

**PUTTING HUMAN RIGHTS BACK INTO
THE HABITAT AGENDA
An Update**

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At the outset of the February 1996 session of the Preparatory Committee for the U.N. Conference on Human Settlements (Habitat II), Human Rights Watch issued a document titled "Putting Human Rights Back into the Habitat Agenda." We expressed our concern that the draft Habitat Agenda failed to reflect the integral relationship between internationally recognized human rights and the issues of shelter and settlements. We were troubled that the major human rights treaties that recognize the right to adequate housing were not mentioned in the draft, and that the draft did not draw connections between violations of civil and political rights and the consequent threats to human shelter and life.

As noted in that report, the most thoughtful formulations of housing policy will not suffice to realize the right to housing if governments seek to dilute their obligations under existing laws as they pertain to forced evictions and population transfers, the treatment of refugees, women and children, guarantees of non-discrimination, and universal civil, political, economic, social and cultural rights.

In that February document we proposed several changes and amendments in the draft Agenda. We are pleased to notice that several of the issues of concern to Human Rights Watch and other human rights, housing, and environmental NGOs have been reflected in the new draft text. Many, however, remain unresolved.

In this paper, Human Rights Watch highlights those issues and reiterates the suggested changes in the Agenda text. We urge all participants in the Habitat process to press for the incorporation of these basic issues into the Agenda, so that the Habitat Plan of Action will truly represent a step forward, building on the bedrock of existing international human rights standards.¹

Explicit Recognition of the Universal Right to Adequate Housing

We urge that the recognition of the right to adequate housing be plainly stated throughout the Agenda, and that the paragraphs that refer to this right be redrafted to ensure such recognition.

In February, Human Rights Watch expressed its concern with regards to the fact that the draft Agenda as it stood at the outset of the last Prepcom failed to explicitly recognize adequate housing as a universal human right. We were therefore glad to note that paragraph (para.) 13 has been amended to make express reference to the following international instruments that establish this right, i.e. the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child.

We continue to request that the following paras. be amended as proposed:

Para. 9Everyone ~~should~~ *shall* be entitled to an adequate standard of living, including adequate food, clothing and housing and to the continuous improvement of living conditions, *as specified in international law*. We also call on member states to remove brackets from this part of para. 9.

Para. 19 Following the words "decision-making and development"Governments at all levels,

¹ In this paper we refer to the draft Habitat Agenda as it stood following the February 1996 preparatory conference; "Draft Statement of Principles and Commitments and Global Plan of Action: The Habitat Agenda" [hereinafter Agenda], A/CONF.165/PC.3/L3/Add.1-10.

including local authorities, have a responsibility to..... ensure that all *the rights of all people, including those rights embodied in the Universal Declaration of Human Rights and other international agreements*, are protected under law.

Para. 24 ...We commit ourselves to the goal of improving living and working conditions on an ~~equitable and sustainable basis~~ *the basis of equality and non-discrimination*, so that everyone will ~~have~~ *enjoy the right* to adequate shelter that is healthy, safe, secure, accessible, and affordable and that includes basic services, facilities and amenities and the enjoyment of freedom from discrimination in housing and legal security of tenure

Non-Discrimination

We continue to feel the definition of non-discrimination is incomplete in that it does not specify all grounds for discrimination in a manner consistent with international instruments, namely it fails to include discrimination based on "disability."²

Again Human Rights Watch was pleased to note that the concern expressed with regard to the inconsistent and incomplete definition of "discrimination" in the former draft has been taken into consideration and paras. 14 and 25 have been amended to include discrimination based on "race, sex, language, religion, political, or other opinion, national or social origin, property, birth or other status...."

Nonetheless, we believe the link between the right to adequate shelter and the needs of the disabled should be explicitly stated, in order to ensure that states parties work towards eradicating all forms of discrimination against disabled persons in connection with the question of adequate shelter and access to infrastructure. We recommend that paras. 14 and 25 be amended to reflect this point. We are furthermore concerned that in para. 44 (bis) (a) the reference to "property, birth or other status" as bases for impermissible discrimination is in brackets.³ We call on member states to remove these brackets.

The terms "non-discriminatory" or "equal" should be favored over the term "equitable" throughout the text.

Another pervasive problem that has not been resolved in the new draft, is the conflation of the English term "equitable" with the term "equal." Depending on the context, "equitable" can mean "just", "fair", or "proportionate." "Equal" means "the same" in treatment, kind, measure or value. If "equitable" treatment subject to the interpretation of each state is all that is required, there is no guarantee that all people will be treated equally or without discrimination. It is not accidental that the major international covenants on human rights do not describe the enjoyment of rights in terms of equity, but rather require states parties to undertake to ensure that rights are enjoyed without discrimination of any kind, and equally by all people.

²The bases for the definition of impermissible discrimination are derived from the International Covenant on Economic, Social and Cultural Rights, Art. 2(2); the International Covenant on Civil and Political Rights, Art. 2(1); the International Convention on the Elimination of All Forms of Racial Discrimination, Arts. 1(1), 1(3); the Convention on the Elimination of Discrimination Against Women; and the Convention on the Rights of the Child, Art. 2.

³Paragraph 44 as it appears in document A/CONF.165/L.1.

Forced Evictions

We recommend combining the currently bracketed paras. 75 (b) and 75 (b bis) into one unbracketed paragraph that would read as follows :

Para. 75 (b) Protect all people from violation of their right to adequate housing by forced eviction including ensuring the right to challenge such evictions before an independent tribunal, providing due process in such proceedings, and strictly prohibiting all violations of internationally recognized human rights which occur in connection with forced evictions.

United Nations bodies have explicitly recognized forced eviction under some circumstances as a violation of the right to adequate housing.⁴ The U.N. Committee on Economic, Social and Cultural Rights “considers that instances of forced evictions are *prima facie* incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law.”⁵ Forced evictions are frequently entwined with deprivations of other civil and political rights, such as the right to free speech, assembly and association, the right to be protected from arbitrary detention, and labor rights. Examples include:

- More than one million Chinese living along the Yangtze River are in the process of being forcibly relocated in connection with the construction of the massive Three Gorges Dam project to largely infertile and overpopulated upland areas. Regulations issued by the Sichuan provincial government make clear that evacuation is compulsory. Opposition is punishable under China's public security laws. Public information and comment on the dam project have been severely restricted. Only 30 percent of determined compensation levels are to be paid directly to those resettled, with the rest to be given to local authorities in resettlement zones for agricultural and industrial development, from which those resettled would supposedly benefit. Those to be moved have not been consulted about this method of compensation, and there have already been arrests on counterrevolution charges of those who have protested against resettlement.⁶
- Beginning in 1988, a series of protests was mounted by rural activists, villagers slated for relocation, and social and political action groups in western India against the Sardar Sarovar Project, involving a series of dams to be constructed along the Narmada River. The villagers scheduled for relocation claimed they had no access to full information about the project, nor were they offered adequate compensation. Their protests and those of activists mobilized on their behalf, usually in the form of mass demonstrations, were met by excessive use of force on the part of police, detention and abuse in custody after arrest, and various forms of threats and harassment.⁷

⁴ See, e.g. U.N. Commission on Human Rights, res. 1993/77; the report of the U.N. Secretary General, “Analytical Report on Forced Evictions” E/CN.4/1994/20; and U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities res. 1995/29.

⁵ General Comment No. 4 on the Right to Adequate Housing (Article 11(1) of the International Covenant on Economic, Social and Cultural Rights, paragraph 18, in “Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies” HRI/GEN/1/Rev.1.

⁶ See Human Rights Watch/Asia, “The Three Gorges Dam in China: Forced Resettlement, Suppression of Dissent and Labor Rights Concerns,” *A Human Rights Watch Short Report*, Vol. 7, No. 2 (New York: Human Rights Watch, February 1995).

⁷ See Asia Watch, “Before the Deluge: Human Rights Abuses at India's Narmada Dam,” *A Human Rights Watch Short Report*, Vol. 4, No. 15 (New York: Human Rights Watch, June 1992).

Human Rights Watch is glad that the drafters recognized that the reference in the former para. 75 (b) to "unfair" evictions obscured the duty of states to provide adequate legal remedies whenever abusive forced evictions occurred, and amended it to make express reference to "illegal" and "forced" evictions, the latter having been explicitly recognized by United Nations bodies as being under certain circumstances a violation to the right of adequate housing.

Nonetheless it must be said that this amended version of para. 75 still falls short of our proposition in three respects. Firstly it does not specifically refer to the "right to adequate housing." Again we urge that the obligation of states to realize this right be explicitly stated whenever this right is referred to. Secondly, para. 75 (b bis) proposes the adoption of regulatory proceedings as a protective measure of the human rights that are violated by forced evictions. Human Rights Watch however, continues to stress the importance of an independent tribunal to protect the latter, it being a far more effective safeguard of these rights than regulatory proceedings. Thirdly we are not satisfied with the usage of the term "illegal eviction" in para 75 (b). We suggest using the term "forced" eviction as defined in international instruments in order to avoid leaving the interpretation of an "illegal" eviction to states parties.

Displacement of Civilians in Armed Conflicts

The document does not address the impact of armed conflict on human settlements by making explicit reference to international humanitarian law obligating parties to protect civilians and all forms of shelter used for civilian purposes. An appropriate place to recognize these principles might be the following:

Para. 27 (I) Reducing the impact on human settlements of natural and human-made disasters and ending and preventing abuses of international humanitarian law that lead to the displacement of civilians in the course of armed conflict as well as abuses of internationally recognized human rights that impel people to flee their homes.

The displacement of civilians during armed conflicts is another cause of the massive deprivation of shelter. In this decade the world has seen unprecedented flows of refugees and displaced persons as a result of war, and particularly as a result of the violation of the prohibition on displacement of civilians except where their own security or where military necessity so requires.

- The forced displacement of non-Serbs has continued to be carried out in Bosnia for nearly four years, and even as recently as November 1995, during the months following the collapse of the two UN-designated safe areas of Srebrenica and Zepa and while active peace negotiations were underway.⁸

Governments' counterinsurgency strategies may include the destruction and dislocation of civilian settlements to punish imputed support for insurgents and to deprive insurgents of such imputed support.

- In Turkey, since the government's conflict with the Kurdistan Workers Party (PKK) began in 1984, an estimated two million civilian ethnic Kurds have left their homes, many driven out by government counterinsurgency campaigns, and over 2,200 of their villages in the southeast have been partially or

⁸ See Human Rights Watch/Helsinki, "Northwestern Bosnia: Human Rights Abuses during a Cease-Fire and Peace Negotiations," *A Human Rights Watch Short Report*, Vol. 8, No. 1 (New York: Human Rights Watch, February 1996).

completely depopulated, the majority of them by security forces.⁹

Although armed conflicts are mentioned in para. 124, it is with reference to rehabilitation and reconstruction processes.

The Needs of Vulnerable People

To address the inability of vulnerable groups to defend themselves from denial of their rights or discrimination, we suggest the following revision:

Para. 73 (d) ~~Consider becoming~~ *Become* parties to the relevant United Nations system conventions that deal with specific and special needs of vulnerable groups, and particularly that pertaining to [documented] migrant workers; *or persons subject to discrimination, including but not limited to the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, the Refugee Convention and Protocol, the International Convention on the Elimination of All Forms of Discrimination Against Women, the International Convention on the Rights of the Child, the Geneva Conventions of August 12, 1949, and the Protocols Additional to the Geneva Conventions of August 12, 1949.*

The Agenda's definition of vulnerable groups remains inconsistent and vague. Para. 72 defines "vulnerability" as "the inability to compete on an equal basis for resources and opportunities." Although the new draft has been amended to include a form of vulnerability that is often caused by "marginalization in and exclusion from the socio-economic mainstream and decision-making process," Human Rights Watch does not believe this addition fully comprises the form of vulnerability that, in our view, has been ignored by the drafters i.e. a vulnerability caused by a failure of the authorities to respect persons as equal before the law and to enable them equally to defend their rights.

In addition, there are more specific issues that pertain to categories of persons who are frequently placed in a position of inequality or vulnerability.

A. Refugees and the Internally Displaced

We favor the inclusion of the following phrase into para. 9 so as to emphasize the obligation to prevent human rights abuses that cause people to flee their homes.

Para. 9The rapidly increasing number of displaced persons, including refugees, other displaced persons in need of international protection and internally displaced persons, as a result of natural and human-made disasters in many regions of the world, is aggravating the shelter crisis, highlighting the need for a speedy solution to the problem on a durable basis *and for the commitment of governments to end and prevent human rights abuses that lead to displacement and refugee flows.*

Although the draft Agenda recognizes the increasing number of those displaced from their homes by war or persecution, it does not discuss the prevention of the gross human rights abuses that lie at the root of the deprivation of

⁹ See Human Rights Watch Arms Project, *Weapons Transfers and Violations of the Laws of War in Turkey*, (New York: Human Rights Watch, November 1995); Human Rights Watch/Helsinki, "Forced Displacement of Ethnic Kurds from Southeastern Turkey," *A Human Rights Watch Short Report*, Vol. 6, No. 12 (New York: Human Rights Watch, October 1994).

adequate shelter for millions around the world. Though we realize para. 9 has been greatly expanded upon, to now make explicit reference to the needs of particular groups of person, we believe the suggested language above provides for essential practical actions to address those needs.

We suggest revising para. 72 (ter) to include the protection of individuals seeking refugee status held in state custody as follows:

Para. 72 (ter) "there is a need to strengthen the support for the international protection and assistance to refugees and *refugee status seekers*, especially women and children who are particularly vulnerable and to ensure governments respect the right of these persons to adequate shelter and living conditions ."

We feel we must repeat our concern with regard to the fact that the obligation of governments to provide adequate living conditions and adequate shelter to individuals seeking refugee status held in state custody needs to be made explicit in the draft.

- Since 1988, Hong Kong has incarcerated tens of thousands of Vietnamese asylum-seekers in dangerous, squalid, and radically overcrowded detention facilities, from which the government and the UNHCR are progressively removing services in an effort to encourage voluntary repatriation.¹⁰
- From 1994 to 1995, the U.S. government detained 20,000 Haitian and 30,000 Cuban asylum-seekers in tents pitched on tarmac surrounded by barbed wire, in an effort to deny them the legal protections available to those reaching U.S. shores and discourage further immigration.

B. Homeless Persons

We recommend that the Agenda include explicit recognition of the duty not to enact or enforce laws that subject the homeless to sanction on account of the circumstance of poverty or homelessness alone. Appropriate draft paragraphs for revision include:

Para. 91 To prevent and reduce violence and crime, especially at the local levels, Governments in partnership with all stakeholders, should:

(a) Design, create and maintain livable human settlements that encourage the use of public spaces as centers of community life so that they do not become places for criminal activity, *provided that the regulation of public spaces is performed so as not to discriminate against vulnerable adults or children, such as those who are poor or homeless.*

(d) As appropriate, promote personal security and reduce fear by improving police services, making them more accountable to the communities they serve, and by encouraging and facilitating, whenever appropriate, the formation of lawful community-based crime prevention measures and systems; *provided that the law enforcement at every level is performed so as not to discriminate against vulnerable adults or children, such as those who are poor or homeless.*

The prohibition on discrimination on account of property requires that no one be punished simply because he or she is poor or homeless.¹¹ Human Rights Watch is concerned at the tendency of governments to enact new laws or

¹⁰ See Asia Watch, "Indefinite Detention and Mandatory Repatriation: The Incarceration of Vietnamese in Hong Kong," *A Human Rights Watch Short Report*, Volume 3, No. 24 (New York: Human Rights Watch, December 1991).

¹¹ International Covenant on Economic, Social and Cultural Rights, Art. 2(2); International Covenant on Civil and Political Rights, Art. 2(1). We interpret "vulnerability" to include groups that have been the subject of proscribed discrimination,

discriminatorily to enforce existing laws in a manner that makes it inevitable that persons who are destitute or homeless will be penalized merely because of their circumstances.

- In some U.S. municipalities, for example, governments have approved a framework of ordinances that serve to allow the arrest of homeless or poor people merely for lingering in public places.

In many countries, homeless "street children" are killed with impunity by police or other agents of the state:

such as the poor and homeless.

- In Colombia 2,190 children, most of them homeless, were murdered in 1993; the state has failed to investigate or prosecute those responsible: a significant number of murders have been carried out by state agents.¹²

C. Women

Although we recognize a conscious effort on the part of the drafters to provide for the protection of women's proprietary rights, notably in paras. 54 (e) and 59 (d), we nonetheless continue to feel the draft falls short in at least four key areas:

The Agenda should reflect that statutory discrimination against women is found not only in property laws, but also in family codes, personal status codes, and customary law. It is essential that laws regarding family, marriage and divorce not subject property rights to a father's, or a husband's family's acquiescence. Amendments should include:

Para. 56 (k) Develop *non-discriminatory* land codes and legal framework that define the nature of land and real property and the rights that are formally recognized.

Para. 58 (g) Promote mechanisms for the protection of women *who as a result of discrimination* risk losing their homes and properties when their husband's die, *divorce them, forcibly evict them, or subject them to violence.*

The need to reform property laws so they provide equal and non-discriminatory access to property and land for women is a major concern throughout the world. While some instances of statutory discrimination against women in this area are mentioned in the Agenda, such as the case of widows, others are ignored. In some countries, despite statutory guarantees of a woman's right to own land, she can still be forcibly evicted from her family home upon her husband's repudiating her.

With regards to our second point of contention which concerned **the particular needs and circumstances of women who are displaced and forcibly evicted, especially with regards to their personal safety**, we are pleased to note that para. 128 to a certain extent now provides for these women in sub-section (j) which reads as follows:

"Governments should....Ensure that the particular needs of women, children, persons with disabilities and vulnerable groups are considered in all communications, rescue, relocation, rehabilitation, and reconstruction;"

Nonetheless, we remain concerned that this paragraph fails to make express reference to the issue of women's personal safety. In custodial situations, refugee and internally displaced women are frequently at risk of violence, including rape or sexual extortion to gain access to basics such as food and water for themselves and their children. An appropriate provision to recognize this might be:

Para. 128 (g) Identify and support approaches to cope with the urgent shelter requirements of returnees and internally displaced persons, *including the specific needs of women, such as the protection of their personal safety.*

¹² See Human Rights Watch/Americas and Human Rights Watch Children's Rights Project, *Generation Under Fire: Children and Violence in Colombia* (New York: Human Rights Watch, November 1994).

Our third concern with regards to women is the issue of **domestic violence, which we feel should be addressed in the draft as a contributing factor in women's homelessness.** Although para. 74 © refers to domestic violence, it is within the context of providing special living facilities and shelter solutions for women victims of such violence. Similarly, para. 91 (b bis) deals with this issue in calling for the promotion of gender perspective in crime prevention policies. We would, however, favor stronger terminology to more effectively protect women victims and therefore would suggest altering para. 91 (b bis) as it now reads to:

Para. 91 (b bis) "Enhance women's safety in communities through the promotion of the gender perspective in crime prevention policies and programs by increasing in those responsible for implementing these policies the knowledge and understanding of the causes, consequences and mechanisms of violence against women *and by ensuring that police forces respond without discrimination to incidents of violence against women, including such incidents which occur in the home, and conform to their obligations under international law to duly prosecute such crimes.*"

Para. 91 (e bis) also addresses the issue of domestic violence in that it encourages the establishment of programs to prevent violence, including violence in the home. With regard to this sub-section of para. 91, we consider **the exclusion of women within the group of persons encouraged to partake in programs to prevent violence, including violence in the home, to be a grave oversight** and hence recommend the following amendment:

Para. 91 (e bis) " Encourage the establishment of programmes and projects based upon voluntary participation, especially of *women*, children, youth and older persons, to prevent violence, including violence in the home, and crime;

D. Children

We were again pleased to note that the new draft Agenda now refers explicitly in para. 72 (b bis) to adequate shelter as a right of a child and that reference is often made to the International Convention on the Rights of the Child. We would, however, encourage that **children be recognized as a vulnerable group throughout the draft Agenda.** Many of the paragraphs in the draft where we have previously suggested revisions would be appropriate for recognition of the special needs of children. For example, in para. 73 (d) we have suggested listing United

Nations conventions addressing the rights of vulnerable groups including the Convention on the Rights of the Child. In para. 91 (a) we have suggested an addition to prevent discriminatory regulation of public spaces with regard to poor and homeless children and adults. In article 128 (g) we suggested the recognition of the needs of refugees and internally displaced, including children.

We also would propose that in para. 9 of the preamble, the sentence referring to the needs of children and youth be amended so that reference be made not only to the rights, duties and responsibilities of parents and other persons legally responsible for the child but also to the rights of the child themselves.

Involvement of Persons and Local Communities in the Decision-Making Process

Para. 66 (b) and (c) refers to the involvement of persons and local communities in the decision-making process and in setting standards for community facilities. This paragraph favors the inclusion of women and persons with disabilities in these processes. However other paragraphs that also deal with the decision-making process such as 92 (b), 84 (I) and 88 (c) expand the group of persons held to be of value in such a process to include minorities, children, youth, older persons, and persons living in poverty and exclusion. We believe the contribution and inclusion of these groups as well as those mentioned by para. 66 to be vital to the decision-making process and we therefore recommend their inclusion in all paragraphs dealing with the latter.

A Call for Commitments

Human Rights Watch believes each government should establish a plan specifying how and when it intends to implement the Habitat Agenda. We call on U.N. member states to present their plans for the Agenda's implementation when their leaders address the conference in Istanbul. In this manner a record of governments' commitments and plans will be established, and the Habitat Agenda will serve to guide governments towards improving human settlement.

* * *

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Human Rights Watch

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