



Human Rights Commission
Te Kāhui Tika Tangata

Submission on Consultation - Reform of the Residential Tenancies Act 1986

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Introduction

1. The Human Rights Commission (Commission) supports reform of the Residential Tenancies Act (RTA) to better promote the rights of renters.
2. Renting law is particularly important to the New Zealanders who are most likely to be living in rented homes – children, disabled people, Māori, Pasifika, low income New Zealanders, and single parent families (typically women and children).¹
3. Modernised renting law would promote not only the right to housing but also a range of rights correlated to good housing – for example health and education rights. Stable housing can also support social inclusion through ongoing membership of a community.
4. This submission letter emphasises the importance of increased security of tenure as a foundation for other housing rights.

New Zealand renting laws affect some people disproportionately

5. Disabled people, Māori, Pasifika, low income New Zealanders, and single parent families are more likely to rent.² In 2014, 40-41% of children were living in rented accommodation.³ Many of these groups have their access to rental housing further restricted by experiencing discrimination when they are looking for a home to rent.⁴ And when they do find a home, for people in some of these groups that home is more likely to be cold and damp.⁵
6. For disabled people, the ability to choose where to live, be part of a community and have access to adequate housing, is central to a life of security, dignity, inclusion and autonomy. The lack of affordable accessible homes makes security of tenure in high quality housing particularly important. The ability to make modifications (2.1.17 Consultation Discussion document)—to add a ramp or a silent fire alarm, for example—would expand disabled people’s access to rented homes.⁶ It would also allow more

¹ [A Stocktake of New Zealand’s Housing](#), Security of tenure in rental housing, pp. 38-42.

² Ibid. The report found home ownership is not evenly distributed through the population, either by age or ethnicity. Data show that Europeans/Pākehā have enjoyed higher homeownership rates than other ethnicities; in 2013 this rate was 57% compared with Māori at 28% and Pacific Island peoples at 19%. February 2018, pp. 5,14.

³ [Child Poverty Action Group, Our children, our choice: priorities for policy](#). The report found 40-41% of children are now living in rented accommodation...this is problematic because this form of housing tenure is more likely to be overcrowded and less likely to be well maintained. 2014, p. 87.

⁴ See [Children’s Commissioner’s Expert Advisory Group on Solutions to Child Poverty Working Paper](#) no.18: Housing Policy Recommendations to Address Child Poverty [at paragraphs 27-30](#), and the authorities cited there.

⁵ Disabled Persons Assembly press release 13 July 2018 <http://www.dpa.org.nz/news/press-release-renters-united-plan-to-fix-rentals-addresses-needs-of-disabled-people->

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As New Zealand’s Independent Monitoring Mechanism on the Convention on the Rights of Persons with Disabilities observed in their November 2017 submission to the UN Committee monitoring compliance with the Convention:

“The Ministry of Health does offer Housing Modification Grants but only to the owners of houses or if the owner agrees to the modification: so unless a disabled person can persuade their landlord to apply for a grant then houses in the private rental market are very unlikely to be modified for a disabled person. There

people to more easily move house, knowing that they would be able to make modifications to a new home. Mobility and choice can be expected to allow people to leave homes that do not meet their needs and to move to more appropriate homes.

7. Increasingly, older New Zealanders will also be renting.
8. Given how crucial housing is to other rights (to staying in education, receiving ongoing care from a GP, staying in a job, etc.), enhanced rental rights can be expected to have significant positive flow-on effects in relation to a range of rights.

Recommendation 1: Throughout the reform, enhance renters' rights by preferring the options which most improve secure of tenure in healthy homes.

Recommendation 2: Provide renters with disabilities a presumptive right to make reasonable modifications to their homes that are necessary to accommodate their disability.

A human rights approach to housing requires greater focus on tenants' rights

9. The UN Special Rapporteur on Housing has emphasised that housing is a right⁷ not a commodity, and regulation needs to recognise that. In her 2017 report to the UN Human Rights Council, she explores the financialisation of housing and its detrimental impact on human rights, in particular the right to housing. The financialisation of housing occurs when housing is treated as a commodity—a vehicle for accumulating wealth and investment, just like gold, woodpulp, or any other commodity—rather than a social good.⁸
10. The Special Rapporteur calls for governments to ensure that markets serve housing need rather than investment priorities, and her report reminds States that they are first and foremost accountable to human rights.
11. She warns that capital investment in housing as a means of accumulating wealth increasingly disconnects housing from its social function of providing a place to live in security and dignity and undermines the realisation of housing as a human right.⁹
12. A human rights approach to renting regulation suggests that the focus should be on how regulation supports the increased availability of secure and healthy homes, rather than on viewing 'rental properties' as an investment or commodity.
13. This focus might be demonstrated by changing the language the legislation uses to discuss renting. For example, it could refer to "homes" rather than "properties", and "rented home agreements" rather than "tenancy agreements". The title of the legislation could be changed to become something like the "Rented Homes Act".

is poor data on the number of modified or accessible houses, and the waiting time for modified state or community housing."

⁷ The right to housing is viewed as an integral part of the economic, social and cultural rights contained in international human rights instruments and can be found in the Universal Declaration on Human Rights, CERD, ICESCR, UNCRC, CEDAW and UNCRPD. A rights-based approach to housing is also consistent with the Treaty of Waitangi article 3 commitment to equity.

⁸ Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, UN Human Rights Council, 27 February 2017.

⁹ Ibid., p. 3.

Recommendation 3: Frame the RTA to make clear that it relates to the right to a home.

14. If landlords are to exercise their right to use their houses to accumulate wealth they have also an obligation to be responsible business owners. In this regard the United Nations Guiding Principles on Business and Human Rights (UNGP) apply. The UNGP are a global standard of expected conduct for all business enterprises wherever they operate.¹⁰ The UNGP call for businesses to respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse impacts with which they are involved and ensure victims have access to adequate and effective remedies.

Recommendation 4: Refer to the UNGP when considering landlords' obligations.

15. The 2030 Sustainable Development Agenda provides an overarching global plan for achieving prosperity, peace and resilience worldwide. New Zealand has committed to a "deep and transformative" sustainable development agenda that directly reflects the Agenda.¹¹ Goal 11 of the Agenda commits States to make cities, and human settlements inclusive, safe, resilient and sustainable. Target 11.1 recognises the fundamental role that housing plays in reaching this Goal, committing States to ensuring access for all to adequate, safe and affordable housing and basic services by 2030. New Zealand will present a Voluntary National Review at the 2019 UN High-level Political Forum on Sustainable Development.¹² Progress on reform of renters' rights would constitute a positive development that could be reported to the Forum.

Recommendation 5: Refer to the 2030 Sustainable Development Agenda when considering landlords' obligations.

Security of tenure is a cornerstone right

16. As recognised in the discussion paper, improved security of tenure must be the foundation of modernised tenancy law.

17. "Transience has major health, educational and social costs which recent housing policy has failed to address".¹³ When the Committee on Economic, Social and Cultural Rights considered the fourth periodic report of New Zealand, it expressed concern that economic, social and cultural rights do not enjoy equal status with civil and political rights in New Zealand.

18. The Committee recommended that the State party adopt a human rights-based national Housing Strategy, taking into account the 2018 report "A Stocktake of New Zealand's Housing".¹⁴ It also requested the State party provide information on the implementation of the recommendations made by the Committee within 18 months.

¹⁰ [United Nations Guiding Principles on Business and Human rights.](#)

¹¹ New Zealand National Statement: High Level Political Forum on Sustainable Development. [Statement](#) delivered by Craig J. Hawke, Permanent Representative of New Zealand to the United Nations, 20 July 2018.

¹² High Level Political Forum on Sustainable Development: [51 Countries Preparing to Present National SDG Reviews at HLPF 2019.](#)

¹³ See key findings regarding the rental market in the Government's 2018 "[A stocktake of New Zealand's Housing](#)" report. The Stocktake Report also said that [quote] "There are few incentives for landlords to have fixed-term tenancy agreements, which leaves tenants with little security" p. 6.

¹⁴ [A Stocktake of New Zealand's Housing](#), February 2018.

19. We acknowledge the Government's encouraging public responses to the call from the Committee for New Zealand to develop a rights-based housing strategy.¹⁵
20. New Zealand's progress report to this UN Committee is due in eighteen months' time. Progress on reform of renters' rights would constitute a positive development that could be reported to the Committee.
21. In its General Comment¹⁶ on the right to adequate housing under Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), the UN Committee on Economic, Social and Cultural Rights (CESCR) identified the concept of legal security of tenure as one of the fundamental components of that right,¹⁷ and defined it in the following terms:¹⁸

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.

22. The current RTA does not contain any stand-alone provision that affirms any minimum right to security of tenure for tenants (as distinct from minimum notice requirements regarding termination). This could be addressed through the development of a principles section, which includes a security of tenure principle, up front in the RTA (and which also references the other right to housing components identified by CESCR, including habitability, accessibility, affordability, location, cultural adequacy and availability of services, materials, facilities and infrastructure).

Recommendation 6: Include a principles section in the RTA, that includes “security of tenure.”

Tiriti o Waitangi and UN Declaration on the Rights of Indigenous Peoples considerations

23. The Commission has not identified in the consultation documents any reference to consideration of how enhanced residential tenancy law might affect Māori land holdings. We suggest that there should be specific engagement with Māori on any potential impacts of the changes. The UN Declaration on the Rights of Indigenous

¹⁵ UN Committee on Economic, Social and Cultural Rights [“Concluding observations on the fourth periodic report of New Zealand”](#) on the implementation of the International Covenant on Economic, Social and Cultural Rights, E/C.12/NZL/CO/4 (29 March 2018), at paragraph 40; [Summary record of the 23 March 2018 10am meeting of the UN Economic and Social Council](#), E/C.12/2018/SR.19, comments of Minister Little, including at paragraph 42. CESCR's General Comment No 4, on the Right to Adequate Housing, is provided as an attachment. Also available at www.refworld.org/publisher,CESCR,GENERAL,47a7079a1,0.html. See also [“Housing Minister supports UN call for housing strategy.”](#)

¹⁶ Committee on Economic, Social and Cultural Rights, General Comment No 4, The right to adequate housing (Article 11(1) of the Covenant), 13 December 1991, E/1992/23

¹⁷ Ibid p. 3.

¹⁸ UN Committee on Economic, Social and Cultural Rights *General Comment No 4: The right to adequate housing* Paragraph 8(a).

Peoples Article 19 says: “States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.”¹⁹

Recommendation 7: Undertake specific engagement with Māori on the reforms and the process for progressing them.

Recommendation 8: Consider the impact of reform on Māori land.

24. Consideration should be given to whether the RTA applies to Māori land²⁰ or whether it should apply only by agreement on Māori land. If the RTA is to apply, there may need to be special provision (for example) for tenancies on Māori land to be terminated in order to allow development of surrounding land by related owners.
25. This review should be an important part of a multi-pronged approach to improving housing for Māori: while tenancy regulation certainly needs to work better for tenants, it is still necessary to continue to pursue specific measures to support Māori housing initiatives, improve Māori home ownership, support papakāinga development, and so on.²¹ The review should be assessed and consulted on in that context.

Recommendation 9: Engage with Māori about the inclusion or exclusion of Māori land from the RTA, and the option of including specific provisions to mitigate effects on Māori land utilisation, including recognition of Māori decision-making over Māori land.

Rights require remedies

26. The Commission welcomes the discussion document’s consideration of options for effective enforcement (section 5, page 47 onwards). Options like auditing (5.1.6), single cases regarding multiple breaches (5.1.7) and improvement notices (5.1.10) would support the improvement of conditions for renters.
27. While the Commission understands the benefit of MBIE (/HUD) taking enforcement action against landlords, and monitoring and enforcing compliance with orders, it is also important that tenants have a remedy when their rights are breached.
28. We would suggest that whether it is MBIE or the tenant who takes the matter to the Tenancy Tribunal, there should be provision for tenants to be compensated for their measurable loss arising from the breach and for their hurt, humiliation, or injury to feelings or dignity.
29. The clearest way to describe this might be as a combination of penalty and compensation sums. There may be a maximum penalty (which can be paid to whoever brings the action – MBIE or the tenant), plus compensation for the tenant’s financial

¹⁹ The standard of engagement to be met is ‘free, prior and informed consent’. This is detailed in the Study of the Expert Mechanism on the Rights of Indigenous Peoples “[Free, prior and informed consent: a human rights-based approach](#)” (paras 33-34) August 2018.

²⁰ Land designated as Māori land under Te Ture Whenua Māori legislation.

²¹ The UN Declaration on the Rights of Indigenous Peoples supports the kaupapa of this reform, including, for example, the right to improvement of social and economic conditions and States’ obligations to take effective measures to that end (Article 21); and to particularly attend to rights of women, children, disabled people (Article 22). There are a range of other international human rights instruments which New Zealand has committed to and which require New Zealand to ensure that renters have safe, healthy homes with secure tenure. See: [The Human Right to Adequate Housing in New Zealand](#).

loss (to always be paid to the tenant), plus compensation for the tenant's less measurable losses.

Recommendation 10: Provide that MBIE or tenants may apply to the Tribunal for penalties for breach payable to the applicant, and further provide that compensation awards are payable to the tenant in all cases.

Discrimination complaints under the RTA and Human Rights Act

30. The Human Rights Commission (under the Human Rights Act) and the Tenancy Tribunal (under the RTA) can both accept complaints about discrimination in the renting context. Acknowledging the limits to the scope of the current review (Discussion document para 225) the Commission provides the following insights from its experience of complaints about renting.
31. Some specific issues arise under the current RTA. Firstly, the RTA is silent on assistance animals (such as guide dogs); it treats all animals as pets. We suggest amending the RTA to prohibit landlords from refusing to rent a home to a person because they have an assistance animal, unless it is demonstrably unreasonable, or in breach of a legal duty, for the assistance animal to be accommodated in the property. Specific provision for the application / non-application of pet bonds to assistance animals may be required to accompany such an amendment.
32. Secondly, the RTA's provision (current s12A) relating to choice of procedure ought to be amended to make it clear that applicants may utilise the front-end dispute resolution services available through both Tenancy Services (such as by making a complaint to the Tenancy Compliance and Investigations Team) and the Commission, without affecting their ability to elect to take proceedings in either the Tenancy Tribunal or the Human Rights Review Tribunal. This would align the RTA with the choice of procedures provisions in the employment sector, where the election of procedures under the Human Rights Act and the Employment Relations Act is only restricted once proceedings are filed. This approach provides applicants with more flexible dispute resolution options at the outset.
33. The same provisions relating to choice of procedure could also be clarified in light of *Winther v Housing Corporation of New Zealand* [2011] 1 NZLR 825

Recommendation 11: Consider amending the RTA to prohibit landlords from refusing to rent a home to a person because the person has an assistance animal, unless it is demonstrably unreasonable, or in breach of a legal duty, for the assistance animal to be accommodated in the property.

Recommendation 12: Amend the RTA to clarify that persons may utilise the front-end dispute resolution services available through Tenancy Services and the Commission, without affecting their ability to elect to take proceedings in either the Tenancy Tribunal and the Human Rights Review Tribunal.

34. The Commission looks forward to on-going participation as the review progresses.

ANNEXURE

Human Rights Commission Submission on Consultation: Reform of the Residential Tenancies Act 1986

List of recommendations

Recommendation 1: Throughout the reform, enhance renters' rights by preferring the options which most improve secure of tenure in healthy homes.

Recommendation 2: Provide renters with disabilities a presumptive right to make reasonable modifications to their homes that are necessary to accommodate their disability.

Recommendation 3: Frame the RTA to make clear that it relates to the right to a home.

Recommendation 4: Refer to the UNGP when considering landlords' obligations.

Recommendation 5: Refer to the 2030 Sustainable Development Agenda when considering landlords' obligations.

Recommendation 6: Include a principles section in the RTA, that includes "security of tenure."

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Recommendation 12: Amend the RTA to clarify that persons may utilise the front-end dispute resolution services available through Tenancy Services and the Commission, without affecting their ability to elect to take proceedings in either the Tenancy Tribunal and the Human Rights Review Tribunal.

Recommended references

1. [The changing institutions of private rental housing: an international review Australian Housing and Urban Research Institute Limited.](#)
2. [Free, prior and informed consent: a human rights-based approach Study of the Expert Mechanism on the Rights of Indigenous Peoples.](#)
3. CESCR General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant) (attached below).



**CESCR General Comment No. 4: The Right to Adequate Housing
(Art. 11 (1) of the Covenant)**

*Adopted at the Sixth Session of the Committee on
Economic, Social and Cultural Rights, on 13 December
1991 (Contained in Document E/1992/23)*

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 housing³ 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

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.



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E.76.IV.7 and corrigendum, chap. I), article 8 (1) of the Declaration on the Right to Development and the ILO Recommendation Concerning Workers' Housing, 1961 (No. 115)).



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.

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. This “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

⁴ See note 1.



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;

⁵ Geneva, World Health Organization, 1990.



(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.