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PREPARATORY COMMITTEE FOR THE
UNITED NATIONS CONFERENCE
ON HUMAN SETTLEMENTS
(HABITAT II)

Third session
New York
5 - 16 February 1996
Item 4 of the provisional agenda
Outcome of the Conference

**MATTERS ARISING OUT OF THE RESOLUTIONS
OF MAJOR LEGISLATIVE ORGANS OF THE
UNITED NATIONS AND OTHER INTER-GOVERNMENTAL
BODIES WHICH ARE BROUGHT TO THE ATTENTION
OF THE PREPARATORY COMMITTEE**

Note by the Secretariat

1. This note brings to the attention of the Preparatory Committee resolutions and decisions of organs of the United Nations and other inter-governmental bodies adopted during the past year, which might call for action by the Committee, or are of direct relevance to its work.

A. Resolution adopted by the General Assembly at its fiftieth session.

2. At its fiftieth session, the General Assembly adopted resolution 50/100 of 20 December 1995 entitled "United Nations Conference on Human Settlements (Habitat II)" in which it, inter alia, endorsed the report of the Preparatory Committee for the United Nations Conference on Human Settlements (Habitat II) at its second substantive session (Nairobi, 24 April to 5 May 1995) which included the Preparatory Committee's decision II/1 on the financing of the Conference and its preparatory activities, decision II/3 on the recommendations of the Preparatory Committee on the organization of work of the Conference, including the holding of pre-conference consultations on 1 and 2 June 1996, the establishment of committees and other procedural matters, and decision II/4 on the rules of procedure for the Conference.

3. The General Assembly also invited the Secretary-General to report to the General Assembly at its fifty-first session on the implementation of and follow-up to the outcome of the Conference undertaken by the organizations and bodies of the United Nations system, including the role played by the United Nations Centre for Human Settlements (Habitat) in that process; and decided to include in the provisional agenda of its fifty-first session a sub-item entitled "United Nations Conference on Human Settlements (Habitat II)", under the item "Sustainable development and international economic cooperation".

4. The full text of the above-mentioned resolution is annexed hereto (Annex I).

B. Realization of the right to adequate housing.

5. At its thirteenth session held in Geneva from 20 November to 8 December 1995 the United Nations Committee on Economic, Social and Cultural Rights adopted a statement on the realization of the right to adequate housing and requested that that statement, together with the letter which was addressed to the Secretary-General of the Habitat II Conference by the Chairperson of the Committee on 12 July 1995 relating to resolution 15/2 of the Commission on Human Settlements, be published as official documents of the third session of the Preparatory Committee for the Habitat II Conference and of the Conference itself. The statement from the Committee and the letter from its Chairperson (which is also referred to in paragraph 4 of document A/CONF.165/PC.3/4/Add.3) are attached hereto for the attention of the Preparatory Committee (Annex II).

6. Following on the discussions which took place at the fifteenth session of the Commission on Human Settlements (Nairobi, 25 April to 1 May 1995) on housing rights, the Secretary-General of the Habitat II Conference convened a meeting of an Advisory Panel on Housing Rights at the United Nations Headquarters in New York from 10 to 11 January 1996. The purpose of the meeting was to enable the Secretary-General to exchange views with members of the Panel and to obtain its advice on the various issues emanating from the debate at the fifteenth session of the Commission which was held within the context of substantive preparations for the Habitat II Conference. A report on the conclusions arrived at at this meeting is annexed hereto (Annex III).

7. In its resolution 15/2 entitled "Report on housing rights strategy" the Commission on Human Settlements requested the Executive Director "to undertake, in consultation with other relevant United Nations bodies, a further examination and update" of the report prepared pursuant to resolution 14/6 of the Commission, "taking into consideration the legal, social, economic, political and practical aspects of the subject and the views and concerns expressed by some Member States, including those regarding the existence and/or legal status of the right to adequate housing." Pursuant to this resolution the United Nations Centre for Human Settlements (Habitat) and the United Nations Centre for Human Rights are jointly organizing an expert group meeting which is scheduled to be held in Geneva from 18 to 19 January 1996. The Preparatory Committee will be apprised of the results of the meeting at its present session.

C. World Summit for Social Development.

8. On 12 March 1995, the World Summit for Social Development adopted the Copenhagen Declaration on Social Development and Programme of Action which was subsequently endorsed by the General Assembly at its fiftieth session. The Secretariat had submitted to the second session of the Preparatory Committee for Habitat II (Nairobi, 24 April to 5 May 1995) a note on the results of the Summit for Social Development and the specific significance of its three themes (poverty eradication, enhancement of productive employment and social integration) to the preparatory process of the Habitat II Conference. This note (which was also submitted to the 15th session of the Commission on Human Settlements) is attached hereto (Annex IV) for

the Committee's ease of reference. Paragraphs 9 - 13 of the note refer specifically to the links between the Summit's programme of action and the Habitat II themes, and present an account of the Centre's contribution to the Social Summit.

D. Fourth World Conference on Women.

9. The Fourth World Conference on Women: Action for Equality, Development and Peace held in Beijing from 4 to 15 September 1995 adopted the Beijing Declaration and Platform for Action which is an agenda for women's empowerment aimed at accelerating the implementation of the Nairobi Forward-looking Strategies for the Advancement of Women and at removing all the obstacles to women's active participation in all spheres of public and private life through a full and equal share in economic, social, cultural and political decision-making. The recommendations of the Conference which are of direct relevance to the subject of women and human settlements are contained in Chapter IV sections A, F, K and L of the Platform for Action and particularly paragraph 60 (n) which requests governments to "Enable women to obtain affordable housing and access to land by, among other things, removing all obstacles to access, with special emphasis on meeting the needs of women, especially those living in poverty and female heads of household" and paragraph 63 (b) which requests governments to "Undertake legislative and administrative reforms to give women full and equal access to economic resources, including the right to inheritance and to ownership of land and other property, credit, natural resources and appropriate technologies".

Annex I

GENERAL ASSEMBLY

A. Fiftieth session

**50/100. United Nations Conference on Human Settlements
(Habitat II)**

The General Assembly.

Recalling its resolution 47/180 of 22 December 1992, in which it decided to convene the United Nations Conference on Human Settlements (Habitat II) from 3 to 14 June 1996, and to establish both a preparatory committee and an ad hoc secretariat for the Conference,

Reiterating its gratitude to the Government of Turkey for offering to act as host to the Conference, which is to be held at Istanbul,

Noting with satisfaction the progress that has been made so far in the preparations for the Conference, as outlined in the report of the Preparatory Committee for the Conference on its second substantive session¹ and the report of the Secretary-General on preparations for the Conference,²

Reaffirming the importance of the principles and concepts set out in the Rio Declaration on Environment and Development³ and Agenda 21⁴ for the purpose of guiding the implementation of the decisions and recommendations of the Conference,

Recalling also its resolution 49/109 of 19 December 1994, in which, inter alia, it decided that a third substantive session of the Preparatory Committee would be held at United Nations Headquarters early in 1996 to complete the preparatory work for the Conference,

1. **Endorses the report of the Preparatory Committee for the United Nations Conference on Human Settlements (Habitat II) on its second substantive session (Nairobi, 24 April - 5 May**

¹ **Official Records of the General Assembly, Fiftieth Session, Supplement No. 37 (A/50/37).**

² (A/50/519.

³ **Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992, vol. I, Resolutions Adopted by the Conference (United Nations publication, Sales No. E.93.I.18 and corrigenda), resolution 1, annex I.**

⁴ Ibid., annex II.

1995),⁵ which contains, inter alia, decision II/1 on the financing of the Conference and its preparatory activities, decision II/3 on the recommendations of the Preparatory Committee on the organization of work of the Conference, including the holding of pre-conference consultations on 1 and 2 June 1996, the establishment of committees and other procedural matters and decision II/4 on the rules of procedure for the Conference;⁶

2. Decides that the third session of the Preparatory Committee will be held at United Nations Headquarters from 5 to 16 February 1996;

3. Requests the Secretary-General to make the necessary provisions, within existing resources, so that the Preparatory Committee may, if it so decides, establish two working groups to meet in addition to plenary meetings for the duration of the third session;

4. Note with interest the call by the Secretary-General of the United Nations to give the Conference the dimensions of a "city summit", and reaffirms that the Conference should be held at the highest possible level of participation;

5. Expresses its sincere appreciation to those States and organizations that have made or pledged financial or other contributions in support of the preparatory activities for the Conference, and requests the Secretary-General of the Conference to continue to make every effort to raise the extrabudgetary resources required for Conference activities and preparations;

6. Renews its appeal to all Governments, especially the Governments of developed countries and other Governments in a position to do so, as well as to international and regional financial institutions, to make substantial contributions to the voluntary fund established by the General Assembly in its resolution 47/180 for the purpose of financing preparatory activities for the Conference and supporting developing countries, in particular the least developed among them, in participating fully and effectively in the Conference and its preparatory process;

7. Encourages all relevant non-governmental organizations that are interested, especially organizations from developing countries, to participate in and contribute to the Conference and its preparatory process on the basis of the procedures adopted at recent United Nations conferences;

8. Invites the Secretary-General to report to the General Assembly at its fifty-first session on the implementation of and follow-up to the outcome of the Conference undertaken by the organizations and bodies of the United Nations system, including the role played by the United Nations Centre for Human Settlements in that process;

9. Decides to include in the provisional agenda of its fifty-first session a sub-item entitled "United Nations Conference on Human Settlements (Habitat II)", under the item "Sustainable

⁵ Official Records of the General Assembly, Fiftieth Session, Supplement No.37 (A/50/37).

⁶ As amended in A/C.2/50/9 and Corr.1.

economically most advanced societies, since, according to United Nations estimates, there are over 100 million persons homeless worldwide and over 1 billion inadequately housed.

7. The Committee's general comment identified some of the principal issues which relate to this right:

In the first place, the right to adequate housing applies to everyone, without restriction or distinction based on age, sex, family or economic status, group or other affiliation or social status;

It should not be interpreted in a narrow or restrictive sense. It must not be equated simply with informal shelter, but has to be interpreted as a right to live somewhere in security, peace and dignity according to the principles governing the Universal Declaration of Human Rights and the Covenant itself. As the Commission on Human Settlements 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. According to this interpretation and, on the basis of the concept of adequacy, which alone makes it possible to determine whether a type of shelter may be regarded as "adequate housing" within the meaning of article 11, paragraph 1, of the Covenant, the Committee identified the criteria that must be taken into consideration in any particular context. They include the following:

Legal security of tenure, which guarantees legal protection against eviction, harassment and any other threat;

Availability of services, materials, facilities and infrastructure to guarantee health, security and comfort in dignified conditions;

Affordability: The financial cost of housing should be at such a level that the satisfaction of other basic needs is not threatened or compromised;

Habitability, i.e. the guarantee of protection from inclement weather and risks of disease, as well as of physical safety;

Accessibility, particularly for disadvantaged and vulnerable groups, which should be ensured some degree of priority in connection with housing;

Location, which must facilitate access to employment options and basic social services and be located far from pollution sources that are harmful to health;

Cultural adequacy.

9. The right to adequate housing must be viewed in the light of the other basic rights which are provided for in the International Bill of Human Rights and other international instruments and include the right to freedom of association, of all those concerned to defend their rights in this field, as well as the right to privacy and the principle of non-discrimination.

10. It is on this basis that the States parties to the International Covenant on Economic, Social and Cultural Rights have submitted their reports to the Committee, fully aware that they committed themselves to take measures to promote the right to housing, and, where necessary, to seek international cooperation, in accordance with articles 11, 22 and 23 of the Covenant.

11. The Committee's recommendations in this respect are aimed at encouraging State parties, regardless of their economic situation, to establish a national housing strategy, formulated to the fullest extent possible after thorough consultations and with the participation of all concerned, notably the homeless, persons with inadequate housing and their representatives, and regularly to monitor the development of the housing situation. In both cases, this is an obligation with immediate effect, especially as regards the situation of vulnerable groups: persons or families who are homeless or living in inadequate housing or in "illegal" settlement areas, persons who have been forcibly evicted and low income groups.

12. The measures that must be taken by States may combine measures originating from the public sector and the private sector, but States must above all be encouraged to support self-sufficiency strategies, while fulfilling their own obligations to guarantee respect for the rights of each individual, as soon as possible and in the light of available resources. In many countries, experience has shown that organized vulnerable groups have been able, with minimum State assistance, to undertake construction better suited to their needs and less costly than construction directly undertaken by the public sector.

13. The question of the "enforceability" of the right to adequate housing is beyond doubt, and many elements constituting this right are already the subject of domestic remedies in most of the States parties to the Covenant: this is notably the case with judicial remedies against evictions or demolition, applications for compensation or rehousing following illegal eviction, complaints against illegal measures taken by owners, whether public or private, or with their support; judicial actions against discriminatory measures in the area of housing; complaints against owners concerning health hazards or the inadequacy of housing, or excessive rent; judicial actions concerning land ownership.

14. This list is not exhaustive and assertion of the right to housing in the courts, based on domestic legislation or international instruments, including the Covenant, has assumed considerable importance in many countries. In the light of the substantial increase in the number of homeless persons, collective action is growing steadily, not only in the developing countries, where it often manifests itself through the occupation of undeveloped land, but also in the rich countries, where it takes the form of occupation of

public or private premises which have been kept empty with the sole aim of speculating on the value of the buildings in question.

15. In this connection, the Committee considers that instances of forced eviction are, *prima facie*, incompatible with the requirements of the Covenant and can be justified only in the most exceptional situations and in accordance with the relevant principles of international law.

16. On the occasion of its examination of reports, the Committee has recommended to all States parties that they should avoid unjustified mass evictions and, in any event, limit them to the strict needs of public order and that, in these cases alone, they should carry them out only in consultation with the persons concerned, making provision for appropriate rehousing measures, avoiding the use of force and, in all cases, compensating the victims in order to reduce the adverse consequences to a minimum.

17. In its resolution 1993/77, the Commission on Human Rights itself affirmed that the practice of forced eviction constituted a gross violation of human rights, in particular the right to adequate housing, and urged Governments to undertake immediate measures, at all levels, aimed at eliminating this practice.

18. At a time when a growing number of States (133 to date) have become party to the International Covenant on Economic, Social and Cultural Rights and when international provisions for the protection of human rights, and in particular the right to adequate housing, are increasingly being incorporated in domestic legislation, the view that the right to adequate housing is a human right can no longer be seriously challenged.

19. This right concerns the dignity of human beings; it is provided for in many international instruments for the protection of human rights, foremost among them the International Covenant on Economic, Social and Cultural Rights.

20. The choice made by the Commission on Human Settlements to take up, at the Second United Nations Conference on Human Settlements (Habitat II), the theme "Adequate Shelter for All" and the multisectoral questions relating thereto is in line with the rationale which inspired the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and, recently, the World Conference in Vienna.

21. The reaffirmation, by the United Nations Conference on Human Settlements, that the right to adequate housing is a fundamental human right is of considerable importance for the international community.

- b. Letter addressed by the Chairperson of the Committee on Economic, Social and Cultural Rights to Mr. Wally N'Dow, Assistant Secretary-General, United Nations Centre for Human Settlements (HABITAT)²**

Dear Mr. N'Dow,

1. I am writing to you in my capacity as Chairperson of the United Nations Committee on Economic, Social and Cultural Rights in relation to Resolution 15/2 (entitled "Report on housing rights strategy") adopted by the Commission on Human Settlements on 1 May 1995. The resolution requests the Executive Director to undertake, in consultation with other relevant United Nations bodies, a review of the Housing Rights Strategy report (HS/C/15/2/Add.2) with a view to taking into account, inter alia, concerns expressed by some Member States "regarding the existence and/or legal status of the right to adequate housing".

2. On the basis of detailed reports that I have received I understand that at least one delegation argued, in very strong terms, in favour of the proposition that there is no such human right as a right to adequate housing, that this right is not recognized in international human rights law and that the right has never been recognized in international treaties. The delegation indicated that it attached great importance to this issue, that it would call for a vote upon any paragraph referring to the right to housing and that it would vote against the inclusion of any such reference.

3. I do not wish to become engaged in the policy debate which is clearly a matter for those States participating in the work of the Commission. However, as Chairperson of the United Nations Committee which is charged with monitoring compliance with the International Covenant on Economic, Social and Cultural Rights, it is incumbent upon

²

me to seek to clarify the legal doubts that have been expressed in relation to the right to housing.

4. The right to housing was first recognized in the Universal Declaration of Human Rights which has always been regarded as the foundation stone upon which the international human rights system is based. Article 25 of the Universal Declaration states that:

"Everyone has the right to a standard of living adequate for the health and well-being of himself [sic] and his family, including ... housing ..."

5. This formulation actually derives to a very significant extent from a draft placed before the United Nations in 1946 by a singularly authoritative and distinguished body of United States legal scholars and practitioners known as the American Law Institute (ALI). The ALI's "Statement of Essential Rights" made express provision for "the right to adequate food and housing". The statement was, in turn, inspired by U.S. President Roosevelt's State of the Union Address in 1944 when he defended "the right of every family to a decent home".

6. The right was subsequently reflected in article 11(1) of the International Covenant on Economic, Social and Cultural Rights, which provides that:

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. ...

7. During debates and discussions in Nairobi, especially in the context of the Habitat Preparatory Committee meetings, several different arguments were apparently advanced to support the proposition that no right to adequate housing has ever been recognized in international law, despite the clear wording of these provisions.

8. The first argument was to the effect that these provisions recognize only "a right to an adequate standard of living" but not a right to housing. This argument is simply not tenable. In the first place, the United Nations Commission on Human Rights as well as the General Assembly and a host of other bodies have regularly referred to the right to housing in documents, legal instruments and other texts between 1948 and today. The suggestion that there is no right to housing has never before been asserted. Indeed, not a single report submitted by any of the 131 States parties to the Covenant on Economic, Social and Cultural Rights has ever challenged, let alone denied, that there is a separate and distinct right to adequate housing recognized in the Covenant. It is very strange for this matter to have been raised for the first time after well over 40 years of debate in which no such challenge has ever been made.

9. Secondly, if there is no right to housing based on these instruments then there is, equally, neither a right to adequate food, nor a right to clothing. It is difficult to accept that this could possibly be the case given that the resulting situation would directly

contradict innumerable resolutions adopted by every United Nations body from the General Assembly and the Economic and Social Council to the Commission on Human Rights and many others.

10. Thirdly, as a matter of logic, the right to an adequate standard of living, the existence of which the argument seems to acknowledge, is clearly composed of several elements. One of these is housing. If there is a right to the overall package, there is clearly a right also to the component parts, and thus also a right to housing.

11. Fourthly, this argument would also apply in relation to many of the central provisions of the Covenant on Civil and Political Rights. Suffice it to note that there is no reference to a "right to be free from torture" but merely a statement that "No one shall be subjected to torture ...". It is thus apparent that the argument put forward in Nairobi in relation to the right to housing is thus without any logical or legal foundation.

12. The second argument used by those disputing the existence of a right to housing was that it is not part of customary law. While this proposition is debateable, its acceptance means neither more nor less than that housing is on a par with a wide range of other human rights which many international law experts would not yet characterize as being part of customary law. They include: the right to freedom of association, the right to democracy (as it is commonly termed), freedom of religion, privacy, due process rights, and various worker's rights including the prohibition of exploitative child labour etc. The list of non-customary rights is a very long one, if we accept for example the approach reflected in the ALI's Third Restatement of the Foreign Relations Law of the United States (para 702). But this argument has never been raised by the State(s) which challenge the right to housing when they themselves have sought to insist on the need for other States to respect these human rights, even though they might not be bound by relevant treaty obligations or by traditional interpretations of customary law. There is therefore no basis in law, policy or practice for the suggestion that the absence of a right from the list of customary norms is sufficient reason for any reference to that norm to be excluded from United Nations documents.

13. A third argument used was to the effect that the domestic law of certain states has never recognized a right to housing. This may well be the case but there are two important qualifications to be noted. The first is that the International Convention on the Elimination of All Forms of Racial Discrimination, to which the great majority of States are a party, refers explicitly to "the right to housing". While this only applies to an obligation not to discriminate in relation to that right, it constitutes an unequivocal recognition of the right, per se. Secondly, the fact that municipal law in one or more States does not recognize a given right as a human right for the purposes of domestic law is no reason to oppose any reference to it in an international document.

14. The final argument apparently put forward was that a right to housing would be incompatible with the "enablement" approach reflected in the U.N's Global Strategy for Shelter to the Year 2000. This argument could only be plausible if the right to housing is radically misinterpreted so as to equate it with a obligation upon a government to

Annex III

- a. **Letter of the Chair/Moderator of the Advisory Panel on Housing Rights to the Secretary-General of the United Nations Conference on Human Settlements (Habitat II) transmitting the Report of the Advisory Panel on Housing Rights.**

Sir,

Report of the Advisory Panel on Housing Rights

I have the honour to transmit to you herewith the report of the Advisory Panel on Housing Rights which convened at United Nations Headquarters in New York from 10 to 11 January 1996. I am pleased to advise that the report and the conclusions of the Advisory Panel were adopted unanimously.

Yours sincerely,

**Agwu U. Okali
Attorney-At-Law
Chair/Moderator
Advisory Panel on Housing Rights**

b. **Report of the Advisory Panel Meeting On Housing Rights
New York, 10-11 January 1996**

The Advisory Panel Meeting convened by the Assistant Secretary-General and Secretary-General of the Habitat II Conference, Dr. Wally N'Dow, met in New York on 10 and 11 January 1996 to discuss the contribution which the realization and enjoyment of **Housing Rights** can make to the solution of housing problems. The objective was to seek a common ground on which those with diverse views on the existence and nature of "the right to adequate housing" can work together to advance the universally accepted cause of **adequate shelter for all**.

At the conclusion of their deliberations concerning rights related to housing, the Panel adopted the following statement in the form of Advice to the Assistant Secretary-General and Secretary-General of Habitat II.

Bearing in mind:

That the **Universal Declaration on Human Rights** (Article 25 (1)) recognizes that "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....,"

That the **International Covenant on Economic, Social and Cultural Rights** (Article II (1)) similarly recognizes 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", and

That the **Convention On The Rights of the Child** (Article 27) recognizes the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development and enjoins States Parties to assist parents and others responsible for the child to implement this right and in the case of need provide material assistance and support programmes including, inter alia, housing,

Also bearing in mind Commission on Human Settlements Resolutions 14/6, 15/2, and 15/14 and the work programmes initiated thereunder,

The Panel concludes:

1. That in the context of the work of UNCHS (Habitat) and the Habitat II Global Plan of Action the realization of the Right to an Adequate Standard of Living would require:

- i) that States take steps to guarantee the enjoyment, among other things, of the following:
 - a) Freedom from discrimination in housing, and
 - b) Legal Security of Tenure
 - ii) that policies aimed at making housing habitable, affordable and accessible be pursued in order to facilitate enjoyment of the right to an adequate standard of living.
 - iii) that policies in relation to housing be pursued with a recognition of the fact that the right to an adequate standard of living pertains to every person, including those in female-headed households, and with special attention to the needs of disadvantaged or vulnerable groups.
2. That in recognition of and in compliance with the mandates given to the Executive Director of UNCHS (Habitat) by resolutions 14/6, 15/14 and 15/2 of the Commission on Human Settlements, UNCHS (Habitat) should, in execution of its work programme, including that related to Habitat II, continue consultations with the relevant United Nations bodies and others with a view to the implementation of these resolutions.

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