and extent of the denial of the right they endeavour to

realise. Those whose needs are the most urgent and whose ability to enjoy all rights therefore is most in peril, must not be ignored by the measures aimed at achieving realisation of the right. It may not be sufficient to meet the test of reasonableness to show that the measures are capable of achieving a statistical advance in the realisation of the right. Furthermore, the Constitution requires that everyone must be treated with care and concern. If the measures, though statistically successful, fail to respond to the needs of those most desperate, they may not pass the test.

Progressive realisation of the right

[45] The extent and content of the obligation consist in what must be achieved, that is, "the progressive realisation of this right." It links subsections (1) and (2) by making it quite clear that the right referred to is the right of access to adequate housing. The term "progressive realisation" shows that it was contemplated that the right could not be realised immediately. But the goal of the Constitution is that the basic needs of all in our society be effectively met and the requirement of progressive realisation means that the state must take steps to achieve this goal. It means that accessibility should be progressively facilitated: legal, administrative, operational and financial hurdles should be examined and, where possible, lowered over time. Housing must be made more accessible not only to a larger number of people but to a wider range of people as time progresses. The phrase is taken from international law and Article 2.1 of the Covenant in particular. The committee has helpfully analysed this requirement in the context of housing as follows:

"Nevertheless, the fact that realization over time, or in other words progressively, is foreseen under the Covenant should not be misinterpreted as depriving the obligation of all meaningful content. It is on the one hand a necessary flexibility device, reflecting the realities of the real world and the difficulties involved for any country in ensuring full realization of economic, social and cultural rights. On the other hand, the phrase must be read in the light of the overall objective, indeed the raison d'être, of the Covenant which is to establish clear obligations for States parties in respect of the full realization of the rights in question. It thus imposes an obligation to move as expeditiously and effectively as possible towards that goal. Moreover, any deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources."

Although the committee's analysis is intended to explain the scope of states parties' obligations under the Covenant, it is also helpful in plumbing the meaning of "progressive realisation" in the context of our Constitution. The meaning ascribed to the phrase is in harmony with the context in which the phrase is used in our Constitution and there is no reason not to accept that it bears the same meaning in the Constitution as in the document from which it was so clearly derived.

Within available resources

[46] The third defining aspect of the obligation to take the requisite measures is that the obligation does not require the state to do more than its available resources permit. This means that both the content of the obligation in relation to the rate at which it is achieved as well as the reasonableness of the measures employed to achieve the result are governed by the availability of resources. Section 26 does not expect more of the state than is achievable within its available resources. As Chaskalson P said in *Sobramoney*:

"What is apparent from these provisions is that the obligations imposed on the State by ss 26 and 27 in regard to access to housing, health care, food, water, and social security are dependent upon the resources available for such purposes, and that the corresponding rights themselves are limited by reason of the lack of resources. Given this lack of resources and the significant demands on them that have already been referred to, an unqualified obligation to meet these needs would not presently be capable of being fulfilled."

There is a balance between goal and means. The measures must be calculated to attain the goal expeditiously and effectively but the availability of resources is an important factor in determining what is reasonable.

F. Description and evaluation of the state housing programme

[47] In support of their contention that they had complied with the obligation imposed upon them by section 26, the appellants placed evidence before this Court of the legislative and other measures they had adopted. There is in place both national and provincial legislation concerned with housing. It was explained that in 1994 the state inherited fragmented housing arrangements which involved thirteen statutory housing funds, seven ministries and housing departments, more than twenty subsidy systems and more than sixty national and regional parastatals operating on a racial basis. These have been rationalised. The national Housing Act provides a framework which establishes the responsibilities and functions of each sphere of government with regard to housing. The responsibility for implementation is generally given to the provinces. Provinces in turn have assigned certain implementation functions to local government structures in many cases. All spheres of government are intimately involved in housing delivery and the budget

allocated by national government appears to be substantial. There is a single housing policy and a subsidy system that targets low-income earners regardless of race. The White Paper on Housing aims to stabilise the housing environment, establish institutional arrangements, protect consumers, rationalise institutional capacity within a sustainable long-term framework, facilitate the speedy release and servicing of land and co-ordinate and integrate the public sector investment in housing. In addition, various schemes are in place involving public/private partnerships aimed at ensuring that housing provision is effectively financed.

[48] "Housing development" is defined in section 1 of the Housing Act as:

"the establishment and maintenance of habitable, stable and sustainable public and private residential environments to ensure viable households and communities in areas allowing convenient access to economic opportunities, and to health, educational and social amenities in which all citizens and permanent residents of the Republic will, on a progressive basis, have access to—

(a) permanent residential structures with secure tenure, ensuring internal and external privacy and providing adequate protection against the elements; and

(b) potable water, adequate sanitary facilities and domestic energy supply . . ."

"Housing development project" is defined as "any plan to undertake housing development as contemplated in any national housing programme."

[49] Section 2(1) of the Act sets out the general principles binding on national, provincial and local spheres of government. I set out those principles are that material to the determination of this case. All levels of government must:

"(a) give priority to the needs of the poor in respect of housing development;

(b) consult meaningfully with individuals and communities affected by housing development;

(c) ensure that housing development—

(i) provides as wide a choice of housing and tenure options as is reasonably possible;

(ii) is economically, fiscally, socially and financially affordable and sustainable;

(iii) is based on integrated development planning; and

(iv) is administered in a transparent, accountable and equitable manner, and upholds the practice of good governance;

...

(e) promote—

(i) education and consumer protection in respect of housing development;

(ii) conditions in which everyone meets their obligations in respect of housing development;

(iii) the establishment, development and maintenance of socially and economically viable communities and of safe and healthy living conditions to ensure the elimination and prevention of slums and slum conditions;

...

(ix) the provision of community and recreational facilities in residential areas;

(f) take due cognisance of the impact of housing development on the environment;

...

(h) in the administration of any matter relating to housing development—

(i) respect, protect, promote and fulfil the rights in the Bill of Rights in Chapter 2 of the Constitution;

(ii) observe and adhere to the principles of co-operative government and intergovernmental relations referred to in section 41 (1) of the Constitution; and

(iii) comply with all other applicable provisions of the Constitution."

[50] Over and above these general principles, the Act sets out the functions of the national, provincial and local government in relation to housing. The functions of national government are set out in section 3 of the Act. The function of provincial governments are set out in section 7 of the Act and the functions of municipalities are set out in section 9 of the Act. The responsibilities of local government in the Cape Metro, and in particular the relationship between metropolitan government on the one hand and municipal government on the other, have been regulated by an agreement entered into between the Cape Metro and

the municipalities within its jurisdiction.

- [51] It emerges from the general principles read together with the functions of national, provincial and local government that the concept of housing development as defined is central to the Act. Housing development, as defined, seeks to provide citizens and permanent residents with access to permanent residential structures with secure tenure ensuring internal and external privacy and to provide adequate protection against the elements. What is more, it endeavours to ensure convenient access to economic opportunities and to health, educational and social amenities. All the policy documents before the Court are postulated on the need for housing development as defined. This is the central thrust of the housing development policy.
- [52] The definition of housing development as well as the general principles that are set out do not contemplate the provision of housing that falls short of the definition of housing development in the Act. In other words there is no express provision to facilitate access to temporary relief for people who have no access to land, no roof over their heads, for people who are living in intolerable conditions and for people who are in crisis because of natural disasters such as floods and fires, or because their homes are under threat of demolition. These are people in desperate need. Their immediate need can be met by relief short of housing which fulfils the requisite standards of durability, habitability and stability encompassed by the definition of housing development in the Act.
- [53] What has been done in execution of this programme is a major achievement. Large sums of money have been spent and a significant number of houses has been built. Considerable thought, energy, resources and expertise have been and continue to be devoted to the process of effective housing delivery. It is a programme that is aimed at achieving the progressive realisation of the right of access to adequate housing.
- [54] A question that nevertheless must be answered is whether the measures adopted are reasonable within the meaning of section 26 of the Constitution. Allocation of responsibilities and functions has been coherently and comprehensively addressed. The programme is not haphazard but represents a systematic response to a pressing social need. It takes account of the housing shortage in South Africa by seeking to build a large number of homes for those in need of better housing. The programme applies throughout South Africa and although there have been difficulties of implementation in some areas, the evidence suggests that the state is actively seeking to combat these difficulties.
- [55] Legislative measures have been taken at both the national and provincial levels. As we have seen, at the national level the Housing Act sets out the general principles applicable to housing development, defines the functions of the three spheres of government and addresses the financing of housing development. It thus provides a legislative framework within which the delivery of houses is to take place nationally. At the provincial level there is the Western Cape Housing Development Act, 1999. This statute also sets out the general principles applicable to housing development; the role of the provincial government; the role of local government; and other matters relating to housing development. Thus, like the Housing Act, this statute provides a legislative framework within which housing development at provincial level will take place. All of the measures described form part of the nationwide housing programme.
- [56] This Court must decide whether the nationwide housing programme is sufficiently flexible to respond to those in desperate need in our society and to cater appropriately for immediate and short-term requirements. This must be done in the context of the scope of the housing problem that must be addressed. This case is concerned with the situation in the Cape Metro and the municipality and the circumstances that prevailed there are therefore presented.
- [57] The housing shortage in the Cape Metro is acute. About 206 000 housing units are required and up to 25 000 housing opportunities are required in Oostenberg itself. Shack counts in the Cape Metro in general and in the area of the municipality in particular reveal an inordinate problem. 28 300 shacks were counted in the Cape Metro in January 1993. This number had grown to 59 854 in 1996 and to 72 140 by 1998. Shacks in this area increased by 111 percent during the period 1993 to 1996 and by 21 percent from then until 1998. There were 2121 shacks in the area of the municipality in 1993, 5701 (an increase of 168 percent) in 1996 and 7546 (an increase of 32 percent) in 1998. These are the results of a study commissioned by the Cape Metro.
- [58] The study concludes that the municipality "is the most critical local authority in terms of informal settlement shack growth at this point in time", this despite the fact that, according to an affidavit by a representative of the municipality, 10 577 houses had been completed by 1997. The scope of the problem is perhaps most sharply illustrated by this: about 22 000 houses are built in the Western Cape each year while demand grows at a rate of 20 000 family units per year. The backlog is therefore likely to be reduced, resources permitting and, on the basis of the figures in this study, only by 2 000 houses a year.
- [59] The housing situation is desperate. The problem is compounded by rampant unemployment and poverty. As was pointed out earlier in this judgment, a quarter of the households in Wallacedene had no income at all, and more than two-thirds earned less than R500-00 per month during 1997. As stated above, many of the families living in Wallacedene are living in intolerable conditions. In some cases, their shacks are

permanently flooded during the winter rains, others are severely overcrowded and some are perilously close to busy roads. There is no suggestion that Wallacedene is unusual in this respect. It is these conditions which ultimately forced the respondents to leave their homes there.

- [60] The Cape Metro has realised that this desperate situation requires government action that is different in nature from that encompassed by the housing development policy described earlier in this judgment. It drafted a programme (the Cape Metro land programme) in June 1999, some months after the respondents had been evicted. It wrote:

"From the above, it is seen that there is a complete mismatch between demand and supply in the housing sector, resulting in a crisis in housing delivery.

However, the existing housing situation cannot just be accepted, as there are many families living in crisis conditions, or alternatively, there are situations in the [Cape Metro] where local authorities need to undertake legal proceedings (evictions) in order to administer and implement housing projects. A new housing programme needed [sic] to cater for the crisis housing conditions in the [Cape Metro]. The proposed programme is called an 'Accelerated Managed Land Settlement Programme'."

Later in the document, the programme is briefly described as follows:

"The Accelerated Managed Land Settlement Programme (AMSLP) can therefore be described as the rapid release of land for families in crisis, with the progressive provision of services.

This programme should benefit those families in situations of crisis. The programme does not offer any benefits to queue jumpers, as it is the Metropolitan Local Council who determines when the progressive upgrading of services will be taken.

The Accelerated Managed Land Settlement Programme (AMSLP) includes the identification and purchase of land, planning, identification of the beneficiaries, township approval, pegging of the erven, construction of basic services, resettlement and the transfer of land to the beneficiaries."

We were informed by counsel during the hearing that although this programme was not in force at the time these proceedings were commenced, it has now been adopted and is being implemented.

- [61] The Cape Metro land programme was formulated by the Cape Metro specifically "to assist the metropolitan local councils to manage the settlement of families in crisis." Important features of this programme are its recognition of (i) the absence of provision for people living in crisis conditions; (ii) the unacceptability of having families living in crisis conditions; (iii) the consequent risk of land invasions; and (iv) the gap between the supply and demand of housing resulting in a delivery crisis. Crucially, the programme acknowledges that its beneficiaries are families who are to be evicted, those who are in a crisis situation in an existing area such as in a flood-line, families located on strategic land and families from backyard shacks or on the waiting list who are in crisis situations. Its primary objective is the rapid release of land for these families in crisis, with services to be upgraded progressively.

- [62] In devising its programme the Cape Metro said the following:

"Local government, by virtue of the powers and functions granted to it by national and provincial legislation and policy, needs to initiate, facilitate and develop housing projects. Part of this role is also the identification of vacant land for housing. There are currently a few programmes that are available to finance housing projects, for example, the project-linked subsidy, institutional subsidy and CMIP. None of these programmes deal directly with crisis situations in the housing field. The Accelerated Managed Land Settlement Programme (AMSLP) can therefore be described as the rapid release of land for families in crisis, with the progressive provision of services."

- [63] Section 26 requires that the legislative and other measures adopted by the state are reasonable. To determine whether the nationwide housing programme as applied in the Cape Metro is reasonable within the meaning of the section, one must consider whether the absence of a component catering for those in desperate need is reasonable in the circumstances. It is common cause that, except for the Cape Metro land programme, there is no provision in the nationwide housing programme as applied within the Cape Metro for people in desperate need.

- [64] Counsel for the appellants supported the nationwide housing programme and resisted the notion that provision of relief for people in desperate need was appropriate in it. Counsel also submitted that section 26 did not require the provision of this relief. Indeed, the contention was that provision for people in desperate need would detract significantly from integrated housing development as defined in the Act. The housing development policy as set out in the Act is in itself laudable. It has medium and long term objectives that cannot be criticised. But the question is whether a housing programme that leaves out of account the immediate amelioration of the circumstances of those in crisis can meet the test of reasonableness established by the section.

- [65] The absence of this component may have been acceptable if the nationwide housing programme would result in affordable houses for most people within a reasonably short time. However the scale of the problem is such that this simply cannot happen. Each individual housing project could be expected to take years and the provision of houses for all in the area of the municipality and in the Cape Metro is likely to take a long time indeed. The desperate will be consigned to their fate for the foreseeable future unless some temporary measures exist as an integral part of the nationwide housing programme. Housing authorities are understandably unable to say when housing will become available to these desperate people. The result is that people in desperate need are left without any form of assistance with no end in sight. Not only are the immediate crises not met. The consequent pressure on existing settlements inevitably results in land invasions by the desperate thereby frustrating the attainment of the medium and long term objectives of the nationwide housing programme. That is one of the main reasons why the Cape Metro land programme was adopted.
- [66] The national government bears the overall responsibility for ensuring that the state complies with the obligations imposed upon it by section 26. The nationwide housing programme falls short of obligations imposed upon national government to the extent that it fails to recognise that the state must provide for relief for those in desperate need. They are not to be ignored in the interests of an overall programme focussed on medium and long-term objectives. It is essential that a reasonable part of the national housing budget be devoted to this, but the precise allocation is for national government to decide in the first instance.
- [67] This case is concerned with the Cape Metro and the municipality. The former has realised that this need has not been fulfilled and has put in place its land programme in an effort to fulfil it. This programme, on the face of it, meets the obligation which the state has towards people in the position of the respondents in the Cape Metro. Indeed, the *amicus* accepted that this programme "would cater precisely for the needs of people such as the respondents, and, in an appropriate and sustainable manner." However, as with legislative measures, the existence of the programme is a starting point only. What remains is the implementation of the programme by taking all reasonable steps that are necessary to initiate and sustain it. And it must be implemented with due regard to the urgency of the situations it is intended to address.
- [68] Effective implementation requires at least adequate budgetary support by national government. This, in turn, requires recognition of the obligation to meet immediate needs in the nationwide housing programme. Recognition of such needs in the nationwide housing programme requires it to plan, budget and monitor the fulfilment of immediate needs and the management of crises. This must ensure that a significant number of desperate people in need are afforded relief, though not all of them need receive it immediately. Such planning too will require proper co-operation between the different spheres of government.
- [69] In conclusion it has been established in this case that as of the date of the launch of this application, the state was not meeting the obligation imposed upon it by section 26(2) of the Constitution in the area of the Cape Metro. In particular, the programmes adopted by the state fell short of the requirements of section 26(2) in that no provision was made for relief to the categories of people in desperate need identified earlier. I come later to the order that should flow from this conclusion.

G. Section 28(1)(c) and the right to shelter

- [70] The judgment of the High Court amounts to this: (a) section 28(1)(c) obliges the state to provide rudimentary shelter to children and their parents on demand if parents are unable to shelter their children; (b) this obligation exists independently of and in addition to the obligation to take reasonable legislative and other measures in terms of section 26; and (c) the state is bound to provide this rudimentary shelter irrespective of the availability of resources. On this reasoning, parents with their children have two distinct rights: the right of access to adequate housing in terms of section 26 as well as a right to claim shelter on demand in terms of section 28(1)(c).
- [71] This reasoning produces an anomalous result. People who have children have a direct and enforceable right to housing under section 28(1)(c), while others who have none or whose children are adult are not entitled to housing under that section, no matter how old, disabled or otherwise deserving they may be. The carefully constructed constitutional scheme for progressive realisation of socio-economic rights would make little sense if it could be trumped in every case by the rights of children to get shelter from the state on demand. Moreover, there is an obvious danger. Children could become stepping stones to housing for their parents instead of being valued for who they are.
- [72] The respondents and the *amici* in supporting the judgment of the High Court draw a distinction between housing on the one hand and shelter on the other. They contend that shelter is an attenuated form of housing and that the state is obliged to provide shelter to all children on demand. The respondents and the *amici* emphasise that the right of children to shelter is unqualified and that, the "reasonable measures" qualification embodied in sections 25(5) 26, 27 and 29 are markedly absent in relation to section 28(1)(c). The appellants disagree and criticise the respondents' definition of shelter on the basis that it conceives shelter

in terms that limit it to a material object. They contend that shelter is more than just that, but define it as an institution constructed by the state in which children are housed away from their parents.

[73] I cannot accept that the Constitution draws any real distinction between housing on the one hand and shelter on the other, and that shelter is a rudimentary form of housing. Housing and shelter are related concepts and one of the aims of housing is to provide physical shelter. But shelter is not a commodity separate from housing. There is no doubt that all shelter represents protection from the elements and possibly even from danger. There are a range of ways in which shelter may be constituted: shelter may be ineffective or rudimentary at the one extreme and very effective and even ideal at the other. The concept of shelter in section 28(1)(c) is not qualified by any requirement that it should be "basic" shelter. It follows that the Constitution does not limit the concept of shelter to basic shelter alone. The concept of shelter in section 28 (1)(c) embraces shelter in all its manifestations. However, it does not follow that the Constitution obliges the state to provide shelter at the most effective or the most rudimentary level to children in the company of their parents.

[74] The obligation created by section 28(1)(c) can properly be ascertained only in the context of the rights and, in particular, the obligations created by sections 25(5), 26 and 27 of the Constitution. Each of these sections expressly obliges the state to take reasonable legislative and other measures, within its available resources, to achieve the rights with which they are concerned. Section 28(1)(c) creates the right of children to basic nutrition, shelter, basic health care services and social services. There is an evident overlap between the rights created by sections 26 and 27 and those conferred on children by section 28. Apart from this overlap, the section 26 and 27 rights are conferred on everyone including children while section 28, on its face, accords rights to children alone. This overlap is not consistent with the notion that section 28(1)(c) creates separate and independent rights for children and their parents.

[75] The extent of the state obligation must also be interpreted in the light of the international obligations binding upon South Africa. The United Nations Convention on the Rights of the Child, ratified by South Africa in 1995, seeks to impose obligations upon state parties to ensure that the rights of children in their countries are properly protected. Section 28 is one of the mechanisms to meet these obligations. It requires the state to take steps to ensure that children's rights are observed. In the first instance, the state does so by ensuring that there are legal obligations to compel parents to fulfil their responsibilities in relation to their children. Hence, legislation and the common law impose obligations upon parents to care for their children. The state reinforces the observance of these obligations by the use of civil and criminal law as well as social welfare programmes.

[76] Section 28(1)(c) must be read in this context. Subsections 28(1)(b) and (c) provide:

"Every child has the right —

(b) to family care or parental care, or to appropriate alternative care when removed from the family environment;

(c) to basic nutrition, shelter, basic health care services and social services".

They must be read together. They ensure that children are properly cared for by their parents or families, and that they receive appropriate alternative care in the absence of parental or family care. The section encapsulates the conception of the scope of care that children should receive in our society. Subsection (1)(b) defines those responsible for giving care while subsection (1)(c) lists various aspects of the care entitlement.

[77] It follows from subsection 1(b) that the Constitution contemplates that a child has the right to parental or family care in the first place, and the right to alternative appropriate care only where that is lacking. Through legislation and the common law, the obligation to provide shelter in subsection (1)(c) is imposed primarily on the parents or family and only alternatively on the state. The state thus incurs the obligation to provide shelter to those children, for example, who are removed from their families. It follows that section 28(1)(c) does not create any primary state obligation to provide shelter on demand to parents and their children if children are being cared for by their parents or families.

[78] This does not mean, however, that the state incurs no obligation in relation to children who are being cared for by their parents or families. In the first place, the state must provide the legal and administrative infrastructure necessary to ensure that children are accorded the protection contemplated by section 28. This obligation would normally be fulfilled by passing laws and creating enforcement mechanisms for the maintenance of children, their protection from maltreatment, abuse, neglect or degradation, and the prevention of other forms of abuse of children mentioned in section 28. In addition, the state is required to fulfil its obligations to provide families with access to land in terms of section 25, access to adequate housing in terms of section 26 as well as access to health care, food, water and social security in terms of section 27. It follows from this judgment that sections 25 and 27 require the state to provide access on a programmatic and coordinated basis, subject to available resources. One of the ways in which the state

would meet its section 27 obligations would be through a social welfare programme providing maintenance grants and other material assistance to families in need in defined circumstances.

[79] It was not contended that the children who are respondents in this case should be provided with shelter apart from their parents. Those of the respondents in this case who are children are being cared for by their parents; they are not in the care of the state, in any alternative care, or abandoned. In the circumstances of this case, therefore, there was no obligation upon the state to provide shelter to those of the respondents who were children and, through them, their parents in terms of section 28(1)(c). The High Court therefore erred in making the order it did on the basis of this section.

H. Evaluation of the conduct of the appellants towards the respondents

[80] The final section of this judgment is concerned with whether the respondents are entitled to some relief in the form of temporary housing because of their special circumstances and because of the appellants' conduct towards them. This matter was raised in argument, and although not fully aired on the papers, it is appropriate to consider it. At first blush, the respondents' position was so acute and untenable when the High Court heard the case that simple humanity called for some form of immediate and urgent relief. They had left Wallacedene because of their intolerable circumstances, had been evicted in a way that left a great deal to be desired and, as a result, lived in desperate sub-human conditions on the Wallacedene soccer field or in the Wallacedene community hall. But we must also remember that the respondents are not alone in their desperation; hundreds of thousands (possibly millions) of South Africans live in appalling conditions throughout our country.

[81] Although the conditions in which the respondents lived in Wallacedene were admittedly intolerable and although it is difficult to level any criticism against them for leaving the Wallacedene shack settlement, it is a painful reality that their circumstances were no worse than those of thousands of other people, including young children, who remained at Wallacedene. It cannot be said, on the evidence before us, that the respondents moved out of the Wallacedene settlement and occupied the land earmarked for low-cost housing development as a deliberate strategy to gain preference in the allocation of housing resources over thousands of other people who remained in intolerable conditions and who were also in urgent need of housing relief. It must be borne in mind however, that the effect of any order that constitutes a special dispensation for the respondents on account of their extraordinary circumstances is to accord that preference.

[82] All levels of government must ensure that the housing programme is reasonably and appropriately implemented in the light of all the provisions in the Constitution. All implementation mechanisms, and all state action in relation to housing falls to be assessed against the requirements of section 26 of the Constitution. Every step at every level of government must be consistent with the constitutional obligation to take reasonable measures to provide adequate housing.

[83] But section 26 is not the only provision relevant to a decision as to whether state action at any particular level of government is reasonable and consistent with the Constitution. The proposition that rights are interrelated and are all equally important is not merely a theoretical postulate. The concept has immense human and practical significance in a society founded on human dignity, equality and freedom. It is fundamental to an evaluation of the reasonableness of state action that account be taken of the inherent dignity of human beings. The Constitution will be worth infinitely less than its paper if the reasonableness of state action concerned with housing is determined without regard to the fundamental constitutional value of human dignity. Section 26, read in the context of the Bill of Rights as a whole, must mean that the respondents have a right to reasonable action by the state in all circumstances and with particular regard to human dignity. In short, I emphasise that human beings are required to be treated as human beings. This is the backdrop against which the conduct of the respondents towards the appellants must be seen.

[84] The national legislature recognises this. In the course of stating the general principles binding on all levels of government, the Housing Act provides that in the administration of any matter relating to housing development, all levels of government must respect, protect, promote and fulfil the rights in Chapter 2 of the Constitution. In addition, section 2(1)(b) obliges all levels of government to consult meaningfully with individuals and communities affected by housing development. Moreover, section 9(1)(e) obliges municipalities to promote the resolution of conflict arising in the housing development process.

[85] Consideration is now given to whether the state action (or inaction) in relation to the respondents met the required constitutional standard. It is a central feature of this judgment that the housing shortage in the area of the Cape Metro in general and Oostenberg in particular had reached crisis proportions. Wallacedene was obviously bursting and it was probable that people in desperation were going to find it difficult to resist the temptation to move out of the shack settlement onto unoccupied land in an effort to improve their position. This is what the respondents apparently did.

[86] Whether the conduct of Mrs Grootboom and the other respondents constituted a land invasion was disputed on the papers. There was no suggestion however that the respondents' circumstances before their

move to New Rust was anything but desperate. There is nothing in the papers to indicate any plan by the municipality to deal with the occupation of vacant land if it occurred. If there had been such a plan the appellants might well have acted differently.

[87] The respondents began to move onto the New Rust Land during September 1998 and the number of people on this land continued to grow relentlessly. I would have expected officials of the municipality responsible for housing to engage with these people as soon as they became aware of the occupation. I would also have thought that some effort would have been made by the municipality to resolve the difficulty on a case-by-case basis after an investigation of their circumstances before the matter got out of hand. The municipality did nothing and the settlement grew by leaps and bounds.

[88] There is, however, no dispute that the municipality funded the eviction of the respondents. The magistrate who ordered the ejection of the respondents directed a process of mediation in which the municipality was to be involved to identify some alternative land for the occupation for the New Rust residents. Although the reason for this is unclear from the papers, it is evident that no effective mediation took place. The state had an obligation to ensure, at the very least, that the eviction was humanely executed. However, the eviction was reminiscent of the past and inconsistent with the values of the Constitution. The respondents were evicted a day early and to make matters worse, their possessions and building materials were not merely removed, but destroyed and burnt. I have already said that the provisions of section 26(1) of the Constitution burdens the state with at least a negative obligation in relation to housing. The manner in which the eviction was carried out resulted in a breach of this obligation.

[89] In these circumstances, the municipality's response to the letter of the respondents' attorney left much to be desired. It will be recalled that the letter stated that discussions were being held with officials from the Provincial Administration in order to find an amicable solution to the problem. There is no evidence that the respondents were ever informed of the outcome of these discussions. The application was then opposed and argued on the basis that none of the appellants either individually or jointly could do anything at all to alleviate the problem. The Cape Metro, the Western Cape government and the national government were joined in the proceedings and would all have been aware of the respondents' plight.

[90] In all these circumstances, the state may well have been in breach of its constitutional obligations. It may also be that the conduct of the municipality was inconsistent with the provisions of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act. In addition, the municipality may have failed to meet the obligations imposed by the provisions of sections 2(1)(b), 2(1)(h)(i) and 9(1)(e) of the Housing Act. However no argument was addressed to this Court on these matters and we are not in a position to consider them further.

[91] At the hearing in this Court, counsel for the national and Western Cape government, tendered a statement indicating that the respondents had, on that very day, been offered some alternative accommodation, not in fulfilment of any accepted constitutional obligation, but in the interests of humanity and pragmatism. Counsel for the respondents accepted the offer on their behalf. We were subsequently furnished with a copy of the arrangement which read as follows:

- "1. The Department of Planning, Local Government and Housing (Western Cape Province) undertakes in conjunction with the Oostenberg Municipality to provide temporary accommodation to the respondents on the Wallacedene Sportsfield until they can be housed in terms of the housing programmes available to the local authority, and in particular the Accelerated Land Managed Settlement Programme.*
- 2. The 'temporary accommodation' comprises: a marked off site; provision for temporary structures intended to be waterproof; basic sanitation, water and refuse services.*
- 3. The implementation of such measures is to be discussed with the Wallacedene community and the respondents."*

Although, as indicated earlier, the special position of the respondents was aired during argument, the relief claimed by them was always grounded only in sections 26 and 28 of the Constitution and not on the breach of any statute (such as the Prevention of Illegal Evictions Act, or the Housing Act), the common law or any other provision of the Constitution. Accordingly, it is inappropriate for this Court to order any relief on grounds other than sections 26 or 28 of the Constitution.

[92] This judgment must not be understood as approving any practice of land invasion for the purpose of coercing a state structure into providing housing on a preferential basis to those who participate in any exercise of this kind. Land invasion is inimical to the systematic provision of adequate housing on a planned basis. It may well be that the decision of a state structure, faced with the difficulty of repeated land invasions, not to provide housing in response to those invasions, would be reasonable. Reasonableness must be determined on the facts of each case.

I. Summary and conclusion

- [93] This case shows the desperation of hundreds of thousands of people living in deplorable conditions throughout the country. The Constitution obliges the state to act positively to ameliorate these conditions. The obligation is to provide access to housing, health-care, sufficient food and water, and social security to those unable to support themselves and their dependants. The state must also foster conditions to enable citizens to gain access to land on an equitable basis. Those in need have a corresponding right to demand that this be done.
- [94] I am conscious that it is an extremely difficult task for the state to meet these obligations in the conditions that prevail in our country. This is recognised by the Constitution which expressly provides that the state is not obliged to go beyond available resources or to realise these rights immediately. I stress however, that despite all these qualifications, these are rights, and the Constitution obliges the state to give effect to them. This is an obligation that courts can, and in appropriate circumstances, must enforce.
- [95] Neither section 26 nor section 28 entitles the respondents to claim shelter or housing immediately upon demand. The High Court order ought therefore not to have been made. However, section 26 does oblige the state to devise and implement a coherent, co-ordinated programme designed to meet its section 26 obligations. The programme that has been adopted and was in force in the Cape Metro at the time that this application was brought, fell short of the obligations imposed upon the state by section 26(2) in that it failed to provide for any form of relief to those desperately in need of access to housing.
- [96] In the light of the conclusions I have reached, it is necessary and appropriate to make a declaratory order. The order requires the state to act to meet the obligation imposed upon it by section 26(2) of the Constitution. This includes the obligation to devise, fund, implement and supervise measures to provide relief to those in desperate need.
- [97] The Human Rights Commission is an *amicus* in this case. Section 184 (1) (c) of the Constitution places a duty on the Commission to "monitor and assess the observance of human rights in the Republic." Subsections (2) (a) and (b) give the Commission the power:
- "(a) to investigate and to report on the observance of human rights;*
- (b) to take steps to secure appropriate redress where human right have been violated."*
- Counsel for the Commission indicated during argument that the Commission had the duty and was prepared to monitor and report on the compliance by the state of its section 26 obligations. In the circumstances, the Commission will monitor and, if necessary, report in terms of these powers on the efforts made by the state to comply with its section 26 obligations in accordance with this judgment.
- [98] There will be no order as to costs.



Compilation of Selected Adjudication on Housing Rights



South African Constitutional Court

Jaftha & Anor. v. Van Rooyen & Anor⁽⁵⁷⁾

Facts:

The plaintiffs alleged that legislation which allowed for debtors' homes to be attached and sold to satisfy petty debts, even where this might result in homelessness, violated the negative aspect of the constitutional right to have access to adequate housing (Section 26).

Decision:

When considering what constitutes, "adequate housing," the Court referred to international law, including the ICESR and jurisprudence of the CDESCR. The Court emphasised that the need for the protection of security of tenure in Section 26 must be viewed in light of past forced removals from land and evictions.

The Court found that any measure which permits a person to be deprived of existing access to adequate housing limits the constitutional right to housing. The Court proceeded to consider whether such a measure is "reasonable and justifiable in an open and democratic society based on human dignity equality and freedom." The Court held the legislation to be unconstitutional to the extent that it allowed execution against the homes of indigent debtors where they lose their security of tenure. The legislation was unjustifiable and could not be saved to the extent that it allowed for such executions where no countervailing considerations in favour of the creditor justify the sales in execution.

The Court ordered the provision of judicial oversight over sales in execution against the immovable property, enabling a court to determine whether an execution order against immovable property is justifiable in the circumstances of the case.



South African Constitutional Court *Port Elizabeth Municipality v. Various Occupiers*⁵⁹¹

Facts:

The occupiers resided on privately-owned land within the Municipality which was zoned for residential purposes. Most of the occupiers had come there after being evicted from other land. They had not applied to the Municipality for housing. Responding to a neighbourhood petition, whose signatories included the owners of the property, the Municipality sought an eviction order in the High Court. The occupiers indicated they were willing to leave the property if they were given reasonable notice and provided with suitable alternative land on to which they could move. They refused the Municipality's offer that they move to another area, stating that that area was crime-ridden, unsavoury and overcrowded. Furthermore, they feared they would have no security of occupation there and find themselves liable to yet further eviction.

The Municipality contended, *inter alia*, that if alternative land was made available to the occupiers, they would effectively be 'queue-jumping', disrupting the established housing programme and forcing the Municipality to grant them preferential treatment.

Decision:

The Court stated that Section 26(3) of the South African Constitution expressly acknowledges that eviction of people living in informal settlements may take place, even if it results in loss of a home. However, in making its decision whether or not to grant an eviction order in terms of Section 6 of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 ('PIE')⁴⁴⁸ (which provides that a court may grant such an order "if it is just and equitable to do so") a court must take account of all relevant circumstances, including (a) the manner in which occupation was effected,⁴⁴⁹ (b) its duration,⁴⁵⁰ and (c) the availability of suitable alternative accommodation or land.⁴⁵¹

With regard to (a), the Court referred expressly to 'queue-jumpers' stating that "*persons occupying land with at least a plausible belief that they have permission to be there can be looked at with far greater sympathy than those who deliberately invade land with a view to disrupting the organised housing programme and placing themselves at the front of the queue.*" The Court stated that, on the facts, the occupiers were not 'queue jumpers'. In considering (b) the Court stated that a court will be far more cautious in evicting well-settled families with strong local ties, than persons who have recently moved on to land and erected their shelters there. With regard to (c), the Court stated that there is no unqualified constitutional duty on local authorities to ensure that in no circumstances should a home be destroyed unless alternative accommodation or land is made available: "*In general terms, however, a court should be reluctant to grant an eviction against relatively settled occupiers unless it is satisfied that a reasonable alternative is available, even if only as an interim measure pending ultimate access to housing in the formal housing programme.*"

The Court stated further that while the existence of a programme that is designed to house the maximum number of homeless people over the shortest period of time in the most cost effective way would go a long way towards establishing a context that would ensure that a proposed eviction would be just and equitable, it falls short of being determinative of whether, and under what conditions, an actual eviction order should be made in a particular case.

Given the special nature of the competing interests involved in eviction proceedings launched under section 6 of PIE, the Court said that, absent special circumstances, it would not ordinarily be just and equitable to order eviction if proper discussions, and where appropriate, mediation, have not been attempted. In appropriate circumstances the courts should themselves order that mediation be tried.

The Court concluded that, in light of the circumstances of this case, it was not just and equitable to order the eviction of the occupiers.



Compilation of Selected Adjudication on Housing Rights



South African Constitutional Court

President of the Republic of South Africa & Ors. V. Modderklip Boerdery (Pty) Ltd. (2004)^[42]

[This case dealt with two related matters. The first was an application for leave to appeal an eviction order granted under the Prevention of Illegal Eviction and Unlawful Occupation of Land Act by the High Court against 40,000 illegal occupiers of a farm owned by Modderklip Boerdery. The second matter involved an attempt on the part of the landowner to get the State to enforce the eviction order. Referring to its decision in the Grootboom case, the Court stated that the question regarding the illegal occupiers' constitutional right of access to adequate housing was whether the State had met its constitutional obligations by taking steps in relation to those in 'desperate need' or had any plan for the 'immediate amelioration of the circumstances of those in crisis.' The Court found the State wanted in both respects. In response to the State's claims that to provide housing to the squatters would reward 'queue-jumping' and encourage land invasions, the Court stated that this concern was not justified on the facts of the case. The Court held further that Grootboom made it clear that the Government has an obligation to ensure, at the very least, that evictions are executed humanely and that the order in question could not be executed – humanely or otherwise – unless the State provided some land. This factor had to be taken into account without granting the occupiers priority over others in need of housing. The Court therefore ordered that the residents were entitled to continue occupying the land until the State or provincial authority made alternative land available to them. With regard to the landowner's claims, the Court stated that it was unacceptable that Modderklip Boerdery should be required to bear, without recompense, the State's constitutional duty to provide land for some 40,000 persons. The Court held that the State had violated the landowner's rights to equality and property and awarded the landowner constitutional damages to be calculated in accordance with the Expropriation Act of 1975.]



Compilation of Selected Adjudication on Housing Rights



South African Constitutional Court

*President of the Republic of South Africa & Ors. V. Modderklip Boerdery (Pty) Ltd. (2005)*⁴⁷¹

Facts:

This judgment dealt with two related matters. The first was an application for leave to appeal an eviction order granted under the Prevention of Illegal Eviction and Unlawful Occupation of Land Act (PIE)³⁶ by the High Court against 40 000 illegal occupiers of a farm owned by Modderklip Boerdery. The second matter involved an attempt on the part of the landowner to get the State to enforce the eviction order.

Decision:

While the Supreme Court of Appeal had largely based its decision on the illegal occupiers' constitutional right of access to adequate housing and the need for the state to provide alternative land for them, the Constitutional Court primarily focused on Modderklip's constitutional right "to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or another independent, impartial tribunal of forum." The Court held that the obligation on the State goes further than mere provision of a legislative framework, mechanisms and institutions such as the courts and an infrastructure to facilitate the execution of court orders. The State is also obliged to take reasonable steps to ensure that "large-scale disruptions in the social fabric do not occur in the wake of the execution of court orders, thus undermining the rule of law." The Court stated further that it is unreasonable for a private entity to be forced to bear the burden, which should be borne by the State, of providing the occupiers with accommodation. The circumstances of this case were extraordinary in that it was not possible to rely on mechanisms normally employed to execute evictions. The Court stated that to execute the eviction order granted in this case and evict tens of thousands of people would cause social chaos, misery and disruption, "[i]n the circumstances of this case, it would also not be consistent with the rule of law." The State was constitutionally obliged to take reasonable steps to ensure that Modderklip was provided with effective relief. It could have done so by expropriating the property in question or by providing other land. It had not done so and thus violated Modderklip's right to an effective remedy. The Court upheld the award of compensation to Modderklip made by the Supreme Court of Appeal (who had held that the State had violated the landowner's rights to equality and property) as "appropriate relief" for violation of its constitutional rights. Such compensation would be offset against any compensation to be given were the State to expropriate the land.



Compilation of Selected Adjudication on Housing Rights



Cape High Court of South Africa

The City of Cape Town v. Rudolph⁽⁴³⁾

[The Cape High Court refused an eviction order against homeless persons on vacant land on procedural grounds, declaring that the City of Cape Town was in breach of its statutory and constitutional obligations as set out in Grootboom, and ordering it to remedy the breach and report back to the court.]



House of Lords of the United Kingdom *South Bucks District Council & Anor. V. Porter*^[52]

Facts

The appellant was a 62 year old Romany gypsy^[53] woman who, having bought a site located in the ‘Green Belt’ in 1985, had lived there ever since with her husband in breach of planning control.

The appeal to the House of Lords sought to reverse the quashing by the Court of Appeal of a planning inspector’s grant of planning permission for the retention of a mobile home and outbuildings on the site. The inspector had held that there had been a material change of circumstances since previous rejections of the appellant’s application for planning permission. In providing reasons for his decision, the inspector had given weight to the appellant’s status as a gypsy, the lack of availability of an alternative site for her to go to, and her chronic ill health. The last two circumstances had not existed previously and, in the inspector’s view, constituted special circumstances such as to override development policies. The Council alleged that the inspector had given inadequate reasons for his decision and had failed to have regard for the unlawfulness of the appellant’s occupation of the land.

Decision

Reversing the Court of Appeal’s decision, the House of Lords set out the conditions necessary to sustain a ‘reasons challenge’ in the planning context and ruled that the inspector’s reasons were clear and ample.

With regard to whether the prior unlawful use of the site was a material consideration militating against the grant of planning permission, the House of Lords stated that where an occupier seeks to rely upon the very fact of his continuing use of land, it must be material to recognise the unlawfulness of that use as a consideration operating to weaken his claim. Whether or not the unlawfulness was material would depend on how the hardship claim was phrased. The House of Lords stated that if the appellant had been relying on her long period of residence to assert that removing her from the site would cause her greater hardship than if she were to be removed after a much shorter occupancy, “[s]uch a claim would seem ... to raise issues closely analogous to those arising on an Article 8^[54] claim and to require substantially the same approach to the lawfulness or otherwise of the period of occupation as the European Court of Human Rights adopted in *Chapman v United Kingdom*”^[55]. In this case, however, the unlawfulness of the prior occupation was of little if any materiality, as the changed circumstances relied on by the inspector related to the lack of an alternative site and the appellant’s ill-health — neither of which appeared to have owed anything to the length of her residence at the site.