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ANGOLA

Mass forced evictions in Luanda - a call for a human rights-based housing policy

November 2003

Summary

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"They treated us like cattle." This phrase was repeatedly used by victims of three mass forced evictions which took place between 2001 and 2003 in Luanda, Angola's capital, and are described in this report.

Forced evictions - evictions carried out without due process - are a violation of human rights.

Large-scale evictions took place in the Boavista, Soba Kapassa and Benfica areas of Luanda. They were arbitrary and carried out without adequate prior notice or consultation. Armed police and municipal eviction squads sometimes used excessive force. A total of over 5,000 houses were demolished. Some of the evicted families were promptly given alternative housing but thousands had to live in tents for about two years before about half were re-housed. Many others remain without alternative housing. Many victims lost possessions. Some lost their livelihoods or schooling. Some suffered physically as a result of being left without shelter. Many felt the psychological impact of being arbitrarily uprooted.

One of the main challenges facing Angola, now that the 27-year conflict is over, is to address the needs of millions of city dwellers living in unplanned settlements of self-built houses and without adequate access to utilities such as clean drinking water, sanitation, electricity and refuse collection, or services, such as schools and clinics.

About 3.5 million people, a quarter of the country's population, live in Luanda. Most of them have no legal security of tenure. The commercial pressure on prime urban land in the capital places them at risk of forced eviction.

Amnesty International is calling on the authorities to place a moratorium on all mass evictions until such time as there is adequate legal and other protection against forced evictions.

Forced evictions almost invariably affect the poorest and most vulnerable members of society. They increase social inequality and poverty and they frequently give rise to social conflict.

This report shows how the mass forced evictions in Luanda violated the right to adequate housing and other human rights contained in national laws and in international human rights treaties to which Angola is a State Party.

Improving the housing and other facilities in Luanda and other areas, and increasing security of tenure would benefit the economy as a whole. Improvements should be based on a housing policy which conforms to human rights standards. As yet, there is no clear housing policy, although new laws on land and urban development have been drafted and opened for public debate.

The aim of the present report is to contribute to this debate and to the adoption of human rights-based policies and laws on housing and urban development. This report contains recommendations to the authorities which would, if implemented, provide protection against forced evictions and constitute concrete steps towards the realization of the right to adequate housing.

Selected international standards, commentaries and jurisprudence on the right to adequate housing are appended to the report. These are intended as a reference tool for government officials, members of the National Assembly and non-governmental organizations, including residents' committees, and any others who have an interest in or who are involved in promoting human rights-based housing policies and laws.

This report summarizes a 78-page document (30,500 words): Angola, Mass forced evictions in Luanda – a call for a human rights-based housing policy (AI Index: AFR 12/007/03) issued by Amnesty International in November 2003. It is also being published in Portuguese. Anyone wishing further details or to take action on this issue should consult the full document. An extensive range of our materials on this and other subjects is available at <http://www.amnesty.org> and Amnesty International news releases can be received by email:

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INTERNATIONAL SECRETARIAT, 1 EASTON STREET, LONDON WC1X 0DW, UNITED KINGDOM

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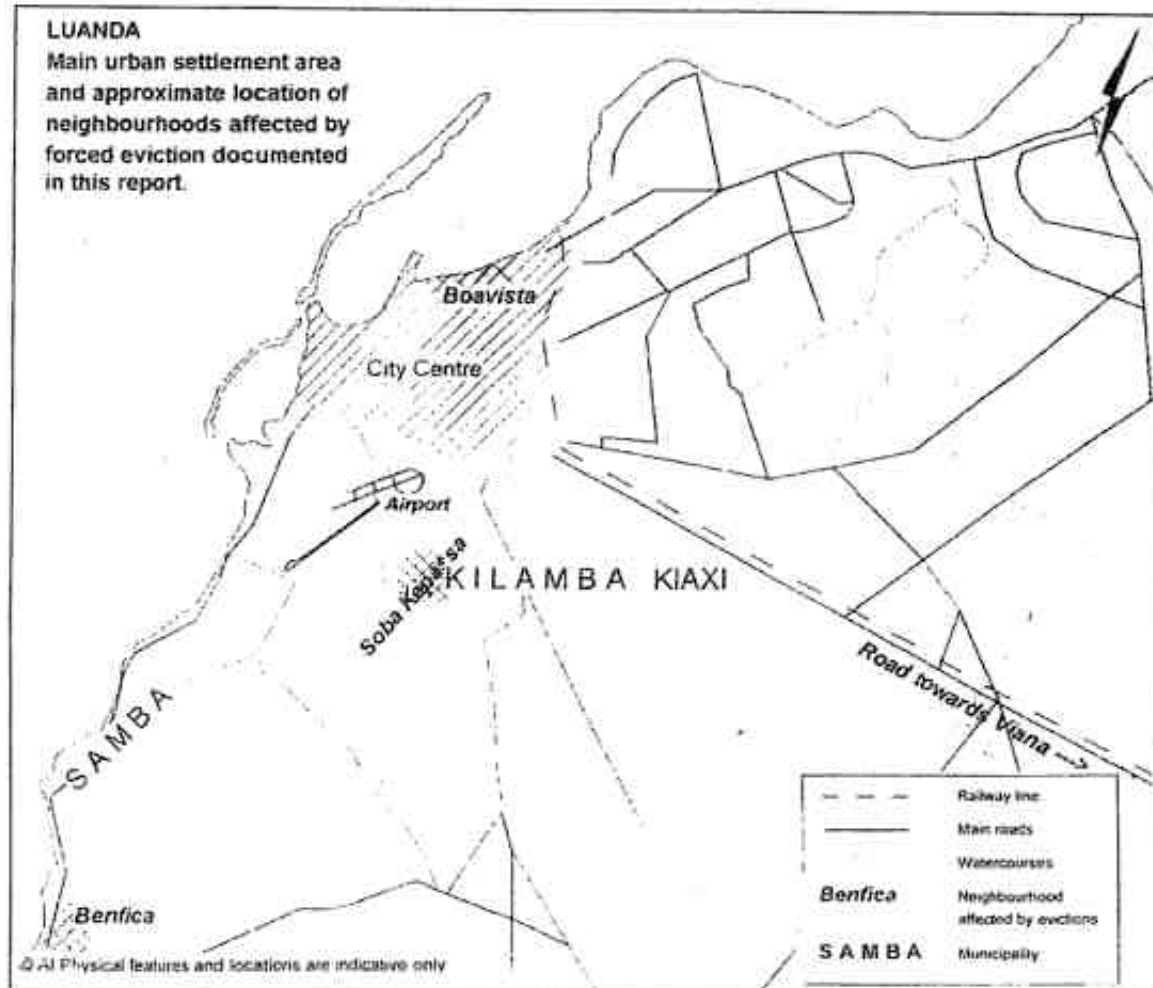
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TABLE OF CONTENTS

- 1. Introduction**
- 2. Urban development in Luanda**
- 3. Forced evictions 2001 – 2003**
 - 3.1 Boavista
 - 3.2 Bairro Soba Kapassa
 - 3.3 Comuna de Benfica
- 4. Forced evictions and the law - Angolan law and international human rights law**
 - 4.1 State obligations concerning the implementation of the right to adequate housing
 - 4.2 The prohibition of forced eviction
 - 4.3 Protection against forced eviction
 - a) security of tenure
 - b) legislation prohibiting forced eviction
 - c) the requirement to provide adequate information and ensure effective consultation
 - d) legal remedies
 - 4.4 State action to facilitate access to adequate housing
 - a) facilitating the work of self-help groups
 - b) promoting awareness of the law and human rights principles
 - 4.5 State provision of adequate housing for the needy – minimum core obligations
 - 4.6 The right to adequate housing – the meaning of “adequate”
 - 4.7 Justiciability
- 5. Amnesty International’s recommendations**
 - 5.1 Recommendations for prompt action to protect fundamental rights
 - 5.2 Recommendations for progressive steps to achieve fulfilment of the right to adequate housing as a component of the right to an adequate standard of living
- 6. Notes**
 - 6.1 List of abbreviations
 - 6.2 Human rights treaties to which Angola is a State party
 - 6.3 Relevant addresses and web sites
- 7. Appendices containing selected international standards on the right to adequate housing and the prohibition of forced eviction**

Main urban settlement area and approximate location of neighbourhoods affected by forced eviction documented in this report.



ANGOLA

Mass forced evictions in Luanda - a call for a human rights-based housing policy

1. Introduction

Thousands of families spent nearly two years in tents after they were forcibly evicted from their homes in Boavista, an area near the port of Luanda, Angola's capital city, in July 2001. From late 2001 to December 2002 over a thousand houses in Soba Kapassa ward in south Luanda had been razed to the ground and their occupants left homeless. By April 2003, over 470 houses had been demolished in Benfica; some evicted families were given homes in a new housing estate to the north of Luanda, over 40 kilometres away. All these evictions were arbitrary and carried out at police gun-point. In most cases there was no provision for adequate alternative accommodation.

Forced eviction – a term used internationally to describe evictions that are carried out without due process – is a violation of human rights, particularly the right to adequate housing, which is a component of the right to an adequate standard of living.

Few of Luanda's inhabitants enjoy an adequate standard of living. Most of them live in overcrowded shanty towns, or *musséques* which began to develop around the central business district and higher income residential areas decades before Angola's independence from Portugal in 1975.¹ They expanded as the city's population increased and as people fled to the city as a direct or indirect result of the 27-year conflict.

A peace agreement was reached in April 2002, following the death in February 2002 of Jonas Savimbi, the leader of the armed opposition *União Nacional para a Independência Total de Angola* (UNITA), National Union for the Total Independence of Angola.

Now that there is peace, the people of Angola have the opportunity to address serious problems that were neglected during the conflict. One of the most pressing is the question of providing access to land and increasing security of tenure in urban and rural areas. The authorities are aware of the need for reform and new land laws and a law on urban development have been drafted and published for public consultation.

This report focuses on arbitrary forced evictions in Luanda, home to at least a quarter of Angola's estimated population of 14 million people, but the human rights issues raised are relevant to the land problem as a whole.² Amnesty International is calling on the government to stop forced evictions.

¹ *Musséque* in the Kimbundu language means "sandy place" and came to be applied to the peri-urban areas of informally built housing.

² The last national census was carried out in 1970. The UN Population Fund estimated that, at a growth rate of 3%, the national population in 2003 is about 14 million. The population of Luanda is estimated to be over 3.5 million.

This report also seeks to contribute to the development of human rights-based policies and laws on housing and urban development. It discusses current Angolan law in the light of international human rights law and standards on the right to adequate housing and the right not to be forcibly evicted. Amnesty International's recommendations to the Angolan authorities include suggestions for increasing protection against forced evictions as well as for the adoption of concrete steps towards the realization of the right to adequate housing, including legislation to ensure that this right may be protected by the courts.³

2. Urban development in Luanda – the context

Seen from the window of an aeroplane, Luanda presents a vivid impression of the density and informality of settlement around the central business district.

The expansion of the urban core, which had been interrupted by the war, increased in tandem with the development of oil exploration in the late 1990s. Condominiums for the staff of oil companies and other national and multi-national corporations were built, mostly in the south of Luanda. These and other developments, including the expansion of Luanda's port, put corresponding pressure on the *musséques*. The 2002 peace agreement has encouraged an acceleration of this process.

In the absence of any policy on urban development Luanda's *musséques* developed informally as increasing numbers of people without homes built houses on available spaces, with whatever materials they could find or afford.

Sometimes, in areas closer to the centre, houses encroached on roads or above drainpipes. In certain areas homes are perched on barren slopes or beneath the *morros* or small cliffs which collapse under heavy rain. Little has been done to secure the slopes or cliffs against erosion, to provide adequate rain-water drains or to ensure that new areas are properly planned so that roads and drains may be laid down. In the *musséques* few areas have adequate facilities such as water, electricity, sanitation, refuse collection, schools and clinics.

There is little security in the peri-urban areas. The overcrowding, pervasive poverty and lack of social support make these areas fertile ground for crime. An exacerbating factor is the large number of weapons in civilian hands. There are police stations in all municipalities, and a project to restructure and reform the police has been initiated. However, the lack of adequate training and resources and low salaries have contributed to the incidence of unnecessary and excessive use of force and acts of corruption. Furthermore, not enough has been done in the past to prevent abuse or to bring to justice those suspected of carrying out human rights violations.

Musséque dwellers have few employment opportunities. The main income generators, oil extraction, which contributed 60% of Gross Domestic Product in 1999, and diamond mining,

³ The appendices to this report contain copies of international standards on the right to adequate housing. It is intended as a resource for those involved in the development of housing policies and laws. This report is also available in Portuguese.

provide few jobs for urban dwellers.⁴ Although a tiny minority of Luanda's inhabitants work in the formal sector, mostly in low-paid state administration jobs, the vast majority try to earn a living through petty trade or other informal occupations.

Access to adequate housing and security of tenure, particularly for the poor, is almost entirely absent. Few resources have been devoted to providing affordable housing. Those without formal jobs have little opportunity of arranging credit so that they can buy building materials.

Very few people have full legal title to their land. The system for registering land and housing almost collapsed during the war and was unable to cope with the expansion of households in Luanda. The procedures for obtaining official permission to occupy or build on land appear to be complicated and slow, and applicants are vulnerable to exploitation and expropriation by unscrupulous or corrupt officials.

There is no representation at the local level. Luanda, one of Angola's 18 provinces, is administered by the Luanda Provincial Government. It is divided into nine municipalities [*municípios*] which are sub-divided into communes [*comunas*], sectors [*sectores*], wards [*bairros*] and blocks [*blocos*]. The current provincial governors were appointed by the State President although, in accordance with a recent change in the law, they now report to the Prime Minister and the Minister of Public Works. Municipal and communal administrations are responsible to the provincial government.⁵ Residents Committees were formally established in Luanda and other cities in 1983 and used to be responsible for certain tasks including refuse collection. The influence of these committees, often associated with the ruling party, declined following the political reforms and economic liberalization of the early 1990s.⁶ However, in the three areas studied in this report, residents set up or revived committees in response to the threat of eviction.

The risk of forced eviction is exacerbated by the absence of a clear policy concerning urban land and property. The system for awarding and monitoring development contracts is inadequate and opaque, leaving room for corrupt practices. The authorities often fail to give notice of intention to develop an area, and there is no tradition of adequate consultation. Residents therefore have little opportunity to contest official decisions. The Provincial Governor, Simão Paulo, has stated an intention to launch a program to discourage illegal land occupation and warned that houses put up without permission would be demolished but did not announce plans for providing access to alternative housing for those to be evicted.⁷

When it endorsed the Istanbul Declaration on Human Settlements and the Habitat Agenda in 1996, the government undertook to work progressively towards ensuring "security of tenure,

⁴ World Bank, April 2003, http://www.worldbank.org/afr/ao/ctry_brief.htm

⁵ The Lusaka Protocol, a peace agreement reached in 1991, included provisions for democratic local institutions, but war resumed and local elections were not held.

⁶ *Here in the city there is nothing left over for lending a hand*, Paul Robson and Sandra Roque, Action for Rural Development and the Environment and Development Workshop, published by Development Workshop, Angola, 2001.

⁷ Interview with the Provincial Governor in *Folha 8*, 12 October 2002.

protection from discrimination and equal access to affordable adequate housing" for all citizens.⁸ It has taken some steps towards this goal but much remains to be done.

The draft new Land Law and Law of Territorial and Urban Management are currently being debated publicly. This provides an opportunity to ensure that improvements are introduced. The draft laws have apparently not been based on any clear policy and contain no guidance on how conflicting objectives may be balanced. Furthermore, they specifically make it illegal to acquire land through long-term occupation.⁹ This potentially removes any protection that existing urban occupants may have under the Civil Code. The draft laws, like the current law, allow the state and local authorities to expropriate land required for purposes defined by law, and those affected may claim compensation.

In 2003 the government established a new Ministry of Urban Development and Environment. The Ministry held a seminar on the management of urban space in late May 2003. Participants, including relevant government authorities and non-governmental organizations (NGOs), made recommendations for the development of new policies and legislation to improve access to housing, including for the poor.

It is important that the new policies and laws accord fully with international human rights standards and take into account the substantial international jurisprudence and other published research and analysis surrounding the right to adequate housing. Forced evictions are an inversion of this right. New laws will take time to implement but forced evictions may, and should, be stopped immediately.

The following three case-studies of mass forced evictions illustrate what has been happening in the absence of a human rights-based housing and urban development policy. The problem is not confined to these three cases and there have been reports that further evictions have been planned in other parts of Luanda, including Bitá Tanque in Viana Municipality, and Monte Pio in central Luanda where evictions were reported to have been ordered by the Presidential Office of Special Operations rather than the Luanda Provincial Government. In August 2003, there were reports of evictions in Honga in south Luanda carried out by a public development company during which one a protester was killed by a stray police bullet and another was beaten.

3. Forced evictions 2001 – 2003

The UN Committee on Economic, Social and Cultural Rights (CESCR), the body responsible for monitoring the implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR), describes forced eviction as "the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land

⁸ Istanbul Declaration, principle 8. The Angolan Government voted in favour of the adoption of the declaration at the United Nations Conference on Human Settlements (Habitat II) in Istanbul, Turkey, in June 1996.

⁹ Acquiring title to land by prescription is known as "usucapio" – "... the transfer of rights in, or title to, real property by enjoying it peaceably, without interruption, openly and as if it were of right over a long period of time." *The Law Dictionary*, Anderson Publishing Co, Cincinnati, 1988.

which they occupy, without the provision of, and access to, appropriate forms of legal or other protection."¹⁰ The CESCR has recognized that evictions may be justified in some circumstances but they must be carried out in accordance with laws which respect human rights and which specify in detail when evictions may be permitted.¹¹

Forced evictions violate a range of rights. They overturn the right to adequate housing, which is a component of the right to an adequate standard of living. In addition, they subject people to arbitrary or unlawful interference with their privacy, family or home. In some cases, forced evictions are accompanied by torture or ill-treatment. Victims may also be denied their right of access to legal remedy or to seek compensation. These rights are protected by international human rights treaties to which Angola is a State party including the African Charter on Human and Peoples' Rights (African Charter) which it ratified on 9 October 1990, the two International Covenants, the ICESCR and the International Covenant on Civil and Political Rights (ICCPR), to which Angola acceded on 10 January 1992, and other international human rights treaties and standards.¹²

The information in this report concerning forced evictions was gathered from various sources including copies of official and other documents related to the evictions and interviews, held during an Amnesty International visit to Luanda in April and May 2003, with victims of forced eviction and with representatives of NGOs working to support them. Amnesty International has written to the Luanda Provincial Government to express its concerns about the forced evictions but at the time of writing had received no reply.

The provincial authorities have tolerated long-term occupation of land and the building of houses and they are aware of the difficulty of obtaining official permission to occupy and build on land. However, they evidently believe that those without full legal title may be evicted without recourse to legal procedures concerning expropriation of property.

The following case-studies reveal a pattern of human rights violations. Local government officials failed to provide full and truthful information about plans for eviction and there was little meaningful consultation with residents or effort to find an alternative to evicting them from their homes. None of the evictions was carried out on the basis of a court order. Evictions were carried out violently and the authorities responsible for ensuring respect for the law failed to take appropriate action to stop the abuses or to investigate allegations of human rights violations. Some people were left without shelter, seriously endangering their health. Many lost their possessions. Those who were evicted may not have been living in adequate housing before being evicted but most were ejected into even worse conditions. For many, the evictions also entailed loss of employment or schooling. For all, the psychological impact was severe: victims spoke of being discriminated against because they were poor and being treated like cattle or chickens.

¹⁰ General Comment No. 7: The right to adequate housing: forced evictions, Committee on Economic, Social and Cultural Rights [1997], para. 3.

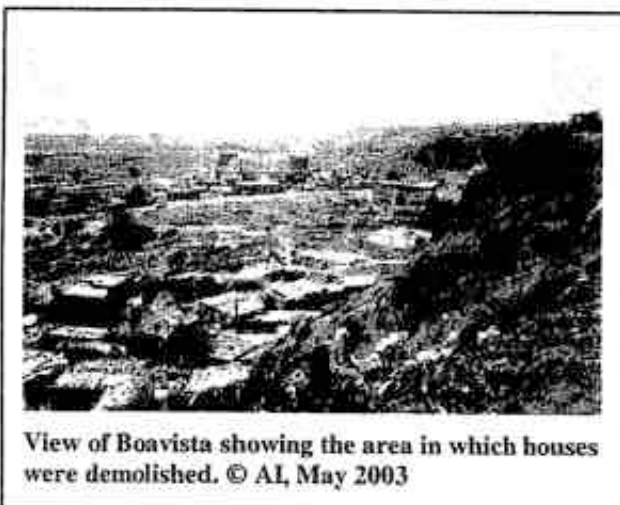
¹¹ *Ibid.* para 14.

¹² A list of selected international human rights treaties to which Angola is a State Party is included in Section 6 of this report.

Lawyers working with the victims of forced eviction are preparing legal actions against the provincial authorities to seek restitution of the land which the victims had occupied or compensation for the losses incurred. However, to date, none of these cases has been tried.

3.1 Boavista

Boavista, one of the oldest *musséques* in Luanda, is situated between the port area of Luanda and a luxury residential suburb, from which it is separated by a winding cliff. Under heavy rain, parts of the cliff wash down, engulfing adjacent houses. Evictions in Boavista took place without meaningful prior consultation and in the first week two people were killed and others injured after police opened fire. More than 4,000 families were forcibly evicted from Boavista between June and September 2001 and transported to Viana municipality, over 40 kilometres south east of Luanda, where they lived in tents until about half of them were re-housed in 2003.



View of Boavista showing the area in which houses were demolished. © AI, May 2003

In September 2000 and in April and May 2001, several people, including children, had died as a result of landslides.¹³ In June 2001, Simão Paulo, the then vice-Governor of Luanda Province, reportedly announced in a television program that the government intended to 'evacuate people from Boavista to a safer area. The authorities then began registering the houses to be demolished. It was rumoured that the real reason for the evictions was that the area had been earmarked for constructing a mixed residential and commercial district.

In response to this threat of eviction, on 19 June 2001, residents set up the *Comissão de Moradores Unidos do Bairro Boavista* (Boavista Ward United Residents' Commission) to provide a channel for negotiation with the authorities. In a letter to the provincial government dated 22 June, the residents expressed concern that all the houses in Boavista were being registered for demolition, not just those in danger of landslides. They complained that the registration was being done hastily and inaccurately. They were also concerned that those evicted would be forced to live in tents far from the city and without adequate services. They requested a meeting with the authorities to discuss their concerns. Residents said that they received no reply.

¹³ In September 2000, after a landslide had killed three children, 107 houses were reportedly registered for demolition, but as nowhere could be found to re-house the families they remained in Boavista.

According to residents, they were surprised on 30 June 2001 to see a long line of police approaching Boavista with two bulldozers behind them. They hastily erected barricades made of the rusting shells of wrecked cars and burning tyres. The police retired, but early on Sunday, 1 July 2001, a large contingent of security forces surrounded Boavista. It included the paramilitary *Polícia de Intervenção Rápida* (PIR), Rapid Intervention Police, members of the ordinary (public order) police, and the army. Mounted police and police dogs were also said to be present and helicopters hovered above.

The police reportedly began forcing people out of their houses. Residents protested loudly. Some threw stones and a policeman was hit on the head. Police fired into the air. As a result, Emílio Rafael and Andrade Jungo Jaime – who was said to have received two bullets in the head – were killed. According to reports, others were injured by police bullets: 17-year-old Cândida Quissanga was hit in the right thigh as she was washing dishes outside her house and António Samuel was hit in the left knee. José Santos Cabanga, Paulo Gomes, and a mechanic called Marcelino also reportedly received bullet injuries and José Leonardo Caninga, a 27-year-old barber, had his left arm bitten by a police dog.

No demolitions were carried out that day. After police left the scene later in the morning, some of the residents went to the Sambizanga Municipal Administration and broke windows. Others damaged government vehicles. At least 13 people were arrested.

On 3 July 2001, according to residents, police conducted a search in Boavista and found eight weapons. In a communiqué, police said that they had seized rifles, grenades, pistols, radio transmitters and drugs and claimed that the residents had attacked them, using firearms.

José Rasgadinho, the Coordinator of the Residents' Commission, was arrested at 4 am at his home on 3 July. Seven other people were arrested later that morning, including Francisco Luís dos Santos, a member of the Commission. They¹⁴ were interrogated and then released on 4 July for lack of evidence against them. On the same day, the other 13 detainees appeared before a municipal *Tribunal de Polícia*, (Police Court).¹⁴ Their lawyer argued that no arms had been found in their possession. The prosecution provided no witnesses and so the case was deferred. On 6 July the detainees were released pending trial. On 9 July the court dropped the case on the grounds that the trial had not taken place within the period stipulated by law.

There was a meeting on 6 July between the residents and the authorities to discuss the evictions but no agreement was reached.

The first evictions took place on 7 and 8 July, when a total of 117 houses were said to have been demolished. The evictions and demolitions proceeded on subsequent weekends. Residents reported that during these evictions there were instances of people being beaten by members of the eviction and demolition squad. Some of the evicted residents were able to take furniture and other possessions with them to Viana municipality. The authorities had

¹⁴ The Police Courts consist of lay judges who try cases of defendants arrested in *flagrante delicto* who are accused of crimes which carry a maximum of two years' imprisonment. The procedure used is known as the police correctional procedure.

provided trucks but there was no inventory and belongings were thrown carelessly into the trucks causing damage or loss.

José Rasgadinho was again detained on 15 September 2001, after his house and those of other commission members had been registered for demolition. According to his arrest warrant he was accused of "aggression" which is not specified as a crime in the penal code. He was interrogated and released a few days later for lack of evidence. He reportedly returned to Boavista to find that his house had been demolished and that he had lost his possessions.

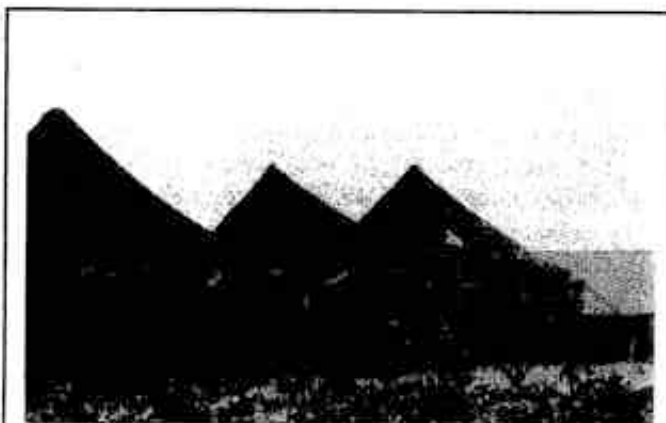


Figure 1 Weather-beaten tents in Zango, Viana municipality. © Mãos Livres, May 2003

When the evictions stopped on 29 September 2001, over 4,000 families had been moved to Viana municipality where they had been given tents in two newly cleared sites in areas known as Zango and Terra Nova II. Some tents reportedly held up to four families. Latrines were built and a large tent was provided for a school. There were almost no employment opportunities in the area and few could afford to travel to central Luanda for work.

The authorities promised to provide houses for the former

Boavista residents but progress was very slow. In November 2002 President José Eduardo dos Santos officially opened the first house in a project which reportedly involved the building of thousands of new houses in Calumbo commune, not far from the camps. However, at the time, few of the houses were ready for occupation. By January 2003, 500 houses had been completed but, according to the Boavista Ward United Residents' Commission, 137 had been allocated to people who were not former Boavista residents and who included local government and other officials. In February 2003, following complaints by former Boavista residents and others, President dos Santos requested the General Inspectorate of State Administration to hold an inquiry into the allocation of the houses.

After further delays, on 7 June 2003, former Boavista residents reportedly occupied about 300 unfinished houses and burned down 121 tents. On the following day a squad of about 250 men, including police and Luanda Provincial Government fiscal agents, evicted the occupiers, beating some. By July, the government controlled newspaper, *Jornal de Angola*, reported that 1,688 former Boavista families who had been living in Zango camp had been re-housed, while 72 Zango residents and 2,465 families in Terra Nova II camp had not received houses.¹⁵ By October 2003, very little further progress had been made. According to residents, 1,776

¹⁵ *Jornal de Angola*, 10 July 2003.

families from Zango had been rehoused but 105 families in Zango and 2,460 others in Terra Nova II continue to live in tents.



Unfinished houses in Zango, Calumbo commune, in May 2003 © Mãos Livres

José Rasgadinho was rearrested on 11 September 2003 and accused of organizing the burning of tents in June. On the following day the prosecutor found no grounds to charge him and ordered his release. However, he was not released until Monday 15 September, reportedly because the police mislaid the release warrant.

At the time of writing the results of the inquiry by the General Inspectorate of State Administration had not been published. There

appears to have been no official investigation into the way the evictions were carried out or into the allegations of excessive use of force and other violations by police on 1 July 2001 and 8 June 2003, and the suspected perpetrators have not been brought to justice.

3.2 Bairro Soba Kapassa

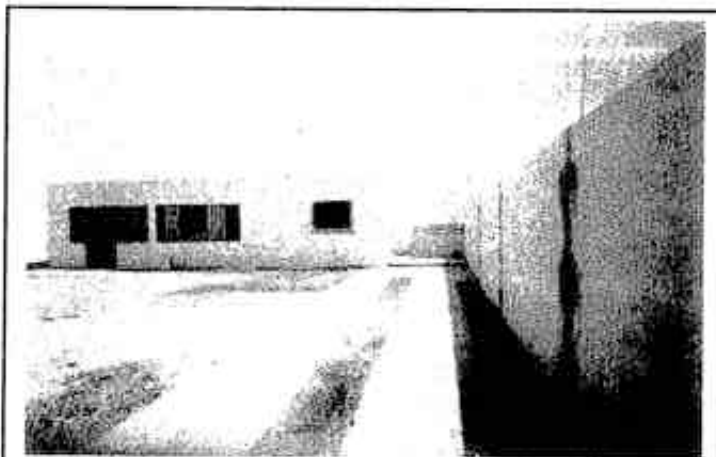
The residents of Soba Kapassa *bairro* (ward) were turning an area of *lavras* (crop gardens) into a carefully-planned housing estate when their vision and initiative met with a harsh response. In just over a year the authorities arbitrarily demolished a total of 1,167 houses, but their reasons for doing so remain unclear. The victims of forced eviction received no compensation.

The housing project which subsequently became known as Bairro Soba Kapassa was conceived in 1998. It was situated near an area called Vila do Estoril in Samba municipality to the south of central Luanda. The residents were aware that they need to obtain permission to use the land and, to facilitate this process, 98 *lavra* occupiers elected a commission, initially called the *Comissão de Urbanização da área da Vila do Estoril*, Vila do Estoril Urbanisation Commission, on 30 May 1998. The municipal authorities registered the Commission on 8 June 1998.

The Commission decided to ensure that the area should be developed in an orderly fashion. They contracted a topographer who marked out the streets and plots and reserved space for schools, parks, clinics and other amenities. The residents paid for the plans and for the grading of roads. They commissioned an architect to produce four different house plans from which residents could choose, according to their means. Having received no reply to their

requests for official permission to build houses, the residents arranged a meeting with José Aníbal Lopes Rocha, the then Provincial Governor, on 17 March 2000 and presented copies of their plans. According to the Commission, the governor congratulated them on their initiative and said that he would set up a Technical Group to work with them to ensure that the plans were properly carried out. He also reminded them that they would have to pay the relevant taxes.¹⁶ In a letter to the Municipal Administration, dated 10 May 2000, and copied to the Commission, the Provincial Government advised that the Municipal Administration would set up a Technical Group to oversee the project.¹⁷

The Technical Group was set up but by mid-2000 had reportedly been unable to visit the area for lack of transport. It was at this point that the Commission noticed a change in the attitude of the authorities towards the project. According to the Commission, during a meeting on 2 September 2000, provincial and municipal administrative officials and police officers arrested Domingos Zua and Matias Manuel Miguel, respectively the coordinator of the Commission and his deputy.¹⁸ The two were subsequently charged with the crime of "disobedience" (disobeying the orders of a public authority). They were tried in a *Tribunal de Polícia* under summary procedures and sentenced to two months' imprisonment and a fine. They were reportedly not told what official orders they had disobeyed. They had no access to defence counsel.



One of the houses which was demolished in Soba Kapassa in December 2002. © CUBSK, 2002

By October 2001, when hundreds of homes had been built, the residents changed the name of their commission to *Comissão de Urbanização do Bairro Soba Kapassa (Vila do Estoril)* (CUBSK), the Urbanization of Soba Kapassa Ward (Vila do Estoril) Commission. According to CUBSK, on 16 October 2001, the Municipal Administrator met with some of the residents and said that 800 *talhões* (plots), amounting to about one-sixth of the housing project, had

¹⁶ Memorandum by the commission to the Luanda Provincial Governor entitled *Acta No 0/CUVE/200, Acta do Encontro Mantido com Sua Excelencia Senhor Governador Provincial de Luanda*, dated 17 March 2000, and reportedly copied to the government.

¹⁷ Letter from the office of the Luanda Provincial Governor dated 10 May 2000 to the Kilamba Kiaxi Administration, Ref: 448/GAB.GOV/2000.

¹⁸ Letter from the Commission to the Provincial Governor dated 20 September 2000.

been designated for a hospital.¹⁹ The residents reportedly agreed to the proposal after the authorities assured them that the affected families would receive the same size of land and type of house in compensation. Forty-two houses had been built in that area and 36 were already occupied.

Without any specific notice, according to residents, some houses in the area designated for the hospital were demolished in late October and others on 1 and 9 December 2001. There were further demolitions, again without notice, on 15 January 2002. Altogether, 42 houses were demolished, reportedly by a commercial firm, Kaboko, which fenced off the land and subsequently began building housing.²⁰

On 22 November 2002, after houses had already been demolished, Simão Paulo, the new Luanda Provincial Governor, reportedly announced publicly that houses were to be demolished in order to construct the Luanda Provincial Hospital which was to be built with funds provided by the Chinese government.

On 30 November 2002, a Commission of Inquiry, which had been set up by the provincial governor, visited Bairro Soba Kapassa and met members of the CUBSK and about 100 other residents. The Commission of Inquiry's task was to verify the legality of the residents' occupation of the land. Residents said that in the meeting they informed the Commission of Inquiry of their efforts to obtain legal title and pointed out the authorities' implied consent to their plans during the meetings in March 2000 and October 2001.²¹ Residents reported that they heard nothing further from the Commission of Inquiry.²²

Representatives of *Mãos Livres* (Free hands), a human rights NGO, and Bairro Soba Kapassa residents visited the Legal Office of the Luanda Provincial Government on Friday 6 December 2002 to inquire about the provincial government's plans for the area. They said they received assurance that there were no immediate plans to demolish houses but that a study was being undertaken.

The residents said they were once again taken by surprise when, on the morning of Monday, 9 December 2002, police armed with AKM-type rifles surrounded the area and a government official announced, using a megaphone, that houses designated for demolition were to be marked with reference numbers. However, according to residents, a group of about 100 *fiscais* (fiscal agents - members of the Luanda Provincial Government Fiscal Department), immediately began demolishing the houses using picks and sledge hammers. Over 100 houses were demolished. According to reports, several people who tried peacefully to prevent the

¹⁹ Letter from the Commission to the Secretary General of the majority political party, the *Movimento Popular de Libertação de Angola*, (MPLA), People's Movement for the Liberation of Angola, (undated).

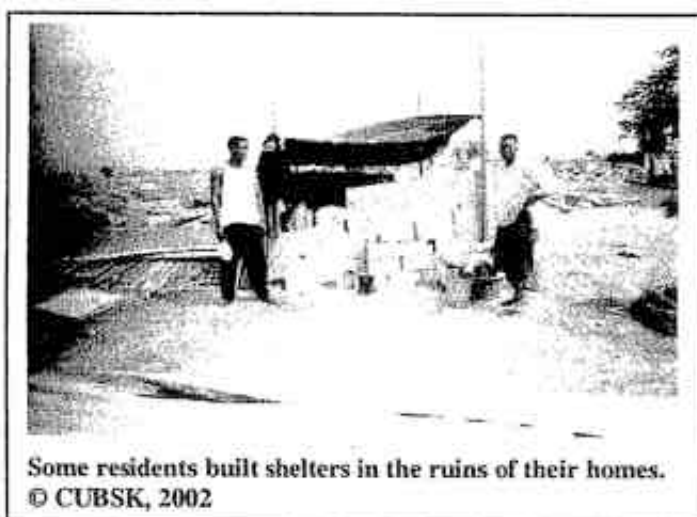
²⁰ Letter from the Commission to the Municipal Administrator, with copies to the Governor of Luanda and National Assembly, dated 12 March 2002.

²¹ Memorandum from the Commission to the Luanda Provincial Government following the visit of the Commission of Inquiry, dated 30 November 2001.

²² Letter from the Commission to the Secretary General of the MPLA (undated).

demolitions were beaten by fiscal agents and police and a woman who was beaten by four fiscal agents sustained cuts and bruises.

Fourteen people were reportedly taken to the Kilamba Kiaxi municipal police station.²³ One of those detained subsequently told Amnesty International that the women and five of the men were held in the yard and police told them that although they were not under arrest they were not permitted to leave the station. They were released later that day with the help of *Maos Livres* representatives. Three others were placed in the cells. One of them, João Milongui, had been very badly beaten by fiscal agents and had sustained a broken or dislocated left arm in addition to cuts, bruises, and swellings on his face, back and other parts of his body. *Maos Livres* helped to secure their release, uncharged, on 11 December. When *Maos Livres* inquired about the legal basis for the evictions the police reportedly showed them a copy of the public statement issued by the Luanda Provincial Government on 22 November 2002.



Some residents built shelters in the ruins of their homes.
© CUBSK, 2002

On 17 December, a reinforced demolition squad of about 300 members, including police, paramilitary police and soldiers as well as fiscal agents, arrived and brought with them three bulldozers and several 17-ton trucks. The security forces surrounded the area and fiscal agents ordered people out of their houses. By the end of the following day, over 1,000 houses had been torn down. As on 9 December, members of the demolition team beat people who tried to resist eviction.

These included a woman, Victória Mutango, who was reportedly hit with bits of broken cement blocks, beaten with pistol butts and kicked on her head and other parts of her body. She was taken to hospital where she remained for a week but died in January 2003: the death certificate reportedly stated that she had died as a result of cranial trauma and hypertension.

During the evictions on 9, 17 and 18 December, some residents were able to remove furniture and other items from their houses. Others were not so fortunate. The demolition team, without making any inventory, loaded building materials, furniture and electrical goods and other items on trucks to be taken to a warehouse. Residents complained that fiscal agents also helped themselves to goods ranging from zinc sheets and furniture to food items. Immediately after the evictions, residents approached the municipal authorities to reclaim their possessions but were unsuccessful.

²³ Kilamba Kiaxi Municipality is adjacent to Samba Municipality.

Between 9 and 18 December 2002, according to CUBSK, a total of 1,125 houses had been demolished in Bairro Soba Kapassa. Many former residents went to live with relatives or in rented accommodation elsewhere. Others remained in the area and built shacks or shelters. They would vacate the area during the day to avoid the patrolling fiscal agents and police but returned for the night. Two of these homeless people died shortly afterwards of illnesses which may have been exacerbated by the conditions in which they were living: a one-year-old boy reportedly died of pneumonia and a mother of six succumbed to a heart attack.

On around 20 February 2003, according to residents, the Kilamba Kiayi police commander, accompanied by armed police, arrived to evict the remaining residents. The police reportedly first fired into the air and then beat some of the residents. They reportedly arrested 16 men and took them to the police station. That day, 14 of the detainees were released but two others, Mário Domingos and José Kavula, were held on accusations of "aggression," which is not a crime under the penal code. They were detained for several days and released as there was not enough evidence to charge them with any crime.

Two people who were detained and beaten on 9 December 2001 subsequently registered official complaints about the beatings and submitted these to the police. At the time of writing no trial date for these cases had been set. It was reported in July 2003 that the criminal investigation police were investigating cases of fiscal agents suspected of carrying out beatings and theft of property.

In Bairro Soba Kapassa, an emerging carefully-planned housing estate was turned into a rubble-strewn field. Former residents have received no compensation. As in the Boavista case, there has apparently been no thorough investigation into the legality of the actions of the provincial and municipal administrative authorities. Nor has there been any reported investigation into the allegations of inappropriate and disproportionate use of force or into the reports that police and soldiers participated in or condoned beatings and other ill-treatment.

3.3 Comuna de Benfica

Between July 2001 and April 2003 a total of over 470 houses were demolished in Benfica Commune, Samba Municipality. Some of these houses had been re-built and again demolished. The demolition squads, backed by police, behaved violently. Following evictions in March and April 2003, former Benfica residents were given new houses in Panguila, Cacuaco Municipality, to the north of Luanda and almost 40 kilometres from their original homes.

The area affected by these evictions does not have a discrete name. It is situated behind Bairro da Clemência and in this report, the affected area is referred to as the 'Clemência area'. The first houses in the area were erected informally in 1997 by people who had been cultivating *lavras* in the area. Most were small and roughly built; others were larger constructions of cement blocks. At about the same time, the residents formed a residents' committee to deal with matters of common concern.

The first evictions took place in July 2001. According to the residents, of the 57 homes which were demolished, 19 were made of brick and one of wood, three were tents and the rest had

been made of zinc sheets. Some residents had begun to seek official registration of their houses.

On 5 July, reportedly without any prior notification from the authorities, a group of soldiers from the *Unidade da Guarda Presidencial* (UGP), Presidential Guard Unit, the ordinary police and fiscal agents of the Luanda Provincial Government surrounded the area and then began tearing down the houses. The demolition squad also reportedly destroyed or stole building materials and other items including domestic electrical goods.

On the following day, the municipal administrator returned with representatives from the municipal office of the *Ministério da Assistência e Reinserção Social* (MINARS), the Ministry for Social Assistance and Reinsertion. These officials reportedly moved the 57 families to a separate area where there was no shelter and no water. The authorities did not provide tents or other facilities. Thirty-nine families promptly returned to the area they had left. It reportedly took them 10 months to save money to replace the building materials that had been damaged or stolen in July 2001.

The next evictions took place in May 2002. According to residents, about 60 UGP soldiers, ordinary police and armed fiscal agents arrived without warning on 18 May. They reportedly demolished four houses but left, firing in the air, as angry residents chased them, waving sticks and throwing stones.

A reinforced team of about 150 police and fiscal agents reportedly arrived without prior notification on 22 May. Residents said that in the early hours of the following morning the police began entering houses and said that they were looking for illegal weapons. At about 10am the same day, the fiscal agents started to break down houses using picks, sledge hammers and cutlasses. About 150 houses, some of brick and some of zinc, were destroyed.

Members of the demolition squad reportedly beat several people and injured three. Residents said that a pregnant woman who had been hit in the stomach was taken to hospital but subsequently lost her baby. In the violence a four-year-old child had his leg broken. Eugênia Bernardo, an 18-year-old woman with an infected lung, was left in the rain without any shelter. Three people were reportedly arrested but released nine hours later.

The residents were not offered alternative accommodation or compensation. They said that a representative of a construction company, Maboque, told them that the land on which they had been living was designated for "social structures," while administrative officials unofficially told them that the area was to be divided into plots and sold for between US\$3,500 and US\$ 5,000.

The Municipal Administrator reportedly gave the official reason for the evictions at a meeting on 25 May 2002 when he told residents that the land was to be used for erecting large public buildings in accordance with a 1975 plan. Residents said that administration officials told them that they could move to another part of Benfica known as Block C, as a temporary measure, while a more permanent situation was located. The authorities apparently agreed to pay them compensation for their building materials and their gardens and gave them a document showing the scale of compensation payments for different types of crop gardens.

The compensation for a hectare of manioc, for example, was listed as US\$ 750. However, the residents said they received no compensation of any kind.

The authorities reportedly called for another meeting on the morning of 2 September 2002, but did not turn up. Instead, according to residents, a group of military police, ordinary police and armed fiscal agents arrived in the Clemência area at about 1 pm and demolished about 190 houses. The authorities relocated a group of evicted residents to an adjacent area but the residents left after an armed forces officer living nearby reportedly threatened to send soldiers to evict them. Some returned to the area they had left and others went to live with relatives.

On the following day, 3 September, residents staged a demonstration in front of the municipal offices during which a signboard was torn down. Some residents reportedly went to demonstrate outside the house of a member of the municipal committee of the majority political party, the *Movimento Popular de Libertação de Angola* (MPLA), People's Movement for the Liberation of Angola, whom they believed to be involved in promoting the demolitions. According to residents, a man emerged from the house with a gun and fired it, hitting a wall. The police arrived, arrested three people and reportedly beat them with gun barrels until they bled and then took them to the Kamuxiba police station in Samba municipality. Some hours later, the residents' committee members and some women residents were also detained.

The Samba municipal administration alleged that the detainees were guilty of "disobedience" because they had built houses without authorization, of firing a shot and pulling down a sign board. A lawyer from *Mãos Livres* assisted the defendants at their trial on 6 September in the *Tribunal de Polícia*. The judge ruled that the case be dismissed for lack of evidence.

Residents who remained in the area continued to try to protect their homes and some of those evicted built new shelters. At a meeting with the communal administration on 19 September, according to the residents, they were told that they were not fit to live in the area which was destined for people who could afford high-rental homes.

On 23 September an administrative official arrived and tried to issue *fichas*, or orders to quit the area, to a group of women who refused to accept them in the absence of the residents' committee. Instead the women reportedly tried to beat the official and broke a window of his car.

On 24 September, according to residents, 13 women decided to inform the police about what had happened. They were sent to the Criminal Investigation Department in Luanda and transferred 24 hours later to the *Cadeia da Comarca*, the district prison. Two were pregnant and two others had babies with them who had not yet been weaned. The women later complained that they had been beaten and forced to sleep on damp cement floors and made to carry heavy crates of soft drinks. Instead of being brought before a magistrate within 48 hours, in accordance with the law, they were held for 21 days before being released uncharged after the criminal investigation police found no grounds for detaining them. One of the women reportedly miscarried after she was released.

In September 2002 the former Benfica residents set up an NGO to defend their rights. They called it *SOS Habitat - Acção Solidária*, (SOS Habitat - Solidarity Action, or SOS Habitat).

Luís Araújo, a Benfica resident with experience in urban development, and António Sapunete, a resident in a part of the Clemência area, were elected as coordinator and vice coordinator respectively.



Mr Sapunete's house in Benfica, showing eviction registration number. © AI, May 2003

Further evictions took place in March and April 2003. On 12 March a group of police took up positions around the area and remained there. On the following day, members of SOS Habitat reportedly asked the Municipal Administrator what the administration was planning to do, but received no clear information.

On the morning of 18 March two vehicles arrived carrying representatives of the municipal police, the police *Comando das Unidades de Protecção de Objectivos Estratégicos* (CUPOE), Command of the Units for the Protection of Strategic Objectives, municipal fiscal

agents and representatives of the municipal MINARS office.

According to residents, officials entered the houses, even those whose occupants were not at home, and then painted a number on the wall outside the front door. The SOS Habitat coordinator pointed out to the officials that it was illegal to enter people's homes without a warrant and to evict people without proper notification which, according to Angolan law, must be addressed personally to each household. The delegation then left, but returned early on the following day, 19 March, with a group of CUPOE armed with AK-type automatic rifles.

On 19 March residents had assembled a demonstration to try peacefully to persuade the authorities not to carry out the evictions. Residents said that during the demonstration, the authorities gave them a public notice, dated 17 March, addressed to the "illegal occupants" and signed by the Samba Administrator. The document stated that the occupants were aware that the land had previously been conceded to other institutions (which were not named); that the consultation process had failed; that the Provincial Government of Luanda had provided accommodation for them in Cacuaco Municipality; and that families should get ready to leave on 19 March with their belongings.²⁴

Luís Araújo, the coordinator of SOS Habitat, approached the authorities, hoping to negotiate a consensual arrangement. However, the Benfica Administrator reportedly ordered him to leave immediately and a police officer pushed him back roughly with the butt of his gun. Luís Araújo moved away from the immediate area and watched as a heated discussion developed between the group which was to be evicted and the authorities. Former Benfica residents told

²⁴ Copy provided to Amnesty International.

Amnesty International that they had heard the police commander say to his officers, "if this man (Luís Araújo) comes back again you can kill him."

Protests continued during the ensuing evictions and demolitions and police responded with force. According to eye witnesses, police officers grabbed Paulo Almeida, made him strip to his underpants and then beat him with rifle butts and kicked him then seized him by the arms and legs and swung him up and onto a truck. Another resident, known as Daniel, received two machete cuts on his forearm. Both were taken to the police station but released later that day. Some of the 58 evicted families were allowed to take possessions with them to Panguila, including zinc sheets and water tanks, but there was not enough room on the trucks for everyone's possessions.



Members of SOS Habitat in Panguila. © AI, May 2003.

On 27 March 2003, administration officials with a police escort reportedly painted numbers on the few remaining homes, most of which were structures of zinc. Police posted in the area, where they lived in small tents, sometimes harassed residents and tried to make them pay bribes. One resident said that on 28 March a police sergeant arbitrarily arrested two brothers, José and Jorge Albino, who were erecting a new house, and took their money before releasing them. Another resident, reported that on 29 March police came to stop him building his house and beat him because he could not pay a bribe of 4,000 Kwanzas (about US\$57).

Another 15 families were evicted on 25 April 2003. Armed police reportedly refused to allow them to take possessions with them.

Most of the families evicted from the Clemência area in March and April 2003 were given new homes in Panguila. However 16 families, including that of Paulo Almeida (see above) did not receive new houses. These were families whose homes had been demolished either in 2001 or in 2002 and who had since been living elsewhere. Only those families living in houses which had been numbered prior to the March 2003 evictions were given new houses in Panguila.

The residents expressed concern that they might be unable to afford the houses in Panguila. Some of them told Amnesty International that an official had given them the number of a bank account into which they would have to make regular payments, presumably to pay for

the houses. They reportedly wrote to the authorities saying that they were not willing to make the payments but received no reply.

The houses in Panguila were built of cement blocks and provided with electricity and running water. They were of better quality than most of the houses that were demolished in the Clemência area. However, residents said that in many respects they felt that they had been in a better situation before leaving Benfica.

Several of the new houses, which are built on marsh land, already have long cracks in the walls and some residents said that they could have built better houses for themselves within five years. Some residents lost jobs because of the distance from Luanda and others had to pay more expensive transport fees to reach their places of employment. There was no functioning school in the area so children whose parents could not afford to send them to distant schools were deprived of schooling.

On 29 June 2003, representatives of the remaining residents in the Clemência area wrote to the Minister of Urbanization and the Environment complaining that their rights to adequate housing were still under threat. They copied their letter to other government authorities and NGOs including Amnesty International. The letter stated that the area was being divided into plots despite the fact that none of those living in the area had received information about any proposed development. They also complained that members of the CUPOE police unit which had been posted in the area since the evictions had been stealing items such as zinc sheets in order to sell them back to the residents. Emilia André Zunza, a 38-year-old woman with four children, was unable to pay to reclaim the stolen items and was said to have remained without shelter for two weeks before she found accommodation with relatives. The residents urged the authorities to halt the laying out of plots, to provide timely compensation for any eventual evictions and demolitions and to set up an inquiry into the alleged abuses by CUPOE officers. They reportedly received no response.

4. Forced evictions and the law: Angolan law and international human rights law

The Angolan Constitution recognizes the relevance of international human rights law and standards. Article 21, paragraph 2 states: "Constitutional and legal norms related to fundamental rights shall be interpreted and incorporated in keeping with The Universal Declaration of Human Rights, the African Charter on Human and Peoples' Rights and other international instruments to which Angola has adhered."²⁵ However, where the provisions of these treaties have not been specifically incorporated into domestic law, it is unclear how the courts may be able to enforce them.

Forced evictions - those carried out without appropriate legal protection - are a violation of the right to adequate housing and other human rights contained in international human rights treaties to which Angola is a State party.

²⁵ A selected list of the human rights treaties to which Angola is a State party is contained in Section 6 of this report.

Forced evictions are not specifically prohibited in Angolan law, although certain provisions in the Civil Code may be used to contest arbitrary expropriation of property. The right to adequate housing is not expressly provided in Angolan law, but it may be implied in the Constitution and in other legislation.

This section of the report summarizes Angola's obligations under international law and standards and discusses the relevant Angolan legislation in the light of international obligations. Reference is made to relevant General Comments of the Committee on Economic, Social and Cultural Rights (CESCR), the body set up to monitor implementation of the ICESCR, and the Human Rights Committee, which is responsible for monitoring implementation of the ICCPR. The General Comments provide authoritative legal interpretations of the rights contained in the Covenants and have been used as the basis for decisions taken by national courts in various countries. States Parties to the International Covenants are required to submit regular reports to the CESCR and the Human Rights Committee on what they have done to implement the rights under the respective Covenants.²⁶

International law and standards concerning the right to adequate housing are discussed more fully in the appendices, which also contain copies or summaries of UN Sub-Commission on Human Rights Resolution 1993/41, Forced evictions; CESCR General Comment 4 The right to adequate housing (art. 11, para. 1) [1991]; General Comment 7 Forced evictions, and the right to adequate housing (art. 11, para. 1) [1997]; and other relevant documents.

4.1. State obligations concerning the implementation of the right to adequate housing

Article 11.1 of the ICESCR states: "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 ..."

According to Article 2.1 of the Covenant "[e]ach 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."

The CESCR, in its General Comment 3 concerning nature of States parties' obligations under the ICESCR, points out that "... while the full realization of the relevant rights may be achieved progressively, steps towards that goal must be taken within a reasonably short time after the Covenant's entry into force for the States concerned. Such steps should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized in the Covenant."²⁷

²⁶ Angola has not yet submitted any report to the Human Rights Committee established pursuant to the ICCPR or to the CESCR. Angola's initial report to the Human Rights Committee was due on 31/12/97 and its second periodic report on 9/04/98. With respect to the CESCR, Angola's initial report was due on 30/06/94, and its second periodic report on 30/06/99.

²⁷ CESCR General Comment 3: The nature of States parties' obligations (art. 2, para. 1) [1990].

The rights of children to adequate housing are contained in the UN Convention on the Rights of the Child (Article 27.3) and the African Charter on the Rights and Welfare of the Child (Article 20.2). Angola is a party to both these treaties.

While the Angolan Constitution does not explicitly provide a right to adequate housing, it does recognize some components of the right to an adequate standard of living, particularly in connection with the protection of children and other vulnerable groups. These constitutional rights, for example to health, cannot be protected in isolation from other components, for example housing and sanitation.

In Part II of the Constitution on Fundamental Rights and Duties, Article 31.2, requires the State, in collaboration with the family and society to "create conditions for the fulfilment of the economic, social and cultural rights of the youth." Article 47.1 concerns the promotion of "measures needed to ensure the right of citizens to medical and health care, as well as child, maternity, disability and old-age care and care in any situation causing incapacity to work."

The right to adequate housing is specifically recognized in Decree No. 1/01 of 5 January 2001, "Norms on the Resettlement of Displaced Populations" which is discussed below.

4.2 The prohibition of forced eviction

Large-scale forced evictions constitute a movement away from the realization of the right to adequate housing. The obligation of the state under international law is clear and simple – it must refrain from forced evictions.

Forced eviction is a violation of the privacy of the home. The Angolan Constitution, in Article 44, requires the State to "... guarantee the inviolability of the home and the secrecy of correspondence, with limitations especially provided for by law." Article 12.4 adds that the State shall "... respect and protect people's property ... in accordance with the law."

The ICCPR states, in Article 17, "1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. ...; 2. Everyone has the right to the protection of the law against such interference or attacks."

The CESCR, in its General Comment 4 on the right to adequate housing, paragraph 18, states that "[t]he 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."²⁸

The African Commission on Human and Peoples' Rights, which oversees implementation of the African Charter, in October 2001, made a highly significant contribution to the jurisprudence on the right to housing and not to be evicted in a decision concerning a

²⁸ CESCR General Comment 4: The right to adequate housing (art. 11, para. 1) [1991].

complaint against the Federal Republic of Nigeria.²⁹ It stated, in paragraph 61, "[a]t 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."

4.3 Protection against forced eviction

A basic protection against forced eviction is to take prompt steps to confer legal security of tenure on people who lack such protection and, as soon as possible, to develop legislation to prevent forced eviction which accords with human rights standards.

a) Security of tenure

In the cases of Bairro Soba Kapassa and Benfica the authorities claimed that those evicted had occupied land illegally. The procedures for obtaining authorisation to occupy land in Luanda are complicated and unclear, with the result that few householders, particularly those living in the *musséques*, have legal security of tenure. However, the obligation to respect the right to housing applies, not just to those who can show documents to prove legal title, but also to those in informal settlements, or who have occupied land or property.

Both the CESCER and the Commission on Human Rights have called on states to provide legal tenure to those threatened with forced eviction.

In its General Comment 4, paragraph 8, the CESCER lists various types of tenure, including informal settlements, and adds: "[n]otwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups."³⁰

The UN Commission on Human Rights, in its resolution 1993/77 Forced Evictions, affirmed that "the practice of forced eviction constitutes a gross violation of human rights, in particular the right to adequate housing" and urged governments to "confer legal security of tenure on all persons currently threatened with forced eviction and to adopt all necessary measures giving full protection against forced eviction, based upon effective participation, consultation and negotiation with affected persons or groups."³¹

²⁹The decision was made at the African Commission's 30th Ordinary Session held in Banjul, The Gambia, from 13 to 27 October 2001, in response to Communication 155/96, Center for Economic and Social Rights and Social and Economic Rights Action Center (SERAC) v. Nigeria.

³⁰Op cit.

³¹Commission on Human Rights resolution 1993/77: Forced Evictions, paras 1 and 3.

b) Legislation prohibiting forced eviction

Article 12.4 of the Constitution states: "The State shall respect and protect people's property, whether of individuals or corporate bodies, and the property and ownership of land by peasants, without prejudice to the possibility of expropriation in the public interest, in accordance with the law."

Under Angolan law, expropriation of property is regulated by Articles 1308 and 1310 of the Civil Code of 1967, which remained in force after Angola became independent from Portugal in 1975.³²

Article 1308 of the Civil Code prescribes that no one can be deprived, in whole or in part, of their right to property except in cases determined by law. Article 1310 requires that in cases of expropriation for public or private use, adequate compensation must always be provided to the proprietors of expropriated property and to the holders of other real rights who may be affected.

The CESCR, in General Comment 7 on forced evictions, paragraph 9, calls for legislative measures which "(a) provide the greatest possible security of tenure to occupiers of houses and land, (b) conform to the Covenant and (c) are designed to control strictly the circumstances under which evictions may be carried out."³³ General Comment 7 also calls upon States to ensure that all state authorities and private persons or bodies are made accountable under the law.

In relation to the circumstances in which evictions may be carried out, General Comment 7 requires, in paragraph 15, "....(d) especially where groups of people are involved, government officials or their representatives to be present during an eviction; (e) all persons carrying out the eviction to be properly identified; (f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise; ..."

The law should also ensure that in cases where evictions are necessary and which are carried out with full procedural protection and due process, the state should provide adequate alternative accommodation for those who are unable to provide for themselves. General Comment 7, paragraph 16 states: "[w]here those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available."

³² According to Article 58 of the 1975 Constitution, repeated in Article 165 of the 1992 Constitution, those laws that have not been altered or revoked are applicable as long as they do not violate the letter and spirit of the Constitution.

³³ CESCR General Comment 7 Forced evictions, and the right to adequate housing (art. 11, para. 1) [1997].

c) The requirement to provide adequate information and ensure effective consultation

Governments are under the obligation to ensure that the relevant authorities provide adequate information to and hold effective consultations with people in relation to the provision of housing.

Effective consultations are impossible if the parties to the consultation do not have access to relevant information. The CESCR refers to both in its General Comment 7, paragraph 15. It considers that the procedural protections in relation to forced evictions should include "(a) an opportunity for genuine consultation with those affected; (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; (c) information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected"

The principle of adequate information and effective consultation is recognised in the January 2001 Decree concerning the resettlement of displaced people. Article 9.1 of this law states that displaced people have a right to be "informed about the stages of the resettlement or return process and the legislation in force on that issue" and to participate actively in the process. The "voluntary and consensual nature" of the process must be ensured and there must be agreement between resident and displaced communities. This law was particularly aimed at people displaced during the conflict but the requirement to consult should apply equally to anyone facing eviction or resettlement.

People should be consulted on feasible alternatives to evictions, for example the possibility of preventing landslides in Boavista, as well as in the provision of alternative housing.

In its General Comment 7 on forced evictions, the CESCR stated, in paragraph 13, "[s]tates parties shall ensure, prior to carrying out any evictions, and particularly those involving large groups, that all feasible alternatives are explored in consultation with the affected persons, with a view to avoiding, or at least minimizing, the need to use force." The requirement to promote consultation and participation in decision making have also been emphasised by the Commission on Human Rights and in the Istanbul Declaration on Human Settlements.

d) Legal remedies

Article 43 of the Angolan Constitution states: "[c]itizens shall have the right to contest and take legal action against any acts that violate their rights as set out in the present Constitutional Law and other legislation."

The Constitution, in Article 36, also provides for legal aid "to ensure that justice shall not be denied owing to insufficient economic means." Legal aid may be provided by the Angolan Bar Association and some NGOs also carry out legal advocacy work. However, these resources are very limited.

Arbitrary expropriation may be challenged under the Law concerning Refutation of Administrative Decisions, Law 2/94 of 14 January 1994. According to this law, contestants may, within 30 days, contest administrative acts or omissions by submitting complaints calling for a decision to be revoked or amended, either to the authority concerned or to that body's hierarchical superior. Only after exhausting these procedures, and within 60 days of the decision or action, may they submit an appeal to the Supreme Court or a Provincial Court which may declare the action or decision null or invalid.

However, this law applies only in cases where there is a contractual arrangement between the complainant and the authorities, such as title to property or a rental agreement, and offers no protection to the majority of urban dwellers facing eviction who have no such arrangement.

In view of the CESCR's requirement that, "[n]otwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction...", it is crucial that new laws should specifically and explicitly prohibit forced eviction.³⁴ Such legislation is an essential foundation for a system which protects people's right to adequate housing.

The CESCR, in General Comment 4, paragraph 17, has identified various types of remedy which might be employed, depending on the legal system, including "(a) legal appeals aimed at preventing planned evictions or demolitions through the issuance of court-ordered injunctions; (b) legal procedures seeking compensation following an illegal eviction; (c) complaints against illegal actions carried out or supported by landlords (whether public or private) in relation to racial or other forms of discrimination; (d) (complaints against) ... any form of discrimination in the allocation and availability of access to housing; ..."

The UN Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, in paragraph 46 (c) of his 2002 report to the Commission on Human Rights, called on governments to "[g]uarantee access to judicial remedies for violations of the right, such as forced evictions, deliberate denial of civic services, including reparations for damages suffered..."³⁵

Legal remedies should include adequate compensation. The CESCR, in paragraph 13 of its General Comment 7 on forced evictions, requires States parties to "...see to it that all the individuals concerned have a right to adequate compensation for any property, both personal and real, which is affected."³⁶

³⁴ CESCR, General Comment 4, paragraph 8, *op.cit.*

³⁵ Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, E/CH.4/2002/59, 1 March 2002.

³⁶ The CESCR was referring to Article 2, paragraph 3 of the ICCPR which requires state parties to ensure an effective remedy for persons whose rights have been violated.

The UN Commission on Human Rights, in its Resolution 1993/77 on Forced evictions adopted at the 67th meeting on 10 March 1993, affirmed that "the practice of forced eviction constitutes a gross violation of human rights" and recommended that "all Governments provide immediate restitution, compensation and/or appropriate and sufficient alternative accommodation or land, consistent with their wishes and needs, to persons and communities that have been forcibly evicted, following mutually satisfactory negotiations with the affected persons or groups."

4.4 State action to facilitate access to adequate housing

a) Facilitating the work of self-help groups

In the Luanda *musséques*, residents' committees or other self-help groups have either emerged or gained new purpose when faced with eviction. Human rights and development NGOs have also tried to assist communities at risk. However, in the three areas discussed in this report, the authorities have not cooperated adequately with the organizations involved. In its General Comment 4 on the right to adequate housing, the CESCR requires the state to facilitate the work of self-help groups and to seek cooperation from international donors. Paragraph 10 states: "...many of the measures required to promote the right to housing would only require the abstention by the Government from certain practices and a commitment to facilitating "self-help" by affected groups. To the extent that any such steps are considered to be beyond the maximum resources available to a State party, it is appropriate that a request be made as soon as possible for international cooperation in accordance with articles 1,1 (1), 22 and 23 of the Covenant..."

b) Promoting awareness of the law and human rights principles

Those who face forced eviction know that ~~their~~ their human dignity is being slighted but may not know the law or their specific rights. Also, it is evident that members of the provincial and local administration and police officers either do not know the law or deliberately ignore it. The obligation to promote involves promoting public awareness of the laws and international standards through the media and other means, as well as providing thorough training to relevant government officials.

4.5 State provision of adequate housing for the needy – minimum core obligations

Under international human rights law, the state is required to assist those who cannot provide for themselves. International jurisprudence has developed so that it is seen as a requirement that the state should provide a basic core of rights for all and that vulnerable groups should receive priority attention.

In its General Comment 3 concerning the nature of States parties' obligations under the ICESCR, the CESCR states, in paragraph 10, that in its view, "a 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.”³⁷

The January 2001 Decree concerning the resettlement of displaced people contains important developments in providing safeguards for the protection of the right to adequate housing. It confers rights to shelter, among other components of the right to an adequate standard of living. It also recognizes the importance of freedom of movement, the right to receive adequate information, and the right to participate in decision-making. The definition of “displaced people” in Article 1 of the decree fits the situation of many individuals among those evicted in Luanda.³⁸ The principles in the Decree should apply to all those facing eviction.

Article 14 of the Decree provides for the identification and allocation of land. The quality of the land must be taken into account and the authorities are required to ensure that negotiations take place between resident and displaced populations concerning land distribution. Article 14 also provides for the planning of housing areas and for the designing of houses with respect to local customs of construction. Article 17 makes the Provincial Government responsible for ensuring that adequate measures are taken to provide water and sanitation, for the management of these systems in collaboration with the community, and for guaranteeing the supply of drinking water. Article 18 on Social Assistance covers the provision of health care, education and any necessary food assistance.

4.6 The right to adequate housing – the meaning of “adequate”

In formulating policies and laws to move towards realization of the right to adequate housing, Angolans will be considering the definition of “adequate.”

In its General Comment No. 4 on the right to adequate housing, the CESCR states, in paragraph 7, that “the right to housing should not be interpreted in a narrow or restrictive sense of ‘... merely having a roof over one’s head ... Rather it should be seen as the right to live somewhere in security, peace and dignity [and] the right to housing should be ensured to all persons irrespective of income or access to economic resources.”³⁹ The Committee gives a definition of “adequate” “[a]dequate shelter means ... adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities – all at a reasonable cost.”⁴⁰

³⁷ General Comment 3 The nature of States parties’ obligations (art. 2, para. 1) [1990].

³⁸ The Decree, in Article 1, defines internally displaced persons as “persons or groups of persons who have been forced or obliged to leave their homes or places of habitual residence, particularly as a result of violence, or in order to avoid the results of armed conflict, violations of human rights or natural or man-made disasters, and who have not crossed an internationally recognised State border.”

³⁹ *Op cit*

⁴⁰ In giving this definition, the Committee cites a statement by both the Commission on Human Settlements and the Global Strategy for Shelter to the Year 2000.

The Committee recognizes that adequacy is determined in part by social, economic, cultural, climatic, ecological and other factors, and identifies certain aspects of the right that should always be taken into account in determining whether housing is "adequate." These are:

- a) legal security of tenure;
- b) availability of services, materials, facilities and infrastructure;
- c) affordability;
- d) habitability;
- e) accessibility;
- f) location; and
- g) cultural adequacy (policies should allow for the expression of cultural identity and diversity, for example in the choice of methods of construction or building materials).⁴¹

4.7 Justiciability

The UN Special Rapporteur on the right to adequate housing as a component of the right to an adequate standard of living has stated that "justiciability of the right to adequate housing in courts at all levels is needed in order for States effectively to respect, protect, promote and fulfil the right to housing."⁴²

Article 43 of the Angolan Constitution states: "[c]itizens shall have the right to contest and take legal action against any acts that violate their rights as set out in the present Constitutional Law and other legislation." However, for constitutional human rights provisions to be brought into effect, they must be incorporated into subsidiary legislation and there must be adequate mechanisms for people to seek redress if their rights are infringed. Rights that are not yet recognized in national legislation must be incorporated as soon as possible. Rights must be justiciable – susceptible to judicial enforcement.

The CESCR, in its General Comment No. 9 on the domestic application of the Covenant, states that "[t]he central obligation in relation to the Covenant is for States parties to give effect to the rights recognized therein."⁴³ It also emphasises the obligation on states to ensure that Covenant norms are "recognized in appropriate ways within the domestic legal order." The state must also ensure that "appropriate means of redress, or remedies, are available to any aggrieved individual or group" and must put in place "appropriate means of ensuring governmental accountability."

As noted above, while the Angolan Constitution does not mention a right to an adequate standard of living, some components of this right are included in the Human Rights chapter of the Constitution. We have also noted above that Article 21 of the Constitution requires that

⁴¹ General Comment 7, para.8.

⁴² Report of the UN Special Rapporteur on the right to adequate housing as a component of the right to an adequate standard of living, E/CH.4/2001/51, 25 January 2001.

⁴³ CESCR General Comment No. 9, The domestic application of the Covenant [1998]

constitutional rights must be interpreted and incorporated in keeping with the African Charter on Human and Peoples' Rights and other international treaties and standards. Article 21, paragraph 3, adds: "[i]n the assessment of disputes by Angolan courts, those international instruments shall apply even when not invoked by the parties."

Although there is provision for a Constitutional Court in the Constitution, this court has not yet been established and in the meantime constitutional questions are dealt with by the Supreme Court. As far as Amnesty International is aware, there have, to date, been no decisions concerning any component of the right to an adequate standard of living. However, the Constitutional provisions on some aspects of this right, interpreted in the light of the African Charter, the ICESCR and the ICCPR, could make them enforceable before Angolan courts, or at least protect them from improper invasion. This has apparently not yet been tested.

4.8 Excessive use of force

Torture or any other cruel, inhuman or degrading treatment or punishment are prohibited in Article 23 of the Angolan Constitution. Police regulations prohibit the use of weapons except in dire necessity in order to repel aggression or attempted aggression against themselves or as necessary for the maintenance of public order or to carry out arrests.⁴⁴

This provision does not fully accord with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Principles 4 and 5 require that the use of force and firearms should be used only when strictly unavoidable and then in proportion to the seriousness of the offence and the legitimate objective to be achieved. Principle 9 of the Body of Principles states: "[l]aw enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life."

Basic Principles 6, 7 and 22 require that, where injury or death is caused by the use of force by police officers, they shall report the incident promptly to their superiors, who should ensure that proper investigations of all such incidents are carried out and officers suspected of arbitrary or abusive use of force or firearms should be brought to justice.

⁴⁴ Decree No. 41/96 of 27 December 1996, Article 5.38.

5. Amnesty International's Recommendations

Amnesty International is concerned by all the violations of human rights discussed in the preceding sections. They stem primarily from the failure of the officials involved to respect the right of everyone to be treated equally and with respect. They are also a result of officials acting either in ignorance of the law or in the belief that they are above it. This applies to both provincial and local government authorities and to the security forces.

The Government of Angola has an obligation to provide access to adequate housing. It also has an obligation to ensure that aggrieved persons have access to legal remedies or redress against forced eviction. It is also obliged to bring to justice those officials suspected of criminal acts related to evictions.

Officials have said that it was necessary to carry out evictions to prevent environmental hazards or to end illegal occupation or to promote development. However, in each of the cases described above it appears that other motives may have been involved. Some of those evicted from Boavista were not in any danger of landslides; the eviction of people without legal title does, and did not, of itself end illegal occupation, since many of those evicted went to live elsewhere in equally illegal situations; and the reasons for the evictions in Soba Kapassa and Benfica remain unclear.

The following recommendations include actions which should be taken promptly, particularly the immediate halting of forced evictions. Other recommendations should be accomplished through progressive but well-planned and concrete steps including the development of human rights-based policies and legislation.

5.1 Recommendations for prompt action to protect fundamental rights

Amnesty International urges the relevant government authorities to:

a) Place a moratorium on mass evictions until such time as a comprehensive human rights-based housing policy and a legal framework providing effective remedies have been adopted.

AND

Give instructions to all relevant authorities that any other evictions may only be carried out on the basis of a court order after adequate consultation with those who may be affected and after prior arrangements have been made regarding re-housing and compensation

- The moratorium and the instructions should be published on the radio and television and in newspapers, and posters should be placed in provincial and municipal administration offices. Public meetings or seminars could be held, as appropriate, to promote awareness of the prohibition on forced evictions.

b) Provide assistance to victims of forced eviction who remain without shelter

- Prompt action should be taken to ensure that victims of forced eviction are provided with assistance and, in the shortest possible time, with "adequate" shelter as defined by the CESCR in its General Comment 4 on the right to adequate housing.

c) Set up a commission of inquiry to investigate the way in which evictions in Boavista, Bairro Soba Kapassa and Benfica were carried out and to make recommendations for effective remedies to victims of forced eviction and for investigations into alleged criminal acts

- The relevant authorities should set up an independent, impartial and competent commission of inquiry which should comply with the following basic principles:
 - The terms of reference of the commission, provisions to ensure impartiality and independence of the commissioners as well as the names those appointed to the commission should be published in the national media;
 - The commission should be empowered to select which cases to consider as well as to question those authorities they consider relevant to the cases and to obtain copies of relevant official documents;
 - The terms of reference should require the commission to investigate to what extent the evictions followed the requirements of national law and international human rights law and standards;
 - The commission should be asked to inquire, *inter alia*, into: the basis for the decisions to carry out evictions and whether alternatives to eviction were considered; the way in which the affected individuals and groups were informed of the decision; the consultation process prior to evictions; the registration of houses to be demolished; the composition of eviction teams; the way in which evictions were carried out; and provision of alternative adequate housing;
 - The commission should be empowered to refer any evidence of criminal acts to the competent authorities;
 - It should also be given the task of considering whether the reparation afforded to those evicted was adequate and, as appropriate, of recommending additional restitution and/or compensation for victims of forced eviction;
 - The commission should be requested to make recommendations for action to avoid forced eviction in future, including recommendations for changes to the law and administrative procedures;
 - Members of the public, particularly those affected by the evictions and non-governmental organizations, should be informed how they can make submissions to the commission of inquiry;
 - The final report of the commission and its recommendations should be published.

d) Request those responsible for drafting legislation on land and urban development to include provisions for incrementally conferring legal security of tenure upon all individuals

and families currently lacking such protection, in genuine consultation with affected individuals and groups

- Develop a strategy for incrementally conferring legal security of tenure on those who do not yet have it, including those in informal settlements or who are occupying land or housing;
- Seek advice on developing this strategy, including from UN specialized bodies.

e) Introduce any necessary legislation or amendments to existing law in order to ensure access to legal remedies for anyone facing eviction

- Those who face eviction should be provided, where necessary, with legal aid in order to seek redress from the courts.

f) Ensure that provincial and municipal authorities understand the national law and international standards regarding eviction

- Provincial and municipal administrators should be instructed, through regulation if necessary, that no evictions are to be carried out unless they comply fully with existing national legislation and international standards including the following essential principles:

- Any plans for development which may involve evictions, including disclosure of the purpose for which the designated property is to be used, should be published on radio and television, in the press and through notices in the municipal offices and at the designated site;
- All occupants of properties which might be affected by these plans, regardless of whether or not the occupants have legal title, should be notified officially, individually and in a timely manner;
- Evictions should be carried out in full accordance with legal requirements;
- There should be an effective consultation process with all those facing eviction which should address the question of alternative accommodation and effective restitution and/or compensation;
- Those to be evicted should be entitled to restitution and/or compensation based on the real-estate market or replacement value of the housing and site;
- Those who have suffered eviction should have the opportunity to seek legal remedies.

g) The law enforcement authorities should carry out an inquiry to review the role of police and other forces in assisting evictions

- The review should question the deployment of units not thoroughly trained in civilian policing, such as the paramilitary and protection units used in the evictions in Boavista, Bairro Soba Kapassa and Benfica, with a view to ensuring that such units are not deployed inappropriately;

- It should also examine, in cooperation with other authorities as necessary, the allegations of the collaboration of military personnel in policing evictions and determine to what extent the involvement of military personnel was appropriate or necessary;
- The review should investigate the way in which authorization was given for police units to participate in evictions which did not conform to the law;
- The police command should issue clear instructions to subordinate commanders that:
 - They may not deploy personnel to assist the administrative authorities in carrying out illegal evictions. These instructions should include clear guidance as to how to distinguish an eviction which conforms to the law from one which does not. Both the instructions and the guidelines should be included in the training of police officers;
 - They may deploy only adequately trained public order police to assist provincial or municipal authorities in carrying out legal evictions.

h) The police authorities should also carry out investigations into the proportionality, legality, and necessity of the use of force in Boavista, Bairro Soba Kapassa and Benfica with a view to bringing to justice police officers and other state agents suspected of excessive use of force and firearms.

- There should be an impartial inquiry into the use of force and firearms during evictions in Boavista, Bairro Soba Kapassa and Benfica to determine to what extent police behaviour conformed to the UN Code of Conduct for Law Enforcement Officers and the UN Body of Principles for the Use of Force and Firearms, and whether the use of force or firearms was necessary or proportionate under the circumstances of each case.
- The results of the inquiry should be made public. In addition, police officers who are suspected of disobeying these regulations and causing death or injury should be brought to justice;
- There should also be an investigation into the behaviour of other forces involved in evictions, including military personnel and Luanda Provincial Government fiscal agents. All those suspected of carrying out beatings or other violence or of theft or robbery committed during the evictions should be brought to justice.

5.2 Recommendations for progressive steps to achieve fulfilment of the right to adequate housing as a component of the right to an adequate standard of living

a) Develop a legal framework which respects the right to adequate housing and the right not to be forcibly evicted.

- The Constitution, which is currently undergoing a process of amendment, should include a provision on the right to adequate housing as a component of the right to an adequate standard of living. The provision should require the state to take legislative and

other steps to achieve the progressive realization of the right, within the maximum available resources.⁴⁵ The provision should prohibit forced evictions.

- Draft legislation currently under consideration, including the Land Law and the Law on Urban and Territorial Development should:

- Incorporate all relevant international standards on the right to housing as a component of the right to an adequate standard of living;
- Contain clear policies based on non-discrimination and respect for the right to housing as a component of the right to an adequate standard of living;
- Prohibit forced eviction, including the forced eviction of people who have not been able to obtain legal title;
- Ensure that all persons possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats;
- Include mechanisms to permit the progressive regularisation of existing informal land occupancy, permitting the transformation into full tenure rights (following the terms of Habitat Agenda, adopted by the Angolan Government in Istanbul 1996);
- Include adequate conflict resolution mechanisms;
- Ensure that, when evictions are planned, adequate information on the proposed evictions is provided in a timely manner to those who may be affected;
- Require all authorities responsible for housing development to hold effective consultations with individuals and communities who may be affected;
- Contain provisions guaranteeing access to legal remedies against acts of forced eviction, other illegal expropriation or damage to property. Access to legal remedies should include access to legal aid;
- Include a requirement that building contractors submit to a transparent tender process and that their project plans and their implementation of projects meet standards for adequate housing;
- Ensure that persons living in unfavourable conditions receive priority assistance;
- Establish a system for the provision of shelter in situations of natural disaster or other emergency;
- Include provisions to ensure transparent monitoring of progress and government accountability including through democratic institutions.

⁴⁵ The CESCR has stated in General Comment 3, para 9, that "any deliberately retrogressive measures ... 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." Therefore, the question of resources should not be interpreted as a justification for allowing forced evictions to continue.

b) Devise strategies for the progressive fulfilment of the right to adequate housing

- In order to ensure the progressive implementation of the right to adequate housing, the government should allocate funding in accordance with the requirement of Article 2.1 of the ICESCR, to the maximum of the government's available resources;
- Strategies should include training and capacity-building for planners involved in the development of strategies;
- They should also provide for the training of provincial and municipal government officials to enable them to implement human rights-based laws and policies;
- The development of strategies should involve all government agencies involved in the delivery not only of housing but also of other components of the right to an adequate standard of living;
- The strategies should be developed in consultation with relevant national NGOs, specialist international NGOs and appropriate inter-governmental agencies;
- The strategies should set out clear steps for the fulfilment of the right to adequate housing;
- Strategies should also include mechanisms to enable the provincial and municipal authorities to coordinate with each other, and with other government agencies such as those dealing with health and sanitation, in implementing the laws and policies on the right to housing as a component of the right to an adequate standard of living;
- There should be a clear strategy for a prompt and adequate response in the case of an emergency requiring the provision of adequate shelter.

c) Prepare and submit Angola's initial reports to the CESC and the Human Rights Committee and submit overdue reports to the African Commission on Human and Peoples' Rights

- Angola's initial report to the CESC concerning its implementation of the ICESCR was due on 30 June 1994 and its second periodic report was due on 30 June 1999. It is important that a comprehensive report be prepared and submitted. It should give an objective account of the current housing situation in Angola, stating to what extent Covenant provisions have been implemented as well as the factors and difficulties impeding the implementation of the Covenant. In accordance with the requirements of paragraph 19 of the CESR's General Comment 7, the report should provide details of the numbers of people evicted in the last five years and the numbers of people lacking protection against evictions. It should also refer specifically to any measures taken to prevent forced evictions.
- An initial report to the Human Rights Committee concerning Angola's implementation of the ICCPR was due on 31 December 1997 and its second periodic report was due on 9 April 1998. A comprehensive report should be prepared, which should refer to evictions

in connection with Angola's implementation of Article 17 of the ICCPR concerning privacy of the home.

- Angola submitted its initial report to the African Commission on Human and Peoples' Rights in October 1998, covering the years 1992 to 1998. The reports that were due in 2000 and 2002 are yet to be submitted to the African Commission. The next report should provide information on evictions in relation to Articles 14, 16 and 18 of the African Charter, and in accordance with the African Commission's decision in response to Communication 155/96, Center for Economic and Social Rights and Social and Economic Rights Action Center (SERAC) v. Nigeria.

d) *Extend a standing invitation to all the UN Special Rapporteurs*

- The Special Rapporteur on the right to housing as a component of the right to an adequate standard of living would be able to contribute to the development of policies and legislation which would conform to human rights standards in relation to the right to adequate housing.

6. Notes

6.1 List of abbreviations

African Charter	- African Charter on Human and Peoples' Rights
CESCR	- Committee on Economic, Social and Cultural Rights
CUBSK	- <i>Comissão de Urbanização do Bairro Soba Kapassa (Vila do Estoril)</i> , the Urbanization of Soba Kapassa Ward (Vila do Estoril) Commission.
CUPOE	- <i>Comando das Unidades de Protecção de Objectivos Estratégicos</i> , Command of the Units for the Protection of Strategic Objectives
ICCPR	- International Covenant on Civil and Political Rights
ICESCR	- International Covenant on Economic, Social and Cultural Rights
MINARS	- <i>Ministério da Assistência e Reinserção Social</i> , the Ministry for Social Assistance and Reinsertion
MPLA	- <i>Movimento Popular de Libertação de Angola</i> , People's Movement for the Liberation of Angola
PIR	- <i>Polícia de Intervenção Rápida</i> , Rapid Intervention Police
UGP	- <i>Unidade da Guarda Presidencial</i> , Presidential Guard Unit
UNITA	- <i>União Nacional para a Independência Total de Angola</i> , National Union for the Total Independence of Angola

6.2 Selected list of human rights treaties to which Angola is a State party

African Charter on Human and Peoples' Rights

African Charter on the Rights and Welfare of the Child

International Covenant on Civil and Political Rights

First Optional Protocol to the ICCPR

International Covenant on Economic, Social and Cultural Rights

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

Convention on the Rights of the Child (CRC)

Convention relating to the Status of Refugees (1951)

Protocol relating to the Status of Refugees

Rome Statute of the International Criminal Court (signed but not yet ratified)

6.3 List of relevant addresses and web sites

The following is a selected list of UN bodies and other organizations working on the right to adequate housing. There are many other international, regional and national organizations working in this field. The following addresses could be used to obtain further information about housing rights and about other NGOs working in this area.

<u>UN-HABITAT</u> Information Services Section Office of the Executive Director UN-HABITAT P.O. Box 30030 Nairobi, Kenya Tel: (254 20) 623120 Fax: (254 20) 623477 Email: infohabitat@unhabitat.org Web: http://www.unhabitat.org	<u>UN Special Rapporteur on the right to housing as a component of the right to an adequate standard of living</u> Office of the High Commissioner for Human Rights, Palais des Nations Avenue de la Paix 8-14 1211 Geneva 10 Switzerland Tel: +41 22 917 90 00 Fax: +41 22 917 9006 or 9003 E-mail: webadmin.hchr@unog.ch Web: http://www.unhchr.ch
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<u>Centre on Housing Rights and Evictions (COHRE)</u> Africa Programme 83 rue de Montbrillant 1202 Geneva Switzerland Tel: + 41 22 734 1028 Tel: + 41 22 734 1052 Fax: + 41 22 733 8336 Email: jean@cohre.org Web: www.cohre.org	<u>Centre for Equality Rights in Accommodation (CERA)</u> 517 College Street, Ste 315, Toronto ON, M6G 4 Tel: (416) 944 0087 Fax (416) 944 1803 E-mail cera@equalityrights.org Web: http://www.web.net/cera/
<u>Habitat for Humanity International</u> 121 Habitat Street Americus, GA 31709-3498 Tel: (229) 924-6935 E-mail: publicinfo@hfhi.org Web: http://www.habitat.org/	<u>Habitat International Coalition</u> Housing & Land Rights Network Middle East / North Africa 7 Mohammad Shafiq Street No. 8 Muhandisin, Giza, Egypt Tel : +20 2 347 4360 Fax : +20 2 338 9482 E-mail : hic-mena@hic-mena.org Web: http://www.hic-mena.org
<u>Network for Economic, Social and Cultural Rights</u> 162 Montague Street, 2nd Floor Brooklyn, New York 11201 United States Tel. +1.718.237.9145, ext. 16 Fax: +1.718.237.9147 General E-mail: escr-net@cestr.org	



APPENDICES

CONTENTS:

- Appendix I Summary of main international standards concerning the right to adequate housing and prohibiting forced eviction;
- Appendix II CESCER General Comment 4
- Appendix III CESCER General Comment 7
- Appendix IV UN Sub-Commission on Human Rights Resolution 1993/41
- Appendix V African Commission decision
- Appendix VI Istanbul Declaration

The documents appended to this report are intended as a resource for those involved in contributing to the development of policies, laws and procedures aimed at giving effect to the right to adequate housing in Angola, including government officials, parliamentarians, residents' committees, lawyers, NGOs, and activists who promote and defend housing rights.

APPENDIX I

Summary of main international standards concerning the right to adequate housing and the prohibition of forced eviction

This summary contains extracts from selected international human rights treaties and other international standards which are not included in separate appendices to this document. For convenience, certain articles cited in Section 4 of the attached report are repeated in this summary.

Contents:

1. The right to adequate housing and the right not to be forcibly evicted under international and regional human rights treaties and other international standards

1.1 The right to adequate housing

1.2 The right not to be forcibly evicted

2. The 'tripartite typology' – the obligations to respect, protect and fulfil the right to adequate housing

☆☆☆☆☆

1. The right to adequate housing and the right not to be forcibly evicted under international and regional human rights treaties and other international standards, interpretations and case-law

1.1 The right to adequate housing

1.1.1 International treaties

International Covenant on Economic, Social and Cultural Rights (ICESCR) Article11

"1. 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.

2.The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

- (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;
- (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need."

International Convention on the Elimination of all Forms of Racial Discrimination (CERD)

Article 5 (e) (iii)

"In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and eliminate racial discrimination in all of its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: ... (e) in particular ... (iii) the right to housing."

International Convention on the Elimination of All Forms of Discrimination Against Women

Article 14 (2)

"States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right ... (h) to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications."

Article 16.1(h)

"States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women

(h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration."

UN Convention of the Rights of the Child

Article 16.1

"No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation."

Article 27 (3)

1. "States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

...

3. States Parties in accordance with national conditions and within their means shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing."

Convention relating to the Status of Refugees

Article 21 states:

"As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances."

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

Article 43.1 (d)

"Migrant workers shall enjoy equality of treatment with nationals of the State of employment in relation to ... (d) Access to housing, including social housing schemes, and protection against exploitation in respect of rents."

1.1.2 African regional treaties

The African Charter on Human and Peoples' Rights

The African Charter does not specifically mention the right to adequate housing. It does, however provide for rights which are components of the right to an adequate standard of living and the right to property.

Article 15: "Every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work."

Article 16 (1): "1. Every individual shall have the right to enjoy the best attainable state of physical and mental health."

Article 17 (1): "1. Every individual shall have the right to education"

Article 18: (1, 3 & 4)

1. The family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical and moral health.
- ...
3. The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and child as stipulated in international declarations and conventions.
4. The aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs.

The African Charter on the Rights and Welfare of the Child

Article 20 (2)

"2. States Parties to the present Charter shall in accordance with their means and national conditions take all appropriate measures;

- (a) to assist parents and other persons responsible for the child and in case of need provide material assistance and support programmes particularly with regard to nutrition, health, education, clothing and housing ..."

1.1.3 International resolutions and declarations

Universal Declaration of Human Rights (UDHR)

Article 25.1

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

International Labour Organization (ILO) Recommendations

No. 115 concerning Worker's Housing (1961)

Section II (Objectives of National Housing Policy), paragraph 2

"It should be an objective of national [housing] policy to promote, within the framework of general housing policy, the construction of housing and related community facilities with a view to ensuring that adequate and decent housing accommodation and a suitable living environment are made available to all workers and their families. A degree of priority should be accorded to those whose needs are most urgent."

Section III (Responsibility of Public Authorities), paragraph 8.2 (b)

"The responsibilities of the central body should include formulating workers' housing programmes, such programmes to include measures for slum clearance and the re-housing of occupiers of slum dwellings."

Section VI (Housing Standards), paragraph 19

"As a general principle, the competent authority should, in order to ensure structural safety and reasonable levels of decency hygiene and comfort, establish minimum housing standards in the light of local conditions and take appropriate measures to enforce these standards."

Suggestions Concerning Methods of Application, Section I, paragraph 5

"The competent authorities should give special attention to the particular problem of housing migrant workers and, where appropriate, their families, with a view to achieving as rapidly as possible equality of treatment between migrant workers and national workers in this respect."

Declaration on Social Progress and Development

Part I, article 6

"Social development requires the assurance to everyone of the right to work and the free choice of employment. Social progress and development require the participation of all members of society in productive and socially useful labour and the establishment, in conformity with human rights and fundamental freedoms and with the principles of justice and the social function of property, of forms of ownership of land and of the means of production which preclude any kind of exploitation of man, ensure equal rights to property for all and create conditions leading to genuine equality among people."

Part II, article 10 (f)

"Social progress and development shall aim at the continuous raising of the material and spiritual standards of living of all members of society, with respect for and in compliance with human rights and fundamental freedoms, through the attainment of the following main goals:...(f) The provision for all, particularly persons in low-income groups and large families, of adequate housing and community services."

Declaration on the Rights of Disabled Persons, Article 9

"Disabled persons have the right to live with their families or with foster parents and to participate in all social, creative or recreational activities. No disabled person shall be subjected, as far as his or her residence is concerned, to differential treatment other than that required by his or her condition or by the improvement which he or she may derive therefrom. If the stay of a disabled person in a specialized establishment is indispensable, the environment and living conditions therein shall be as close as possible to those of the normal life of a person of his or her age."

Declaration on the Right to Development, Article 8

1. States should undertake, at the national level, all necessary measures for the realization of the right to development and shall ensure, *inter alia*, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income. Effective measures should be undertaken to ensure that women have an active role in the development process. Appropriate economic and social reforms should be carried out with a view to eradicating all social injustices.

2. States should encourage popular participation in all spheres as an important factor in development and in the full realization of all human rights.

1.1.4 Interpretations and case law

The Committee on Economic, Social and Cultural Rights (CESR) General Comment 4 The right to adequate housing (art. 11, para. 1) [1991], is attached in Appendix II to this report.

The Constitutional Court of South Africa, in *The Government of the Republic of South Africa et. al. v. Irene Grootboom et. al.*, Case CCT 11/00, heard on 11 May 2000 and decided on 4 October 2000.⁴⁶

This judgement significantly advanced the right to adequate housing domestically as well as internationally by resting on section 39 of the Constitution of South Africa, article 11.1 of the ICESCR and the minimum core obligations for States parties to the Covenant set out in General Comment No.3. The Court held that relevant international law must provide guidance to domestic courts, but more importantly, that as a signatory to the Covenant, South Africa was bound to uphold the principles therein. The Court also held that the State was obligated to abide by its commitments in proactive and practical ways, despite financial constraints, and that the programmes and policies necessary to meet these commitments are matters appropriate for judicial review.

The African Commission on Human and Peoples' Rights, which oversees implementation of the African Charter, in October 2001, made a highly significant contribution to the jurisprudence on the right to housing and not to be evicted in a decision concerning a complaint against the Federal Republic of Nigeria. In this decision, the African Commission stated, in paragraph 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 ... 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."⁴⁷

1.2 The right not to be forcibly evicted

1.2.1 International treaties

The obligation of states not to carry out forced evictions is derived from Article 11.1 of the ICESCR in conjunction with Article 17.1 of the ICCPR and other related principles and rights including the right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment (Article 7 of the ICCPR).

Article 17 of the ICCPR states:

"1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. ..."

⁴⁶ The judgement may be found on the Internet on http://www.concourt.gov.za/judgment.php?case_id=11987

⁴⁷ The decision was made at the African Commission's 30th Ordinary Session held in Banjul, The Gambia from 13 to 27 October 2001, in response to Communication 155/96, Center for Economic and Social Rights and Social and Economic Rights Action Center (SERAC) v. Nigeria.

2. Everyone has the right to the protection of the law against such interference or attacks.”

Article 7 of the ICCPR is relevant to eviction in two ways: it applies not only to physical ill-treatment, which often occurs in cases of forced eviction, but also to the mental suffering inherent in forced eviction. It states:

“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment....”⁴⁸

1.2.2 African Regional treaties

African Charter on Human and Peoples’ Rights,

Article 14

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

1.2.3 Resolutions and declarations

Significant UN Resolutions on the right not to be forcibly evicted include:

Commission on Human Rights

Resolution 1993/77 on Forced evictions adopted at the 67th meeting on 10 March 1993:

“1. Affirms that the practice of forced eviction constitutes a gross violation of human rights, in particular the right to adequate housing;

2. Urges Governments to undertake all necessary immediate measures, at all levels, aimed at rapidly eliminating the practice of forced eviction;

3. Also urges Governments to confer legal security of all persons currently threatened with forced eviction and to adopt all necessary measures giving full protection against forced eviction, based upon effective participation, consultation and negotiation with affected persons or groups;

“4. Recommends that all Governments provide immediate restitution, compensation and/or appropriate and sufficient alternative accommodation or land, consistent with their wishes and needs, to persons and communities that have been forcibly evicted, following mutually satisfactory negotiations with the affected persons or groups.”

⁴⁸ The Human Rights Committee has stated in its General Comment 20 on Article 7 (The prohibition of torture or to cruel, inhuman or degrading treatment or punishment (art. 7) [1992]) that the aim of this article “is to protect both the dignity and the physical and mental integrity of the individual.”

A similar resolution was passed by the Sub-commission on Human Rights, Resolution 1993/41 on Forced evictions adopted at the 34th meeting on 26 August 1993, which is attached in Appendix IV to this report.

1.2.4 Interpretations and case law

CESCR General Comment 7 Forced evictions, and the right to adequate housing (art. 11, para. 1) [1997] is attached in Appendix III to this report.⁴⁹

The African Commission on Human and Peoples' Rights' decision, referred to above, stated, in paragraph 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."

2. The "tripartite typology" – the obligations to respect, protect and fulfil the right to adequate housing⁵⁰

The ICESCR, in Article 2 states:

"1. 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.

2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

The CESCR, in its General Comment 3 The nature of States parties' obligations (art. 2, para. 1) [1990], points out that "... while the full realization of the relevant rights may be achieved progressively, steps towards that goal must be taken within a reasonably short time after the Covenant's entry into force for the States concerned. Such steps should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized in the Covenant." It adds, in paragraph 9, "... 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."⁵¹

⁴⁹ The CESCR's General Comment 7 on forced evictions provides an essential basis for any policy or legislation on the right not to be forcibly evicted.

⁵⁰ The term "adequate" is defined in General Comment 4

⁵¹ Op.cit.

The "tripartite typology" is a useful framework for analysing the state's obligations in relation to human rights. The CESCR has elaborated the "tripartite typology" in its General Comment 15 The right to water (arts. 11 and 12) [2002]. It is used here to identify the different classes of obligations to *respect*, *protect* and *fulfil* (emphasis added) the right to adequate housing and to draw together extracts from relevant international human rights law, standards and jurisprudence.

In its General Comment 15, the CESCR states, in paragraph 20, "The right to water, *like any human right* (emphasis added), imposes three types of obligations on States parties: obligations to respect, obligations to protect and obligations to fulfil." The obligation to fulfil, according to paragraph 25 of General Comment 15, consists of the obligations to "facilitate, promote and provide."

2.1 The obligation to respect

Refraining from forced evictions

With regard to evictions, the obligation of the state under international law is clear and simple – the state must refrain from forced evictions.

The obligation to respect any right requires that the state refrain from interfering directly or indirectly with the enjoyment of that right and also from any practice or activity which denies or limits equal access to the right. The CESCR, in General Comment 15, paragraphs 23 and 24, also requires states to legislate and take other measures to prevent third parties, "including individuals, groups, corporations and other entities as well as agents acting under their authority" from interfering in any way with the enjoyment of the right or of equal access to the right and stipulates that the laws and other measures should include "independent monitoring, genuine public participation and imposition of penalties for non-compliance."

The African Commission, in the decision mentioned above, continues, in paragraph 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."

2.2 The obligation to protect

a) Provision of security of tenure

The United Nations Sub-Commission on Human Rights resolution 1993/41, Forced evictions, operational paragraph 3, "[s]trongly urges Governments to secure legal tenure on all persons currently threatened with forced eviction and to adopt all necessary measures giving full

protection against forced eviction, based upon effective participation, consultation and negotiation with affected persons or groups."

The CESCR, in its General Comment 4 The right to adequate housing (art. 11, para. 1) [1991], states, in paragraph 8 (a), "[t]enure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups."

Governments which have endorsed the Habitat Agenda have committed themselves to: "[p]roviding legal security of tenure and equal access to land to all people, including women and those living in poverty..." and to "[e]nsuring transparent, comprehensive and accessible systems in transferring land rights and legal security of tenure."⁵²

b) Legislation against forced evictions

In its General Comment 7 Forced evictions, and the right to adequate housing (art. 11, para. 1) [1997], the CESCR states, in paragraph 9: "... legislation against forced evictions is an essential basis upon which to build a system of effective protection. Such legislation should include measures which (a) provide the greatest possible security of tenure to occupiers of houses and land, (b) conform to the Covenant and (c) are designed to control strictly the circumstances under which evictions may be carried out. The legislation must also apply to all agents acting under the authority of the State or who are accountable to it. Moreover ... States parties must ensure that legislative and other measures are adequate to prevent and, if appropriate, punish forced evictions carried out, without appropriate safeguards, by private persons or bodies."

Concerning the right to privacy of the home, the Human Rights Committee pointed out in General Comment 16 The right to privacy (art. 17) [1988], with reference to the terms 'arbitrary' and 'unlawful' that:

- the law must specify where the state may interfere;
- any interference must be based on the law;
- such interference must be reasonable;
- it may only be made by a designated authority and on a case-by-case basis.

The Human Rights Committee states, in General Comment 16, paragraph 2, that "interference authorized by States can only take place on the basis of law, which itself must comply with the provisions, aims and objectives of the Covenant." It adds, in paragraph 4, that "even interference provided for by law should be in accordance with the provisions, aims and

⁵² The Habitat Agenda, (<http://w.w.w.unhabitat.org/unchs/english/hagenda/ist-dec.htm>)

objectives of the Covenant and should be, in any event, reasonable in the particular circumstances." In paragraph 8, the Committee states: "relevant legislation must specify in detail the precise circumstances in which such interferences may be permitted. A decision to make use of such authorized interference must be made only by the authority designated under the law, and on a case-by-case basis."

c) The requirement to consult

Article 25 of the ICCPR provides the right to participate in public affairs. This also applies to the drafting of laws and the development of policies concerning housing. In its General Comment 25 The right to participate in public life (art. 25) [1996], the Human Rights Committee stated, in paragraph 8, "[c]itizens also take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves. This participation is supported by ensuring freedom of expression, assembly and association."

The CESCR, in its General Comment 7 Forced evictions, and the right to adequate housing (art. 11, para. 1) [1997], paragraph 13, stated: "States parties shall ensure, prior to carrying out any evictions, and particularly those involving large groups, that all feasible alternatives are explored in consultation with the affected persons, with a view to avoiding, or at least minimizing, the need to use force."

The Commission on Human Rights resolution 2001/28, Adequate housing as a component of the right to an adequate standard of living, in paragraph 10, "[c]alls upon all States: ... to promote participation in decision-making processes, in particular at the local level, when developing an adequate standard of living and housing."

Governments that signed the Istanbul Declaration on Human Settlements "reaffirmed [their] commitment to the full and progressive realisation of the right to adequate housing as provided for in international instruments" by seeking "the active participation of [its] public, private and non-governmental partners at all levels to ensure legal security of tenure, protection from discrimination and equal access to affordable adequate housing for all persons and their families."⁵³

d) Legal remedies and justiciability

The CESCR, in its General Comment 3, The nature of States parties' obligations (art. 2, para. 1) [1990], states that, "[a]mong the measures which might be considered appropriate, in addition to legislation, is the provision of judicial remedies with respect to rights which may, in accordance with the national legal system, be considered justiciable." The Committee notes that "those States parties which are also parties to the International Covenant on Civil

⁵³ Istanbul Declaration 1996, paragraph 8.

and Political Rights are already obligated (by virtue of articles 2 (paras. 1 and 3), 3 and 26) of that Covenant to ensure that any person whose rights or freedoms (including the right to equality and non-discrimination) recognized in that Covenant are violated, "shall have an effective remedy."

The CESCR, in General Comment 4 The right to adequate housing (art. 11, para. 1) [1991], has identified, in paragraph 17, types of remedies which might be employed, depending on the legal system, including: "(a) legal appeals aimed at preventing planned evictions or demolitions through the issuance of court-ordered injunctions; (b) legal procedures seeking compensation following an illegal eviction; (d) allegations of any form of discrimination in the allocation and availability of access to housing; ..."

Legal remedies should include adequate compensation. The CESCR, in its General Comment 7 on forced evictions, in paragraph 13, and referring to Article 2.3 of the ICCPR on the right to an effective remedy, calls on States Parties, "before carrying out any forced evictions ..." to "ensure that all the individuals concerned have a right to adequate compensation for any property, both personal and real, which is affected."

Concerning the justiciability – the susceptibility to judicial enforcement – of economic, social and cultural rights, the CESCR, in its General Comment No. 9, The domestic application of the Covenant [1998], paragraph 10 states: "...[w]hile the general approach of each legal system needs to be taken into account, there is no Covenant right which could not, in the great majority of systems, be considered to possess at least some significant justiciable dimensions. It is sometimes suggested that matters involving the allocation of resources should be left to the political authorities rather than the courts. While the respective competences of the various branches of government must be respected, it is appropriate to acknowledge that courts are generally already involved in a considerable range of matters which have important resource implications. The adoption of a rigid classification of economic, social and cultural rights which puts them, by definition, beyond the reach of the courts would thus be arbitrary and incompatible with the principle that the two sets of human rights are indivisible and interdependent. It would also drastically curtail the capacity of the courts to protect the rights of the most vulnerable and disadvantaged groups in society."

In the case the Government of RSA and others v. Grootboom and others, cited above, Justice Yacoob, who wrote the court's unanimous decision, examined the State's constitutional obligations on the right to adequate housing and acknowledged that "it was a difficult task for the state to fulfil this right, [but] stressed that the state has obligations which the courts could enforce." Justice Yacoob also referred to a decision by the South African Constitutional Court in 1996 concerning whether the economic, social and cultural rights in the South African Constitution were justiciable. According to the 1996 decision: "[t]hese rights are, at least to some extent, justiciable. ... many of the civil and political rights entrenched in the [constitutional text ...] 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."⁵⁴

2.3 The obligation to fulfil

According to the CESCR in its General Comment 15 The right to water (arts. 11 and 12) [2002], paragraph 25, the obligation to fulfil "can be disaggregated into the obligations to facilitate, promote and provide. The obligation to facilitate requires the State to take positive measures to assist individuals and communities to enjoy the right. The obligation to promote obliges the State party to take steps to ensure that there is appropriate education ... States parties are also obliged to fulfil (provide) the right when individuals or a group are unable, for reasons beyond their control, to realize that right themselves by the means at their disposal."

a) The obligation to facilitate and promote

The obligation to facilitate requires the State to take positive measures to assist individuals and communities to enjoy the right.⁵⁵ Measures could include economic provisions to facilitate access to housing. The governments that endorsed the Istanbul Declaration on Human Settlements agreed: "[w]e shall work to expand the supply of affordable housing by enabling markets to perform efficiently and in a socially and environmentally responsible manner, enhancing access to land and credit and assisting those who are unable to participate in housing markets."⁵⁶

The work of self-help groups should also be facilitated. In its General Comment 4 The right to adequate housing (art. 11, para. 1) [1991], paragraph 10, the Committee requires the state to facilitate the work of self-help groups and to seek cooperation from international donors. Paragraph 10 states: "...many of the measures required to promote the right to housing would only require the abstention by the Government from certain practices and a commitment to facilitating "self-help" by affected groups. To the extent that any such steps are considered to be beyond the maximum resources available to a State party, it is appropriate that a request be made as soon as possible for international cooperation in accordance with articles 11 (1), 22 and 23 of the Covenant..."

Article 11.2 (a) of the ICESCR, also includes the promotion of knowledge concerning "the most efficient development and utilization of natural resources."

b) The obligation to provide (including the provision of compensation for victims of forced eviction)

In its General Comment 3 The nature of States parties' obligations (art. 2, para. 1) [1990], the CESCR states that in its view "a 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.

⁵⁴ *Ex parte Chairperson of the Constitutional Assembly: In Re Certification of the Constitution of the Republic of South Africa*, 1996 1996 (4) SA 744; 1996 (10) BCLR 1253 (CC) at para 78.

⁵⁵ General Comment 15, The right to water (arts. 11 and 12) [2002], paragraph 25.

⁵⁶ Istanbul Declaration, 1996, paragraph 9.

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."

In calling on States to give priority to those living in unfavourable conditions, the CESCR, in General Comment 4 The right to adequate housing (art. 11, para. 1) [1991], paragraph 11, adds: "... despite externally caused problems, the obligations under the Covenant continue to apply and are perhaps even more pertinent during times of economic contraction. It would thus appear to the Committee that a general decline in living and housing conditions, directly attributable to policy and legislative decisions by States parties, and in the absence of accompanying compensatory measures, would be inconsistent with the obligations under the Covenant."

The decision of the South African Constitutional Court in the case of the Government of RSA and others v. Grootboom and others is also relevant in this context as it established the obligations of the state to provide shelter to needy persons despite the fact that they had occupied land illegally.

The Applicants in the Grootboom case had been evicted from a piece of land which they had illegally occupied in an effort to escape from appalling living conditions. Justice Yacoob noted, in paragraphs 93-95: "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." ... Justice Yacoob noted that "[i]t 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."

☆☆☆☆☆

APPENDIX II

Committee on Economic, Social and Cultural Rights General Comment 4, Sixth session (1991)^{*}

The right to adequate housing (art. 11 (1) of the Covenant)

1. Pursuant to article 11 (1) of the Covenant, States parties "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 human right to adequate housing, which is thus derived from the right to an adequate standard of living, is of central importance for the enjoyment of all economic, social and cultural rights.

2. The Committee has been able to accumulate a large amount of information pertaining to this right. Since 1979, the Committee and its predecessors have examined 75 reports dealing with the right to adequate housing. The Committee has also devoted a day of general discussion to the issue at each of its third (see E/1989/22, para. 312) and fourth sessions (E/1990/23, paras. 281-285). In addition, the Committee has taken careful note of information generated by the International Year of Shelter for the Homeless (1987) including the Global Strategy for Shelter to the Year 2000 adopted by the General Assembly in its resolution 42/191 of 11 December 1987.¹ The Committee has also reviewed relevant reports and other documentation of the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities.²

3. Although a wide variety of international instruments address the different dimensions of the right to adequate housing,³ article 11 (1) of the Covenant is the most comprehensive and perhaps the most important of the relevant provisions.

4. Despite the fact that the international community has frequently reaffirmed the importance of full respect for the right to adequate housing, there remains a disturbingly large gap between the standards set in article 11 (1) of the Covenant and the situation prevailing in many parts of the world. While the problems are often particularly acute in some developing countries which confront major resource and other constraints, the Committee observes that significant problems of homelessness and inadequate housing also exist in some of the most economically developed societies. The United Nations estimates that there are over 100 million persons homeless worldwide and over 1 billion inadequately housed.⁴ There is no indication that this number is decreasing. It seems clear that no State party is free of significant problems of one kind or another in relation to the right to housing.

^{*} Contained in document E/1992/23.

5. In some instances, the reports of States parties examined by the Committee have acknowledged and described difficulties in ensuring the right to adequate housing. For the most part, however, the information provided has been insufficient to enable the Committee to obtain an adequate picture of the situation prevailing in the State concerned. This general comment thus aims to identify some of the principal issues which the Committee considers to be important in relation to this right.

6. The right to adequate housing applies to everyone. While the reference to "himself and his family" reflects assumptions as to gender roles and economic activity patterns commonly accepted in 1966 when the Covenant was adopted, the phrase cannot be read today as implying any limitations upon the applicability of the right to individuals or to female-headed households or other such groups. Thus, the concept of "family" must be understood in a wide sense. Further, individuals, as well as families, are entitled to adequate housing regardless of age, economic status, group or other affiliation or status and other such factors. In particular, enjoyment of this right must, in accordance with article 2 (2) of the Covenant, not be subject to any form of discrimination.

7. In the Committee's view, the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one's head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity. This is appropriate for at least two reasons. In the first place, the right to housing is integrally linked to other human rights and to the fundamental principles upon which the Covenant is premised. Thus "the inherent dignity of the human person" from which the rights in the Covenant are said to derive requires that the term "housing" be interpreted so as to take account of a variety of other considerations, most importantly that the right to housing should be ensured to all persons irrespective of income or access to economic resources. Secondly, the reference in article 11 (1) must be read as referring not just to housing but to adequate housing. As both the Commission on Human Settlements and the Global Strategy for Shelter to the Year 2000 have stated: "Adequate shelter means ... adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities - all at a reasonable cost".

8. Thus the concept of adequacy is particularly significant in relation to the right to housing since it serves to underline a number of factors which must be taken into account in determining whether particular forms of shelter can be considered to constitute "adequate housing" for the purposes of the Covenant. While adequacy is determined in part by social, economic, cultural, climatic, ecological and other factors, the Committee believes that it is nevertheless possible to identify certain aspects of the right that must be taken into account for this purpose in any particular context. They include the following:

(a) *Legal security of tenure.* Tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property.

Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups;

(b) *Availability of services, materials, facilities and infrastructure.* An adequate house must contain certain facilities essential for health, security, comfort and nutrition. All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services;

(c) *Affordability.* Personal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised. Steps should be taken by States parties to ensure that the percentage of housing-related costs is, in general, commensurate with income levels. States parties should establish housing subsidies for those unable to obtain affordable housing, as well as forms and levels of housing finance which adequately reflect housing needs. In accordance with the principle of affordability, tenants should be protected by appropriate means against unreasonable rent levels or rent increases. In societies where natural materials constitute the chief sources of building materials for housing, steps should be taken by States parties to ensure the availability of such materials;

(d) *Habitability.* Adequate housing must be habitable, in terms of providing the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors. The physical safety of occupants must be guaranteed as well. The Committee encourages States parties to comprehensively apply the *Health Principles of Housing*⁵ prepared by WHO which view housing as the environmental factor most frequently associated with conditions for disease in epidemiological analyses; i.e. inadequate and deficient housing and living conditions are invariably associated with higher mortality and morbidity rates;

(e) *Accessibility.* Adequate housing must be accessible to those entitled to it. Disadvantaged groups must be accorded full and sustainable access to adequate housing resources. Thus, such disadvantaged groups as the elderly, children, the physically disabled, the terminally ill, HIV-positive individuals, persons with persistent medical problems, the mentally ill, victims of natural disasters, people living in disaster-prone areas and other groups should be ensured some degree of priority consideration in the housing sphere. Both housing law and policy should take fully into account the special housing needs of these groups. Within many States parties increasing access to land by landless or impoverished segments of the society should constitute a central policy goal. Discernible governmental obligations need to be developed aiming to substantiate the right of all to a secure place to live in peace and dignity, including access to land as an entitlement;

(f) *Location.* Adequate housing must be in a location which allows access to employment options, health-care services, schools, childcare centres and other social facilities. This is true both in large cities and in rural areas where the temporal and financial costs of getting to and from the place of work can place excessive demands upon the budgets of poor households. Similarly, housing should not be built on polluted sites nor in immediate proximity to pollution sources that threaten the right to health of the inhabitants;

(g) *Cultural adequacy.* The way housing is constructed, the building materials used and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing. Activities geared towards development or modernization in the housing sphere should ensure that the cultural dimensions of housing are not sacrificed, and that, inter alia, modern technological facilities, as appropriate are also ensured.

9. As noted above, the right to adequate housing cannot be viewed in isolation from other human rights contained in the two International Covenants and other applicable international instruments. Reference has already been made in this regard to the concept of human dignity and the principle of non-discrimination. In addition, the full enjoyment of other rights - such as the right to freedom of expression, the right to freedom of association (such as for tenants and other community-based groups), the right to freedom of residence and the right to participate in public decision-making - is indispensable if the right to adequate housing is to be realized and maintained by all groups in society. Similarly, the right not to be subjected to arbitrary or unlawful interference with one's privacy, family, home or correspondence constitutes a very important dimension in defining the right to adequate housing.

10. Regardless of the state of development of any country, there are certain steps which must be taken immediately. As recognized in the Global Strategy for Shelter and in other international analyses, many of the measures required to promote the right to housing would only require the abstention by the Government from certain practices and a commitment to facilitating "self-help" by affected groups. To the extent that any such steps are considered to be beyond the maximum resources available to a State party, it is appropriate that a request be made as soon as possible for international cooperation in accordance with articles 11 (1), 22 and 23 of the Covenant, and that the Committee be informed thereof.

11. States parties must give due priority to those social groups living in unfavourable conditions by giving them particular consideration. Policies and legislation should correspondingly not be designed to benefit already advantaged social groups at the expense of others. The Committee is aware that external factors can affect the right to a continuous improvement of living conditions, and that in many States parties overall living conditions declined during the 1980s. However, as noted by the Committee in its general comment No. 2 (1990) (E/1990/23, annex III), despite externally caused problems, the obligations under the Covenant continue to apply and are perhaps even more pertinent during times of economic contraction. It would thus appear to the Committee that a general decline in living and housing conditions, directly attributable to policy and legislative decisions by

States parties, and in the absence of accompanying compensatory measures, would be inconsistent with the obligations under the Covenant.

12. While the most appropriate means of achieving the full realization of the right to adequate housing will inevitably vary significantly from one State party to another, the Covenant clearly requires that each State party take whatever steps are necessary for that purpose. This will almost invariably require the adoption of a national housing strategy which, as stated in paragraph 32 of the Global Strategy for Shelter, "defines the objectives for the development of shelter conditions, identifies the resources available to meet these goals and the most cost-effective way of using them and sets out the responsibilities and time frame for the implementation of the necessary measures". Both for reasons of relevance and effectiveness, as well as in order to ensure respect for other human rights, such a strategy should reflect extensive genuine consultation with, and participation by, all of those affected, including the homeless, the inadequately housed and their representatives. Furthermore, steps should be taken to ensure coordination between ministries and regional and local authorities in order to reconcile related policies (economics, agriculture, environment, energy, etc.) with the obligations under article 11 of the Covenant.

13. Effective monitoring of the situation with respect to housing is another obligation of immediate effect. For a State party to satisfy its obligations under article 11 (1) it must demonstrate, *inter alia*, that it has taken whatever steps are necessary, either alone or on the basis of international cooperation, to ascertain the full extent of homelessness and inadequate housing within its jurisdiction. In this regard, the revised general guidelines regarding the form and contents of reports adopted by the Committee (E/C.12/1991/1) emphasize the need to "provide detailed information about those groups within ... society that are vulnerable and disadvantaged with regard to housing". They include, in particular, homeless persons and families, those inadequately housed and without ready access to basic amenities, those living in "illegal" settlements, those subject to forced evictions and low-income groups.

14. Measures designed to satisfy a State party's obligations in respect of the right to adequate housing may reflect whatever mix of public and private sector measures considered appropriate. While in some States public financing of housing might most usefully be spent on direct construction of new housing, in most cases, experience has shown the inability of Governments to fully satisfy housing deficits with publicly built housing. The promotion by States parties of "enabling strategies", combined with a full commitment to obligations under the right to adequate housing, should thus be encouraged. In essence, the obligation is to demonstrate that, in aggregate, the measures being taken are sufficient to realize the right for every individual in the shortest possible time in accordance with the maximum of available resources.

15. Many of the measures that will be required will involve resource allocations and policy initiatives of a general kind. Nevertheless, the role of formal legislative and administrative measures should not be underestimated in this context. The Global Strategy

for Shelter (paras. 6-67) has drawn attention to the types of measures that might be taken in this regard and to their importance.

16. In some States, the right to adequate housing is constitutionally entrenched. In such cases the Committee is particularly interested in learning of the legal and practical significance of such an approach. Details of specific cases and of other ways in which entrenchment has proved helpful should thus be provided.

17. The Committee views many component elements of the right to adequate housing as being at least consistent with the provision of domestic legal remedies. Depending on the legal system, such areas might include, but are not limited to: (a) legal appeals aimed at preventing planned evictions or demolitions through the issuance of court-ordered injunctions; (b) legal procedures seeking compensation following an illegal eviction; (c) complaints against illegal actions carried out or supported by landlords (whether public or private) in relation to rent levels, dwelling maintenance, and racial or other forms of discrimination; (d) allegations of any form of discrimination in the allocation and availability of access to housing; and (e) complaints against landlords concerning unhealthy or inadequate housing conditions. In some legal systems it would also be appropriate to explore the possibility of facilitating class action suits in situations involving significantly increased levels of homelessness.

18. In this regard, 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.

19. Finally, article 11 (1) concludes with the obligation of States parties to recognize "the essential importance of international cooperation based on free consent". Traditionally, less than 5 per cent of all international assistance has been directed towards housing or human settlements, and often the manner by which such funding is provided does little to address the housing needs of disadvantaged groups. States parties, both recipients and providers, should ensure that a substantial proportion of financing is devoted to creating conditions leading to a higher number of persons being adequately housed. International financial institutions promoting measures of structural adjustment should ensure that such measures do not compromise the enjoyment of the right to adequate housing. States parties should, when contemplating international financial cooperation, seek to indicate areas relevant to the right to adequate housing where external financing would have the most effect. Such requests should take full account of the needs and views of the affected groups.

Notes

1. Official Records of the General Assembly, Forty-third Session, Supplement No. 8, addendum (A/43/8/Add.1).
2. Commission on Human Rights resolutions 1986/36 and 1987/22; reports by Mr. Danilo Türk, Special Rapporteur of the Sub-Commission (E/CN.4/Sub.2/1990/19, paras. 108-120; E/CN.4/Sub.2/1991/17, paras. 137-139); see also Sub-Commission resolution 1991/26.
3. See, for example, article 25 (1) of the Universal Declaration of Human Rights, article 5 (e) (iii) of the International Convention on the Elimination of All Forms of Racial Discrimination, article 14 (2) of the Convention on the Elimination of All Forms of Discrimination against Women, article 27 (3) of the Convention on the Rights of the Child, article 10 of the Declaration on Social Progress and Development, section III (8) of the Vancouver Declaration on Human Settlements, 1976 (Report of Habitat: United Nations Conference on Human Settlements (United Nations publication, Sales No. E.76.IV.7 and corrigendum, chap. D), article 8 (1) of the Declaration on the Right to Development and the ILO Recommendation Concerning Workers' Housing, 1961 (No. 115)).
4. See note 1.
5. Geneva, World Health Organization, 1990.

APPENDIX III

Committee on Economic, Social and Cultural Rights General Comment 7, Sixteenth session (1997)*

The right to adequate housing (art. 11 (1) of the Covenant): forced evictions

1. In its general comment No. 4 (1991), the Committee observed that all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. It concluded that forced evictions are *prima facie* incompatible with the requirements of the Covenant. Having considered a significant number of reports of forced evictions in recent years, including instances in which it has determined that the obligations of States parties were being violated, the Committee is now in a position to seek to provide further clarification as to the implications of such practices in terms of the obligations contained in the Covenant.

2. The international community has long recognized that the issue of forced evictions is a serious one. In 1976, the United Nations Conference on Human Settlements noted that special attention should be paid to "undertaking major clearance operations should take place only when conservation and rehabilitation are not feasible and relocation measures are made".¹ In 1988, in the Global Strategy for Shelter to the Year 2000, adopted by the General Assembly in its resolution 43/181, the "fundamental obligation [of Governments] to protect and improve houses and neighbourhoods, rather than damage or destroy them" was recognized.² Agenda 21 stated that "people should be protected by law against unfair eviction from their homes or land".³ In the Habitat Agenda Governments committed themselves to "protecting all people from, and providing legal protection and redress for, forced evictions that are contrary to the law, taking human rights into consideration; [and] when evictions are unavoidable, ensuring, as appropriate, that alternative suitable solutions are provided".⁴ The Commission on Human Rights has also indicated that "forced evictions are a gross violation of human rights".⁵ However, although these statements are important, they leave open one of the most critical issues, namely that of determining the circumstances under which forced evictions are permissible and of spelling out the types of protection required to ensure respect for the relevant provisions of the Covenant.

3. The use of the term "forced evictions" is, in some respects, problematic. This expression seeks to convey a sense of arbitrariness and of illegality. To many observers, however, the reference to "forced evictions" is a tautology, while others have criticized the expression "illegal evictions" on the ground that it assumes that the relevant law provides adequate protection of the right to housing and conforms with the Covenant, which is by no means always the case. Similarly, it has been suggested that the term "unfair evictions" is

* Contained in document E/1998/22, annex IV.

even more subjective by virtue of its failure to refer to any legal framework at all. The international community, especially in the context of the Commission on Human Rights, has opted to refer to "forced evictions", primarily since all suggested alternatives also suffer from many such defects. The term "forced evictions" as used throughout this general comment is defined as the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection. The prohibition on forced evictions does not, however, apply to evictions carried out by force in accordance with the law and in conformity with the provisions of the International Covenants on Human Rights.

4. The practice of forced evictions is widespread and affects persons in both developed and developing countries. Owing to the interrelationship and interdependency which exist among all human rights, forced evictions frequently violate other human rights. Thus, while manifestly breaching the rights enshrined in the Covenant, the practice of forced evictions may also result in violations of civil and political rights, such as the right to life, the right to security of the person, the right to non-interference with privacy, family and home and the right to the peaceful enjoyment of possessions.

5. Although the practice of forced evictions might appear to occur primarily in heavily populated urban areas, it also takes place in connection with forced population transfers, internal displacement, forced relocations in the context of armed conflict, mass exoduses and refugee movements. In all of these contexts, the right to adequate housing and not to be subjected to forced eviction may be violated through a wide range of acts or omissions attributable to States parties. Even in situations where it may be necessary to impose limitations on such a right, full compliance with article 4 of the Covenant is required so that any limitations imposed must be "determined by law only insofar as this may be compatible with the nature of these [i.e. economic, social and cultural] rights and solely for the purpose of promoting the general welfare in a democratic society".

6. Many instances of forced eviction are associated with violence, such as evictions resulting from international armed conflicts, internal strife and communal or ethnic violence.

7. Other instances of forced eviction occur in the name of development. Evictions may be carried out in connection with conflict over land rights, development and infrastructure projects, such as the construction of dams or other large-scale energy projects, with land acquisition measures associated with urban renewal, housing renovation, city beautification programmes, the clearing of land for agricultural purposes, unbridled speculation in land, or the holding of major sporting events like the Olympic Games.

8. In essence, the obligations of States parties to the Covenant in relation to forced evictions are based on article 11.1, read in conjunction with other relevant provisions. In particular, article 2.1 obliges States to use "all appropriate means" to promote the right to adequate housing. However, in view of the nature of the practice of forced evictions, the reference in article 2.1 to progressive achievement based on the availability of resources will

rarely be relevant. The State itself must refrain from forced evictions and ensure that the law is enforced against its agents or third parties who carry out forced evictions (as defined in paragraph 3 above). Moreover, this approach is reinforced by article 17.1 of the International Covenant on Civil and Political Rights which complements the right not to be forcefully evicted without adequate protection. That provision recognizes, *inter alia*, the right to be protected against "arbitrary or unlawful interference" with one's home. It is to be noted that the State's obligation to ensure respect for that right is not qualified by considerations relating to its available resources.

9. Article 2.1 of the Covenant requires States parties to use "all appropriate means", including the adoption of legislative measures, to promote all the rights protected under the Covenant. Although the Committee has indicated in its general comment No. 3 (1990) that such measures may not be indispensable in relation to all rights, it is clear that legislation against forced evictions is an essential basis upon which to build a system of effective protection. Such legislation should include measures which (a) provide the greatest possible security of tenure to occupiers of houses and land, (b) conform to the Covenant and (c) are designed to control strictly the circumstances under which evictions may be carried out. The legislation must also apply to all agents acting under the authority of the State or who are accountable to it. Moreover, in view of the increasing trend in some States towards the Government greatly reducing its responsibilities in the housing sector, States parties must ensure that legislative and other measures are adequate to prevent and, if appropriate, punish forced evictions carried out, without appropriate safeguards, by private persons or bodies. States parties should therefore review relevant legislation and policies to ensure that they are compatible with the obligations arising from the right to adequate housing and repeal or amend any legislation or policies that are inconsistent with the requirements of the Covenant.

10. Women, children, youth, older persons, indigenous people, ethnic and other minorities, and other vulnerable individuals and groups all suffer disproportionately from the practice of forced eviction. Women in all groups are especially vulnerable given the extent of statutory and other forms of discrimination which often apply in relation to property rights (including home ownership) or rights of access to property or accommodation, and their particular vulnerability to acts of violence and sexual abuse when they are rendered homeless. The non-discrimination provisions of articles 2.2 and 3 of the Covenant impose an additional obligation upon Governments to ensure that, where evictions do occur, appropriate measures are taken to ensure that no form of discrimination is involved.

11. Whereas some evictions may be justifiable, such as in the case of persistent non-payment of rent or of damage to rented property without any reasonable cause, it is incumbent upon the relevant authorities to ensure that they are carried out in a manner warranted by a law which is compatible with the Covenant and that all the legal recourses and remedies are available to those affected.

12. Forced eviction and house demolition as a punitive measure are also inconsistent with the norms of the Covenant. Likewise, the Committee takes note of the obligations enshrined

in the Geneva Conventions of 1949 and Protocols thereto of 1977 concerning prohibitions on the displacement of the civilian population and the destruction of private property as these relate to the practice of forced eviction.

13. States parties shall ensure, prior to carrying out any evictions, and particularly those involving large groups, that all feasible alternatives are explored in consultation with the affected persons, with a view to avoiding, or at least minimizing, the need to use force. Legal remedies or procedures should be provided to those who are affected by eviction orders. States parties shall also see to it that all the individuals concerned have a right to adequate compensation for any property, both personal and real, which is affected. In this respect, it is pertinent to recall article 2.3 of the International Covenant on Civil and Political Rights, which requires States parties to ensure "an effective remedy" for persons whose rights have been violated and the obligation upon the "competent authorities (to) enforce such remedies when granted".

14. In cases where eviction is considered to be justified, it should be carried out in strict compliance with the relevant provisions of international human rights law and in accordance with general principles of reasonableness and proportionality. In this regard it is especially pertinent to recall general comment No.16 of the Human Rights Committee, relating to article 17 of the International Covenant on Civil and Political Rights, which states that interference with a person's home can only take place "in cases envisaged by the law". The Committee observed that the law "should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances". The Committee also indicated that "relevant legislation must specify in detail the precise circumstances in which such interferences may be permitted".

15. Appropriate procedural protection and due process are essential aspects of all human rights but are especially pertinent in relation to a matter such as forced evictions which directly invokes a large number of the rights recognized in both the International Covenants on Human Rights. The Committee considers that the procedural protections which should be applied in relation to forced evictions include: (a) an opportunity for genuine consultation with those affected; (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; (c) information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected; (d) especially where groups of people are involved, government officials or their representatives to be present during an eviction; (e) all persons carrying out the eviction to be properly identified; (f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise; (g) provision of legal remedies; and (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.

16. Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its

available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.

17. The Committee is aware that various development projects financed by international agencies within the territories of State parties have resulted in forced evictions. In this regard, the Committee recalls its general comment No. 2 (1990) which states, *inter alia*, that "international agencies should scrupulously avoid involvement in projects which, for example ... promote or reinforce discrimination against individuals or groups contrary to the provisions of the Covenant, or involve large-scale evictions or displacement of persons without the provision of all appropriate protection and compensation. Every effort should be made, at each phase of a development project, to ensure that the rights contained in the Covenant are duly taken into account".⁶

18. Some institutions, such as the World Bank and the Organisation for Economic Cooperation and Development (OECD) have adopted guidelines on relocation and/or resettlement with a view to limiting the scale of, and human suffering associated with forced evictions. Such practices often accompany large-scale development projects, such as dam-building and other major energy projects. Full respect for such guidelines, insofar as they reflect the obligations contained in the Covenant, is essential on the part of both the agencies themselves and States parties to the Covenant. The Committee recalls in this respect the statement in the Vienna Declaration and Programme of Action to the effect that "while development facilitates the enjoyment of all human rights, the lack of development may not be invoked to justify the abridgement of internationally recognized human rights" (Part I, para. 10).

19. In accordance with the guidelines for reporting adopted by the Committee, State parties are requested to provide various types of information pertaining directly to the practice of forced evictions. This includes information relating to (a) the "number of persons evicted within the last five years and the number of persons currently lacking legal protection against arbitrary eviction or any other kind of eviction", (b) "legislation concerning the rights of tenants to security of tenure, to protection from eviction" and (c) "legislation prohibiting any form of eviction".⁷

20. Information is also sought as to "measures taken during, *inter alia*, urban renewal programmes, redevelopment projects, site upgrading, preparation for international events (Olympics and other sporting competitions, exhibitions, conferences, etc.) 'beautiful city' campaigns, etc. which guarantee protection from eviction or guarantee re-housing based on mutual consent, by any persons living on or near to affected sites".⁸ However, few States parties have included the requisite information in their reports to the Committee. The Committee therefore wishes to emphasize the importance it attaches to the receipt of such information.

21. Some States parties have indicated that information of this nature is not available. The Committee recalls that effective monitoring of the right to adequate housing, either by the

Government concerned or by the Committee, is not possible in the absence of the collection of appropriate data and would request all States parties to ensure that the necessary data is collected and is reflected in the reports submitted by them under the Covenant.

Notes

¹ Report of Habitat: United Nations Conference on Human Settlements, Vancouver, 31 May-11 June 1976 (A/CONF.70/15), chap. II, recommendation B.8, paragraph C (ii).

² Report of the Commission on Human Settlements on the work of its eleventh session, Addendum (A/43/8/Add.1), paragraph 13.

³ Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992, volume I (A/CONF.151/26/Rev.1 (vol. I), annex II, Agenda 21, chapter 7.9 (b)).

⁴ Report of the United Nations Conference on Settlements (Habitat II) (A/CONF.165/14), annex II, The Habitat Agenda, paragraph 40 (n).

⁵ Commission on Human Rights resolution 1993/77, paragraph 1.

⁶ E/1990/23, annex III, paragraphs 6 and 8 (d).

⁷ E/C.12/1999/8, annex IV.

⁸ Ibid.

APPENDIX IV

UN Sub-Commission on Human Rights Resolution 1993/41

Forced evictions

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Recalling its resolutions 1992/14 of 27 August 1992 and 1991/12 of 26 August 1991,

Recalling also Commission on Human Rights resolution 1993/77 of 10 March 1993,

Reaffirming that every woman, man and child has the right to a secure place to live in peace and dignity,

Concerned that, according to United Nations statistics, in excess of one billion persons throughout the world are homeless or inadequately housed, and that this number is growing,

Recognizing that the practice of forced eviction involves the involuntary removal of persons, families and groups from their homes and communities, resulting in increased levels of homelessness and in inadequate housing and living conditions,

Disturbed that forced evictions and homelessness intensify social conflict and inequality and invariably affect the poorest, most socially, economically, environmentally and politically disadvantaged and vulnerable sectors of society,

Aware that forced evictions can be carried out, sanctioned, demanded, proposed, initiated or tolerated by a range of actors,

Aware also that racially motivated and other discriminatory motives are behind a large number of forced evictions,

Emphasizing that ultimate legal responsibility for preventing forced evictions rests with Governments,

Recalling that General Comment No. 2 (1990) on international technical assistance measures, adopted by the Committee on Economic, Social and Cultural Rights at its fourth session, states, *inter alia*, that international agencies should scrupulously avoid involvement in projects which involve, among other things, large-scale evictions or displacement of persons without the provision of all appropriate protection and compensation (E/1990/23, annex III, para. 6),

Mindful of the questions concerning forced eviction included in the guidelines for States' reports submitted in conformity with articles 16 and 17 of the International Covenant on

Economic, Social and Cultural Rights (E/1991/23, annex IV),

Noting with appreciation that the Committee on Economic, Social and Cultural Rights, in its General Comment No. 4 (1991) considered that instances of forced eviction were, prima facie, incompatible with the requirements of the International Covenant on Economic, Social and Cultural Rights and could only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law (E/1992/23, annex III, para. 18),

Noting the observations of the Committee on Economic, Social and Cultural Rights at its fifth to eighth sessions concerning forced evictions,

Noting also the inclusion of forced evictions as one of the primary causes of the international housing crisis in the working paper and first progress report of the Special Rapporteur on promoting the realization of the right to adequate housing, Mr. Rajindar Sachar (E/CN.4/Sub.2/1992/15 and E/CN.4/Sub.2/1993/15),

1. Reaffirms that the practice of forced eviction constitutes a gross violation of human rights, in particular the right to adequate housing;
2. Strongly urges Governments to undertake all necessary immediate measures, at all levels, aimed at rapidly eliminating the practice of forced eviction;
3. Also strongly urges Governments to confer legal security of tenure on all persons currently threatened with forced eviction and to adopt all necessary measures giving full protection against forced eviction, based upon effective participation, consultation and negotiation with affected persons or groups;
4. Recommends that all Governments provide immediate restitution, compensation and/or appropriate and sufficient alternative accommodation or land, consistent with their wishes or needs, to persons and communities that have been forcibly evicted, following mutually satisfactory negotiations with the affected persons or groups;
5. Invites all international financial, trade, development and other related institutions and agencies to take fully into account the views contained in the present resolution, and pronouncements under international law on the practice of forced eviction;
6. Invites all country and thematic rapporteurs of both the Sub-Commission and the Commission on Human Rights to include instances of forced eviction in their respective reports and to seek to monitor the practice;
7. Decides to consider the issue of forced evictions at its forty-sixth session and to discuss the analytical report of the Secretary-General prepared in accordance with Commission on Human Rights resolution 1993/77 under the agenda item entitled "The realization of economic, social and cultural rights" and determine how most effectively to continue its

consideration of the issue of forced evictions.

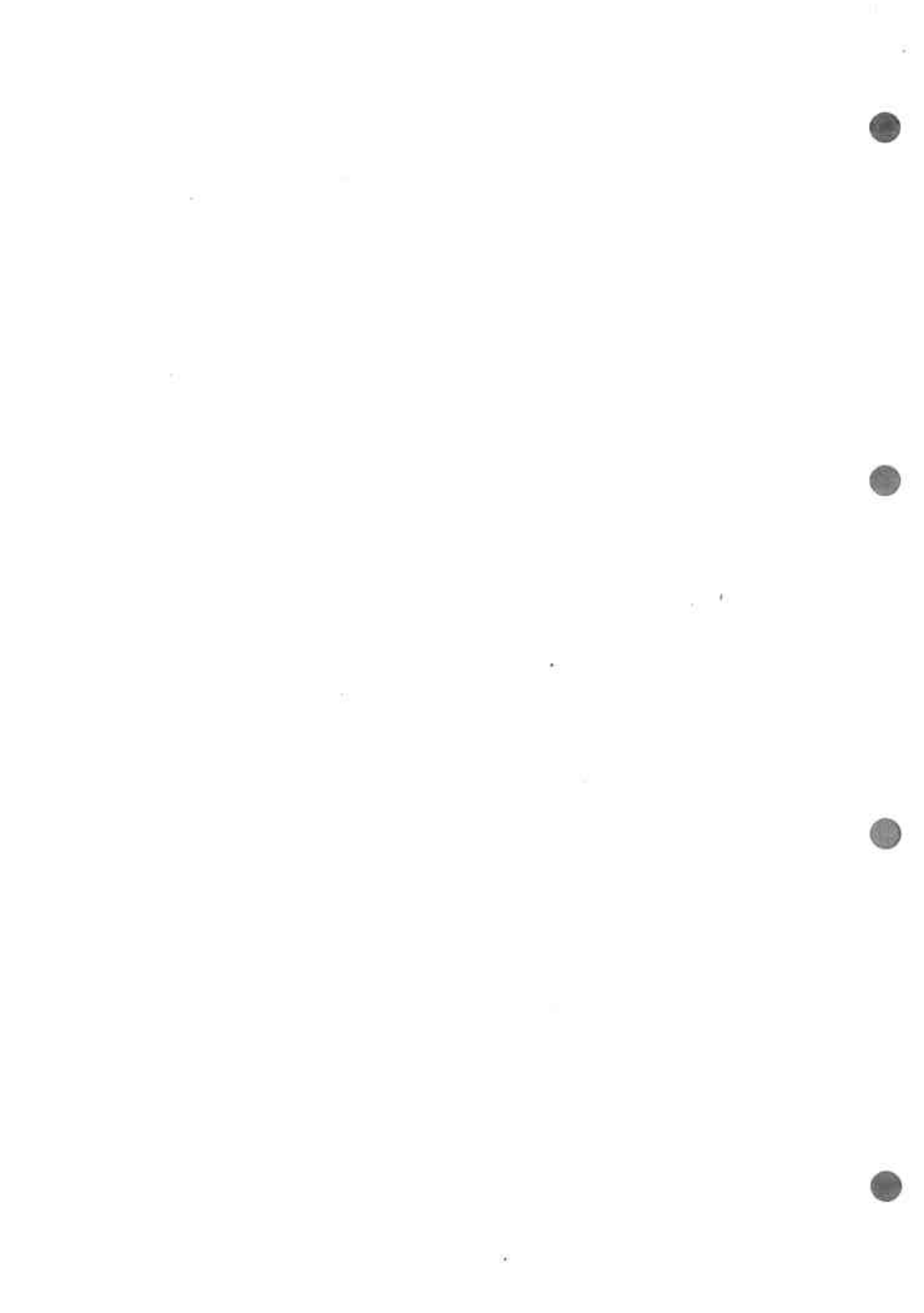
34th meeting

26 August 1993

[Adopted without a vote.]

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Office of the United Nations High Commissioner for Human Rights
Geneva, Switzerland



APPENDIX V

Excerpts from the decision by the African Commission on Human and Peoples' Rights taken in response to Communication 155/96, Center for Economic and Social Rights and Social and Economic Rights Action Center (SERAC) v. Nigeria, and concerning, among other things, forced evictions

The African Commission on Human and Peoples' Rights (African Commission), in its 30th Ordinary Session in Banjul, Gambia, from 13 to 27 October 2001, concluded that the Federal Republic of Nigeria had violated, among other things, Articles 14 and 18(1) of the African Charter on Human and Peoples' Rights (the Charter). The decision also refers to Article 16 of the Charter.

Article 14 of the Charter reads:

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

Article 16 states:

"1. Every individual shall have the right to enjoy the best attainable state of physical and mental health.

2. States parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.

Article 18(1) provides:

"The family shall be the natural unit and basis of society. It shall be protected by the State..."

The African Commission, in paragraph 7 of its Summary of Facts, noted that the Nigerian security forces had "attacked, burned and destroyed several Ogoni villages and homes under the pretext of dislodging officials and supporters of the Movement of the Survival of Ogoni People (MOSOP). These attacks have come in response to MOSOP's non-violent campaign in opposition to the destruction of their environment by oil companies."

The decision includes the following paragraphs:

"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 family¹ 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.² 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.³ The right to shelter even goes further than a roof over one's 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".⁴ 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.⁵ 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.

¹ Communication 74/92

² Scott Leckie, "The Right to Housing" in Eide, Krause and Rosas, 107-123, page 113.

³ Ibidem, pages 113-114

⁴ See General Comment No 7 (1997) on the right to adequate housing (Article 11.1): Forced evictions

⁵ Ibidem, page 113

APPENDIX VI

Istanbul Declaration on Human Settlements

The Istanbul Declaration on Human Settlements of 1996 is a reaffirmation of the Habitat Agenda agreed separately at the Habitat II conference. It notably reaffirms the commitment of world governments to better standards of living in larger freedom for all humankind.

1. We, the Heads of State or Government and the official delegations of countries assembled at the United Nations Conference on Human Settlements (Habitat II) in Istanbul, Turkey from 3 to 14 June 1996, take this opportunity to endorse the universal goals of ensuring adequate shelter for all and making human settlements safer, healthier and more liveable, equitable, sustainable and productive. Our deliberations on the two major themes of the Conference - adequate shelter for all and sustainable human settlements development in an urbanizing world - have been inspired by the Charter of the United Nations and are aimed at reaffirming existing and forging new partnerships for action at the international, national and local levels to improve our living environment. We commit ourselves to the objectives, principles and recommendations contained in the Habitat Agenda and pledge our mutual support for its implementation.

2. We have considered, with a sense of urgency, the continuing deterioration of conditions of shelter and human settlements. At the same time, we recognize cities and towns as centres of civilization, generating economic development and social, cultural, spiritual and scientific advancement. We must take advantage of the opportunities presented by our settlements and preserve their diversity to promote solidarity among all our peoples.

3. We reaffirm our commitment to better standards of living in larger freedom for all humankind. We recall the first United Nations Conference on Human Settlements, held at Vancouver, Canada, the celebration of the International Year of Shelter for the Homeless and the Global Strategy for Shelter to the Year 2000, all of which have contributed to increased global awareness of the problems of human settlements and called for action to achieve adequate shelter for all. Recent United Nations world conferences, including, in particular, the United Nations Conference on Environment and Development, have given us a comprehensive agenda for the equitable attainment of peace, justice and democracy built on economic development, social development and environmental protection as interdependent and mutually reinforcing components of sustainable development. We have sought to integrate the outcomes of these conferences into the Habitat Agenda.

4. To improve the quality of life within human settlements, we must combat the deterioration of conditions that in most cases, particularly in developing countries, have reached crisis proportions. To this end, we must address comprehensively, inter alia, unsustainable

consumption and production patterns, particularly in industrialized countries; unsustainable population changes, including changes in structure and distribution, giving priority consideration to the tendency towards excessive population concentration; homelessness; increasing poverty; unemployment; social exclusion; family instability; inadequate resources; lack of basic infrastructure and services; lack of adequate planning; growing insecurity and violence; environmental degradation; and increased vulnerability to disasters.

5. The challenges of human settlements are global, but countries and regions also face specific problems which need specific solutions. We recognize the need to intensify our efforts and cooperation to improve living conditions in the cities, towns and villages throughout the world, particularly in developing countries, where the situation is especially grave, and in countries with economies in transition. In this connection, we acknowledge that globalization of the world economy presents opportunities and challenges for the development process, as well as risks and uncertainties, and that achievement of the goals of the Habitat Agenda would be facilitated by, *inter alia*, positive actions on the issues of financing of development, external debt, international trade and transfer of technology. Our cities must be places where human beings lead fulfilling lives in dignity, good health, safety, happiness and hope.

6. Rural and urban development are interdependent. In addition to improving the urban habitat, we must also work to extend adequate infrastructure, public services and employment opportunities to rural areas in order to enhance their attractiveness, develop an integrated network of settlements and minimize rural-to-urban migration. Small- and medium-sized towns need special focus.

7. As human beings are at the centre of our concern for sustainable development, they are the basis for our actions as in implementing the Habitat Agenda. We recognize the particular needs of women, children and youth for safe, healthy and secure living conditions. We shall intensify our efforts to eradicate poverty and discrimination, to promote and protect all human rights and fundamental freedoms for all, and to provide for basic needs, such as education, nutrition and life-span health care services, and, especially, adequate shelter for all. To this end, we commit ourselves to improving the living conditions in human settlements in ways that are consonant with local needs and realities, and we acknowledge the need to address the global, economic, social and environmental trends to ensure the creation of better living environments for all people. We shall also ensure the full and equal participation of all women and men, and the effective participation of youth, in political, economic and social life. We shall promote full accessibility for people with disabilities, as well as gender equality in policies, programmes and projects for shelter and sustainable human settlements development. We make these commitments with particular reference to the more than one billion people living in absolute poverty and to the members of vulnerable and disadvantaged groups identified in the Habitat Agenda.

8. We reaffirm our commitment to the full and progressive realization of the right to adequate housing as provided for in international instruments. To that end, we shall seek the active

participation of our public, private and non-governmental partners at all levels to ensure legal security of tenure, protection from discrimination and equal access to affordable, adequate housing for all persons and their families.

9. We shall work to expand the supply of affordable housing by enabling markets to perform efficiently and in a socially and environmentally responsible manner, enhancing access to land and credit and assisting those who are unable to participate in housing markets.

10. In order to sustain our global environment and improve the quality of living in our human settlements, we commit ourselves to sustainable patterns of production, consumption, transportation and settlements development; pollution prevention; respect for the carrying capacity of ecosystems; and the preservation of opportunities for future generations. In this connection, we shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem. In view of different contributions to global environmental degradation, we reaffirm the principle that countries have common but differentiated responsibilities. We also recognize that we must take these actions in a manner consistent with the precautionary principle approach, which shall be widely applied according to the capabilities of countries. We shall also promote healthy living environments, especially through the provision of adequate quantities of safe water and effective management of waste.

11. We shall promote the conservation, rehabilitation and maintenance of buildings, monuments, open spaces, landscapes and settlement patterns of historical, cultural, architectural, natural, religious and spiritual value.

12. We adopt the enabling strategy and the principles of partnership and participation as the most democratic and effective approach for the realization of our commitments. Recognizing local authorities as our closest partners, and as essential, in the implementation of the Habitat Agenda, we must, within the legal framework of each country, promote decentralization through democratic local authorities and work to strengthen their financial and institutional capacities in accordance with the conditions of countries, while ensuring their transparency, accountability and responsiveness to the needs of people, which are key requirements for Governments at all levels. We shall also increase our cooperation with parliamentarians, the private sector, labour unions and non-governmental and other civil society organizations with due respect for their autonomy. We shall also enhance the role of women and encourage socially and environmentally responsible corporate investment by the private sector. Local action should be guided and stimulated through local programmes based on Agenda 21, the Habitat Agenda, or any other equivalent programme, as well as drawing upon the experience of worldwide cooperation initiated in Istanbul by the World Assembly of Cities and Local Authorities, without prejudice to national policies, objectives, priorities and programmes. The enabling strategy includes a responsibility for Governments to implement special measures for members of disadvantaged and vulnerable groups when appropriate.

13. As the implementation of the Habitat Agenda will require adequate funding, we must mobilize financial resources at the national and international levels, including new and additional resources from all sources - multilateral and bilateral, public and private. In this connection, we must facilitate capacity-building and promote the transfer of appropriate technology and know-how. Furthermore, we reiterate the commitments set out in recent United Nations conferences, especially those in Agenda 21 on funding and technology transfer.

14. We believe that the full and effective implementation of the Habitat Agenda will require the strengthening of the role and functions of the United Nations Centre for Human Settlements (Habitat), taking into account the need for the Centre to focus on well-defined and thoroughly developed objectives and strategic issues. To this end, we pledge our support for the successful implementation of the Habitat Agenda and its global plan of action. Regarding the implementation of the Habitat Agenda, we fully recognize the contribution of the regional and national action plans prepared for this Conference.

15. This Conference in Istanbul marks a new era of cooperation, an era of a culture of solidarity. As we move into the twenty-first century, we offer a positive vision of sustainable human settlements, a sense of hope for our common future and an exhortation to join a truly worthwhile and engaging challenge, that of building together a world where everyone can live in a safe home with the promise of a decent life of dignity, good health, safety, happiness and hope.