

CONCEPT PAPER AND STRATEGY: HUMAN RIGHTS IN HUMAN SETTLEMENTS

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Paul Taylor

ACRONYMS

AGFE	Advisory Committee on Forced Evictions
BMZ	Federal Ministry for Economic Cooperation and Assistance, Germany
CEDAW	International Convention on the Elimination of All Forms of Discrimination Against Women
CESCR	Committee on Economic, Social and Cultural Rights
CHS	Commission on Human Settlements
CPR	UN-Habitat Committee of Permanent Representatives
GC	Un-Habitat Governing Council
GLTN	Global Land Tools network
HRAG	Human Rights Expert Advisory Group
HRBA	Human rights-based approach
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on of Economic, Social and Cultural Rights
MDG	Millennium Development Goal
OHCHR	Office of the United Nations High Commissioner for Human Rights
PAAS	Project Accrual and Accountability System
R2C	Right to the City
R-AGFE	Reconstituted AGFE
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCT	United Nations Country Team
UNDAF	United Nations Development Assistance Framework
UNDG	United Nations Development Group
UNDG-HRM	United Nations Development Group - Human Rights Mainstreaming Mechanism
UNHRP	United Nations Housing Rights Programme
UN-Habitat	United Nations Human Settlements Programme
UPR	Universal Periodic Review

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Executive Summary

UN-Habitat has a history of promoting respect for human rights. This is most clearly reflected in the rights orientation of the 1996 Habitat Agenda and the global campaigns on secure tenure and urban governance, its experience of dealing with major cases of forced eviction and its collaboration with the Office of the High Commissioner for Human Rights.

UN-Habitat sought to give additional prominence to human rights in general, and forced evictions in particular, through the establishment of the Advisory Group on Forced Evictions in 2004. Unfortunately, the Group faced certain insurmountable challenges that affected its capacity to meet expectations. Once the Group's mandate expired, UN-Habitat seized the opportunity to review its stance on human rights. As a consequence, UN-Habitat's Executive Director made a decision to introduce human rights as one of the four cross-cutting elements in the strategic plan for 2014 and beyond, and to reconsider arrangements for an advisory entity.

Human rights have been reaffirmed by the current and former Secretaries-General as central to the mandate and mission of the United Nations as a whole. Guidance has been prepared on a human rights-based approach in the form of a common understanding on human rights endorsed by all United Nations entities, and the Office of the High Commissioner for Human Rights has also published authoritative guidance on a human rights-based approach for the use of United Nations entities. Donor Governments, which fund human rights-based approach initiatives, have by and large made human rights the cornerstone of their development assistance policies.

Despite the legitimacy of a human rights-based approach having been affirmed within the United Nations system, there are a number of challenges for UN-Habitat in adopting such an approach. Remedies for breaches of human rights normally rest with the legal system, but not all failures are easily justiciable or legal remedies enforced. Furthermore, reliance on the legal system, besides being expensive and time consuming, may have limited development possibilities in the sense of significantly expanding the enjoyment of human rights.

Nevertheless, the advantages of a human rights-based approach can outweigh the disadvantages, not least because the entrenching of urban human rights in international law gives them a status and authority that they would otherwise lack. Increasing levels of accountability of State parties to international review mechanisms serves to reinforce the persuasive power of rights.

Furthermore, a human rights-based approach, with its emphasis on empowering not only claimholders to assert their rights but also duty-bearers to fulfill their role, opens the door to additional levers of influence for UN-Habitat to make its development support to countries a success. It also equips UN Habitat to address urban inequality and exclusion in a more fundamental way than previously by putting power relationships at the heart of its analyses and focusing its actions

on the empowerment of marginalized groups. It provides an opportunity for UN-Habitat to participate more deeply in “Delivering as one” at the country level.

For a human rights-based approach to be successful in UN-Habitat, it will have to be mainstreamed in all the Programme’s activities. It will need to be given dedicated success criteria, networked through a system of focal points, subjected to consistent monitoring and evaluation, backed by suitable budgets and staffing, and above all receive consistent and unstinting support from senior management. A dedicated unit should spearhead mainstreaming.

The watchword for the application of a human rights-based approach should be implementation, which must be concretized at field level. The adoption of a human rights-based approach will entail the refashioning of relationships between UN-Habitat and certain governments and changes in its interactions with existing partners and ways of working with new partners.

Urban planning will be an important tool for implementing a human rights-based approach, as will modernized urban legislation and new approaches to land and land tenure. Urban human rights can be successfully pursued through national urban plans and policies and Habitat country programme documents. A thorough training programme for staff on a human rights-based approach will be essential, and it must accord high priority to the needs of field staff.

The further conceptual development of the “Right to the city” will bear important feature of a future work programme consisting of, at the very minimum, the codification of existing urban human rights, the further development of minimum essential levels for such urban rights, and possibly working with a view to establishing a legal basis for the right to land.

The mainstreaming unit for a human rights-based approach will be located in the Project Office and will be headed by a senior figure with experience in mainstreaming. The unit, including the secretariat for a proposed advisory group, should incorporate staff members responsible for supporting the mainstreaming of youth and gender who continue to serve those functions. Distinct branches will have responsibilities for specific substantive elements of the rights to housing, water and sanitation, while all will have responsibilities for generalized rights. The Housing and Slum Upgrading Branch will take the substantive lead as the specialist entity in the Programme addressing the housing aspects of the right to adequate housing. The Urban Basic Services Branch will take the lead for the rights to safe water and sanitation. Urban planning is an important tool for laying the groundwork for a human rights based approach in the Programme as a whole and the work of the Urban Planning and Design Branch will therefore play a key role.

The liaison office in Geneva should become the focal point for the relationship between UN Habitat and the human rights community in Geneva and a close relationship should be forged with the Office of the High Commissioner for Human Rights. The New York liaison office has an important role to fulfil in liaising with the United Nations Development Group Human Rights

Mainstreaming Mechanism (UNDG-HRM) on a more intense basis than previously. The regional offices will need to be prioritized as a key target for internal capacity building and support in order to back up the focus on field implementation of a human rights-based approach.

Given the complexity and novelty of a human rights-based approach within UN-Habitat, the establishment of a human rights advisory group is proposed. The advisory group would bring human rights issues to the attention of the Executive Director and senior management and provide advice thereon, including on human rights policies, strategies, programmes and projects, and facilitate relevant strategic alliances. The group would address human rights in general, while a subcommittee, or “intake group”, would tackle the specific issue of forced evictions. The membership of the advisory group would be selected by the Executive Director for a specific term with no security of tenure.

Other initiatives currently underway in the context of a human-rights based approach include the preparation of a programme document, the elaboration of a public policy statement, the preparation of guidance notes for UN-Habitat staff and a catalogue of good practices. A training programme will need to be prepared as a matter of priority and the development of indicators, success criteria and human rights based-approach compliance procedures are a must. Lastly, UN-Habitat will deepen its engagement in the development of post 2015 development goals, which are likely to have a strong human rights component.

1 Introduction

1.1 The Background to this Report

This report has been commissioned by UN-Habitat to assess the feasibility of a proposal to set up a Human Rights in Human Settlements Advisory Group, with the aim of supporting the organization in applying the human rights-based approach in its operations.

The report, which constitutes a concept paper and strategy, presents the findings of assessment, which has addressed the proposal within the context of UN-Habitat's overall approach to human rights.

1.2 Global Perspective on Human Settlements

A human rights-based approach (HRBA) to development needs to be relevant to issues arising out of current trends in urbanization. More than 50 per cent of the world's population is now urban and this is expected to rise to 60 per cent by 2030. 90 per cent of the world's urban population growth during this period will take place in the cities of developing countries particularly those in Africa and Asia. Moreover, much of this developing world urban population growth will take place in slums where already currently close to one billion people live¹.

Global urban conditions are marked by increasing inequality. In developing country cities, although poverty is growing in aggregate terms, there is the paradoxical phenomenon of rising urban economic growth, particularly in Asia and increasingly in Africa. Many urban slums are located on valuable inner city land, and these have increasingly become areas of contestation, as developers seek to assert ownership of these areas and erect up-market housing and associated infrastructure and facilities. As a result, forced evictions², which by

¹ Figures referenced in this sub-section are derived from UN-Habitat, *Draft Strategic Plan for 2014-19*, 4 July 2012, pp4-5.

² The term *forced eviction* is authoritatively defined in General Comment 7 (United Nations Committee on Economic, Social and Cultural Rights, *General Comment 7: The Right to Adequate Housing – Forced Evictions*, May 1997 <http://www.unhcr.ch/tbs/doc.nsf/0/959f71e476284596802564c3005d8d50>) “as the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy without the provision of, and access to, appropriate forms of legal or other protection. The prohibition on forced evictions does not apply to evictions carried out by force in accordance with the law and in conformity with the provisions of the International Covenants on Human Rights”. In other words, forced evictions are by definition contrary to international law. However, evictions carried out by force are justifiable (and do not merit the soubriquet “forced evictions”) if they meet prescribed tests, which are set out in General Comment 7 and enlarged on in *The Basic Principles and Guidelines on Development-based Evictions and Displacement* as acknowledged by the Human Rights Council in December 2007. It should be noted that the relevant yardstick applied here is international law, not national laws, which in some cases do not meet the obligations ensuing from international commitments.

definition do not respect the norms of international law, are becoming more frequent, although hard data is notoriously difficult to obtain.

1.3 Forced Evictions

To many, the increase in forced evictions is a symptom of a larger failure to respect the right to adequate housing, which not only contains the security of tenure but other criteria as well such as the availability of services, affordability, habitability, accessibility, location and cultural adequacy.³ If these tests had been applied in planning for housing and city development generally, it is less likely that contestation and forced evictions would have become so common.

1.4 Increased Expectations

UN-Habitat has long recognized the pressures being placed by urban growth and change on the most vulnerable members of urban society and has consistently sought to address the housing problems of the poor. In its most recent Strategic Plan (2014-19), it seeks to sharpen its approach by assisting cities to plan for future provision for all residents but prioritizing the needs of the worst-off. As will be explored later, a HRBA will help ensure that this prioritization is reflected in the reality of urban development.

UN-Habitat's increasingly intense focus on addressing the problems of the most marginalized, together with escalation of frequency of the violation of housing rights more generally, have led to heightened expectations of UN-Habitat as the mandate holder. This is happening in the context of the UN system as a whole, which is similarly looking at its own performance in promoting human rights. UN-Habitat is therefore addressing afresh its approach to human rights in human settlements.

2 Background

2.1 Approach to Human Rights in UN-Habitat

2.1.1 The Habitat Agenda and Global Campaigns

The right to adequate housing and other human rights have traditionally been a topic of strategic importance to UN-Habitat. Following the United Nations Conference on Human Settlements (Habitat II) held in Istanbul, Turkey in June 1996 that led to the Habitat Agenda - from which derives UN-Habitat's substantive mandate - the Programme formulated a framework within which legal, economic, social, cultural, financial and institutional activities could be harmonized to realize rights. The Global Campaigns on Secure Tenure and on Urban Governance were launched in 1999.

2.1.2 Relationship with the Office of the United Nations Commissioner for Human Rights

In order to support the further development of a human rights-based framework for human settlements, the Office of the United Nations High Commissioner for

³ See General Comment 4

<http://www.unhchr.ch/tbs/doc.nsf/0/469f4d91a9378221c12563ed0053547e>

Human Rights (OHCHR) and UN-Habitat, pursuant to resolutions of their governing bodies (CHR resolution 2001/28 and CHS resolution 16/7 respectively), developed a joint United Nations Housing Rights Programme (UNHRP) in 2002. Each agency currently has a dedicated officer who allocates time to planning, coordinating and implementing joint activities. But actions have always been constrained by low levels of staff and resources well below those envisaged in the founding programme document.

Despite the constraints, UNHRP was active particularly in the normative field and has pursued the following actions at the global level:

- Development of standards and guidelines;
- Elaboration of existing legal instruments and support for enhanced compliance by governments; and,
- Development of a system to monitor and evaluate progress in the realization of human rights.

It has produced reports on housing rights topics such as *Housing Rights Legislation*, and *Indigenous People's Right to Adequate Housing: A Global Overview* amongst others.⁴ Of particular note is a joint publication on *the Right to Adequate Housing*.⁵ It organized regional dialogues on housing rights and reached agreement with the United Nations Committee on Economic, Social and Cultural Rights on the development of a set of human rights indicators and formulating a global monitoring and evaluation mechanism.

However, over time the partnership between OHCHR and UN-Habitat has weakened somewhat - partly due to the problems posed by geographical distance and UN-Habitat's isolation from the rest of the human rights community and partly because of resource constraints within both entities. Collaboration nevertheless continues and one important joint activity concerns a tool for eviction impact assessment. The expert group meeting held in September 2011, which is described below, is another example of collaboration.

2.1.3 Global Land Tools Network

UN-Habitat has independently addressed housing and land rights through the Global Land Tools network (GLTN).⁶ It has also taken a resolute role in addressing some of the serious abuses of the right to adequate housing such as, *inter alia*, forced evictions in Kosovo,⁷ Zimbabwe and Nigeria. Nevertheless, the

⁴ Other reports were *International Instruments on Housing Rights*, *National Housing Rights Legislation*, *Compilation of United Nations Resolutions on Housing Rights*, *Compilation of Selected United Nations Documents on Housing Rights*. See <http://www.unhabitat.org/pmss/Publications>. There are 54 publications in all on the above website specifically addressing the issue of housing rights.

⁵ Office of the United Nations Commissioner of Human Rights, UN-Habitat, *The Right to Adequate Housing – Fact Sheet 21 (Rev.1)*, Geneva, November 2009.

⁶ <http://www.gltm.net>

⁷ This designation is without prejudice to positions on status, and is in line with UNSC 1244 and the ICJ Opinion on the Kosovo Declaration of Independence.

list of countries where UN-Habitat has taken strong action does not reflect by any means the full spectrum of housing rights abuses that have taken place in the recent past. As a result, UN-Habitat has received criticism, particularly from human rights NGOs, for not devoting more time and energy to responding to forced evictions.

2.1.4 Rights to Water and Sanitation

UN-Habitat has also been active in the field of the rights to water and sanitation since 2000. This activity has taken place in both the normative and operational arenas. It has examined the legal basis for the right to water in international law, the key aspects of the right to water and how a HRBA works.⁸ It has addressed the right to sanitation.⁹ The *Manual on the Right to Water and Sanitation*¹⁰ offers insights on how to use human rights standards and principles as powerful tools with which to address practical operational difficulties such as:

- Severe resource constraints in implementing projects;
- The inability of low-income users to pay for water supply and sanitation services;
- Weak institutional capacity;
- Lack of political will to implement the right to water and sanitation.

At policy level the human rights discourse has generally enabled a harmonious and constructive engagement by UN-Habitat with national and city authorities, for example, in its Water for Asian Cities projects in Madhya Pradesh, India and in Laos.

2.2 Advisory Group on Forced Evictions¹¹

The Advisory Group on Forced Evictions (AGFE) was set up in 2004 as consequence of UN-Habitat's *Global Campaign for Secure Tenure*. It took a prominent role as a key plank of UN-Habitat's strategy in addressing housing rights and thus merits a special section that examines its contribution.

Forced evictions were identified as a crucial issue of the Secure Tenure Campaign. As a consequence, resolution 19/5 was endorsed at the 19th session of the UN-Habitat Governing Council, which established the basis for an advisory group to address the issue of forced evictions. The primary task of AGFE was to assist the Executive Director in addressing forced evictions. More specifically, it was tasked to:

⁸ Office of the High Commissioner for Human Rights, World Health Organization, *The Right To Water – Fact Sheet No. 35*, OHCHR, Geneva, August 2010

⁹ COHRE, WaterAid, SDC and UN-HABITAT, *Sanitation: A human rights imperative*, Geneva, 2008.

¹⁰ COHRE, AAAS, SDC and UN-HABITAT, *Manual on the Right to Water and Sanitation*, Geneva, 2007

¹¹ Much of the information used in this section is taken from Farha, L, *The Future of the Advisory Group on Forced Evictions*, July 2012

- Monitor, identify, and if so requested, promote alternatives to unlawful eviction;
- Facilitate learning through exchange and dialogue between stakeholders involved in forced evictions; and,
- Advise and support research, training and capacity building.

AGFE members were appointed by the Executive Director to serve in their individual capacities for a two-year period. Regional, institutional and gender balances were respected to the maximum possible extent. The group was composed of experts from the fields of urban development, community participation, human rights and forced evictions and was drawn from slum dweller organizations, governments, local authorities, NGOs and professional organizations. The Secretariat was based in UN-Habitat's Shelter Branch.

AGFE undertook a number of activities which included, *inter alia*, two global reports on forced evictions, *ad hoc* communications and meetings with the Executive Director, leading events on forced evictions at four World Urban Forums, monitoring forced evictions and providing advisory services in some 29 countries, and developing normative tools, especially on a Global Eviction Database, in a draft form. It carried out a number of missions and achieved practical results in Curitiba (Brazil), New Orleans (United States of America) and Rome (Italy).

Its mandate expired in September 2010.

AGFE faced a number of challenges during its existence. Those described in *The Future of the Advisory Group on Forced Evictions* included:

- Limited ability to influence the Executive Director and UN-Habitat staff;
- Lack of core resources - the principal financial resource was USD 130,000 provided by the Italian Government. Secretariat staff time was limited;
- Limited opportunities for face-to-face meetings within AGFE and lack of a formal communications protocol led to difficulty in developing sharing a vision of the role of AGFE;
- AGFE membership was based on serving in a personal rather than an institutional capacity leading to lack of a coherent agenda;
- Limitations imposed by sole use of English as a working language;
- Limited media visibility;
- Internal disputes - particularly about the meaning and application of a human rights framework. The major area of contestation was about the usefulness of a legalistic emphasis of the HRBA;
- Ambiguities in the Terms of Reference of the Committee, particularly concerning its capacity for independent action in combating forced evictions;
- Inconsistent quality of AGFE outputs;
- Insufficient coordination with the UN Special Rapporteur on Adequate Housing.

Independent interviews with other Committee members seem to confirm the impression of group dysfunctionality. The Committee became a venue of institutional contestation with various members adopting fixed positions and group cohesion failed to develop. Furthermore, for whatever reason, there was a failure to develop a constructive working relationship between UN-Habitat and AGFE, with the inevitable result that support to the advisory committee was not renewed and the search began for a new mechanism to replace it.

2.3 Expert Group Meeting

In order to profit from the experience of AGFE and to conceptualize the way forward, UN-Habitat, together with OHCHR, organized an Expert Group Meeting on Forced Evictions in September 2011 in Nairobi. It was attended by some fifty experts from forty countries. Despite the challenges faced by AGFE, there was a consensus that an international body to monitor and address forced evictions should continue to exist.

The main conclusions of the Expert Group Meeting were reflected in an outcome document that is contained in the report of the meeting.¹² The key specific recommendations were, *inter alia*, that UN-Habitat:

- Adopts a formal human rights policy;
- Undertakes a comprehensive human rights evaluation of all UN-Habitat's programmes, plans, projects, partnerships, initiatives and outputs;
- Makes robust recommendations to and assist states on how their legislation and policies comply with international standards and convictions;
- Focus its activities on the right to adequate housing and protection against forced evictions in terms of i) capacity building, including its own staff and management, ii) facilitating exchange of information and tools between duty bearers, rights holders and other stakeholders and, iii) convening and consulting relevant actors;
- Takes stock of progress by convening a forum for discussion on an annual basis;
- Actively participates in the UN Development Group's Human Rights Mainstreaming Mechanism;
- Engages with the humanitarian community through its chairmanship of the Geneva-based Housing, Land and Property Group in order to promote durable solutions;
- Considers the establishment of an independent mechanism to advise UN-Habitat, and where appropriate, take action on issues on the right to adequate housing and forced evictions;
- Defines, in collaboration with OHCHR, the constitution of an advisory group on forced evictions;
- Establishes a participatory approach towards ensuring security of tenure;
- Reinstates the security of tenure index in the State of the World's Cities Report;

¹² UN-Habitat, *Evictions and the Rights-Based Approach to Urban Development – International Expert Group Meeting*, Annex C, Nairobi, 2012

- Provides funding and technical support for alternatives to eviction;

Although the recommendations have been quoted *in extenso*, there are a number of others of a solely invocatory character that are not repeated here.

All of the proposals listed above have been used to guide the formulation of this report and its recommendations. The implementation of a number had already been put in train prior to writing, such as the reinstatement of the secure tenure index and engagement with humanitarian community by the Housing, Land and Property Group led by UN-Habitat. All the others, with one exception, are the subjects of a positive recommendation in Section 5. The proposal for an annual forum was felt to add insufficient value in relation to cost, taking into account the opportunity provided biennially by the World Urban Forum to review developments and the intense scrutiny of UN-Habitat's approach to human rights that it is anticipated will be forthcoming from the proposed new advisory structure.

2.4 Review of Report - The Future of the Advisory Group on Forced Evictions

The over-riding conclusion of the expert group meeting was that there was a continuing need for an independent mechanism to advise UN-Habitat on human rights. As a consequence, a report was prepared that explored successor arrangements to AGFE.¹³ The preferred option - called *Reconstituted AGFE* (R-AGFE) - would be an independent advisory body that would assist UN-Habitat in implementing a human rights-based approach to forced evictions and the right to adequate housing.

The most important point to note about R-AGFE is the proposal that it have a broader mandate than its predecessor AGFE. Its remit would address human rights in their broadest sense and not just forced evictions. It will advise not only the Executive Director but also senior management. It is also proposed that it retain a role in providing support for UN-Habitat's technical assistance work. This "might include facilitating access to legal and technical advice to stakeholders, particularly victims of forced evictions, where appropriate". UN-Habitat and R-AGFE could undertake collaborative missions to investigate and mediate forced evictions.

The Chair of R-AGFE would be selected by the Group. Two sub-committees would be selected - one to alert UN-Habitat on opportunities to participate in UN processes relevant to forced eviction and participate in the development of tool kits, the other being a media committee.

An *Intake Group* is also proposed that would constitute an "urgent actions" body that would receive notifications of forced evictions and then assess what action to take. The Group would be comprised of OHCHR, UN-Habitat and R-AGFE representatives acting in concert.

¹³ Farha, *ibid*

Alternative setups were reviewed in the report. The setting up of a *Human Rights Expert Advisory Group* was one option. This body would:

- Advise UN-Habitat on how to incorporate more of a human rights approach into its mandate;
- Provide technical advice on a HRBA into UN-Habitat's operational work; and
- Advise UN-Habitat on important human rights development and opportunities for engagement within the system.

The option was dismissed on the basis that it would not result in tangible outputs with respect to forced evictions.

Another alternative was to move UN-Habitat away from creating a formal and cumbersome institution. Instead, UN-Habitat would host a series of *Thematic Expert Group Meetings* focused on particular themes related to forced evictions. This possibility was not favoured on the basis that it would be difficult to ensure adequate and effective follow-up by UN-Habitat.

Finally, consideration was given to the option of integrating HRBAs into the *Global Land Tool Network (GLTN)*, an existing UN-Habitat programme. This was not pursued because it was felt that the GLTN was too Millennium Declaration Goals (MDG) orientated and that the latter was not sufficiently accommodating to HRBA.

In conclusion, the preferred mechanism of R-AGFE appears to essentially be a reprise of the former AGFE, but with an enhanced mandate to deal with human rights in general, not just forced evictions, although there remains a strong emphasis on the latter. It does not appear to have addressed intrinsic weaknesses within the former setup that led a distanced and sometimes adversarial relationship with UN-Habitat and to discord within its own ranks. The most appropriate advisory setup, which is based on the option of a Human Rights Expert Advisory Group and an Intake Group, will be addressed later in this report.

2.5 UN-Habitat Reform

There is an ongoing process of organizational review and reform under the leadership of the Executive Director, Dr. J. Clos. In order to meet the challenge of burgeoning urban growth it is necessary to concentrate on addressing the key levers of progress toward sustainable economic development. In terms of thematic strategic focus areas, these are:

- i) Urban Legislation Land and Governance;
- ii) Urban Planning and Design;
- iii) Urban Economy;
- iv) Urban Basic Services;
- v) Housing and Slum Upgrading;
- vi) Risk Reduction and Rehabilitation; and
- vii) Research and Capacity Development.

The spatial ambition for the application of the above thematic focus areas is to plan in advance of urban population growth. It will be necessary to plan at a scale appropriate to meeting the size of the challenge; to plan in phases; and, to plan for job creation. In the context of the right to adequate housing, this entails improving the supply and affordability of serviced land and housing sufficient to meet the rate of household formation, and implementing slum upgrading programmes that improve the quality of life in existing slums. In providing assistance to the relevant authorities, UN-Habitat will promote the active participation of all residents in all phases of the project cycle. It will promote empowerment of women in all aspects of its work.

In carrying out these tasks, four cross-cutting themes will be pursued, one of which will be human rights.¹⁴

The central characteristic of the above approach is that although it does not reject legacy problems of historical under-provision of housing, it emphasizes making provision for housing requirements in a proactive manner rather than reacting once demand has manifested itself. The intention is to concentrate on the reducing the areas of contestation that constitute the push factors for forced evictions rather than relying solely on reactive responses to forced evictions.

3 Human Rights in the UN System

3.1 Legal Background to HRBA

The HRBA is a model for development that recognizes and uses the international standards and principles for human rights as a normative floor for development.

Universal human rights are often expressed and guaranteed by law in the form of treaties, customary international law, general principles and other sources of international law.¹⁵ From a legal perspective, human rights contained in international law are binding on all states. The foundation stone of many human rights, including the Right to Adequate Housing, lie in the 1948 Universal Declaration of Human Rights (UDHR)¹⁶, a number of whose provisions have the status of international customary law.

The UDHR was the forerunner of international human rights treaties such as the 1966 International Covenant on Civil and Political Rights (ICCPR) and the 1966 International Covenant on of Economic, Social and Cultural Rights (ICESCR).

¹⁴ The others being gender, youth, and climate change.

¹⁵ Much of the following is taken from UNODC, *Promotion and Protection of Human Rights – Guidance Note for UNODC Staff*, Vienna, 2011

¹⁶ United Nations Universal Declaration on Human Rights (<http://www.un.org/en/documents/udhr>) Article 25.1: “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services...”

Human rights obligations contained in these treaties are binding only on ratification or accession. The UDHR and the two treaties comprise the “International Bill of Human Rights”. 80 per cent of member states have ratified four of the seven core human rights treaties,¹⁷ with a similar proportion having ratified one of these, the ICESCR, which is the most important for the rights to adequate housing, safe drinking water and sanitation.

Key characteristics of rights are that they are universal, cannot be waived or taken away, impose obligations, have been internationally guaranteed and are legally protected. The rights are quite many and well known, such as the right to life, liberty and security of the person, the right to a fair trial, the right to equal protection of the law and so on.¹⁸ There is no hierarchy among these rights.

3.2 Key Elements of HRBA

The HRBA is founded on a pattern of human rights relationships between the individual - who is the rights-holder¹⁹ with justified claims on the state - and the state - which is correspondingly the duty-bearer²⁰. There is a recent trend towards group rights that are aimed at vulnerable and disadvantaged groups, for example, indigenous peoples.

A HRBA works towards strengthening the capacities of claim-holders to make their claims, and duty-bearers to meet their obligations.

Human rights obligations of duty-bearers are of three kinds:

- *Respect* - not to interfere with their enjoyment, for instance, states should refrain from carrying out forced evictions;
- *Protect* - to ensure that that third parties do not interfere with their enjoyment, for instance, to stop private speculators from carrying out forced evictions;
- *Fulfill* - to take progressive steps to realize the right in question. For economic, social and cultural rights, which include housing and basic

¹⁷ The others being the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), Convention on the Rights of the Child (CRC), and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (MWC).

¹⁸ See Office of the High Commissioner for Human Rights, *Frequently Asked Questions on a Human Rights-Based Approach to Development Cooperation*, New York, 2006, p. 1 for a more comprehensive list.

¹⁹ The terms *claim-holder* and *rights-holder* are used interchangeably in human rights literature and in this report.

²⁰ Human rights obligations also apply to private individuals, international organizations and other non-state actors. Parents, for example, have explicit obligations under the Convention of the Rights of the Child. However, the State remains the primary duty bearer under international law. See Office of the High Commissioner for Human Rights, *op. cit.* pp. 3-4.

services, states have an obligation to meet a minimum essential level.²¹ Where there is a situation in which a significant number of people are being deprived of a right to adequate housing, it is incumbent on the state to show that all available resources, including international assistance, are being deployed.

Central to HRBA are principles contained in, or derived from, international human rights law such as non-discrimination, participation, inclusion, transparency, accountability and the rule of law.

Both outcome and process are important to the HRBA. Process is essential to ensuring sustainability; otherwise the achievement may be only a temporary gain. This point has been made in connection with the Arab Spring. Countries that had previously been lauded as having been on track to meet the MDGs, including those on housing and basic services, were found to have been sadly lacking in political representation, the denial of social and economic rights and free assembly, association and speech.²² For processes to be truly participatory they need to reflect the right to participate in public affairs (art. 25 ICCPR) and the requirements for “active, free and meaningful” participation of the UN Declaration on the Right to Development.

3.3 United Nations Agencies Statement of Common Understanding on the Human Rights-Based Approach to Development Cooperation

In 1997 the Secretary-General called on all UN entities to mainstream human rights into their various mandates. However, many agencies have had their own interpretation of the approach and how it should be operationalized. To address this problem, a statement -*Towards Common Understanding* - was released following an inter-agency workshop on implementing a human rights-based approach held in May 2003.²³

Towards Common Understanding stated the following:

1. “All programmes ... should further the realization of human rights as laid down in the UDHR and other international rights programmes
2. “Human rights standards.... guide all development cooperation and programming in all sectors and in all phases of the development process
3. “Development cooperation contributes to the development of the capacities of duty bearers to meet their obligations and/or rights-holders to claim their rights”.

²¹ With reference to housing, one commentator has suggested that there is need for increased specificity in this area.

²² Kran, M.V.J., *The United Nations High Level Inter-Agency Meeting- the Opportunity of Urbanization in the 21st Century – the Role of the United Nations*, Sixth Session of the World Urban Forum, Naples, 3 September 2012.

²³ Second Inter-agency Workshop, *The Human Rights Based Approach to Development: Towards a Common Understanding Among the United Nations Agencies*, Stamford, 2003

The document further states “a set of programme activities that only incidentally contributes to the realization of human rights does not necessarily constitute a human rights-based approach to programming”. Besides those rights intrinsic to a sector, such as the right to adequate housing, all phases of all programmes need to reflect the human rights principles of universality and inalienability, indivisibility, inter-dependence and inter-relatedness, equality and non-discrimination, participation and inclusion, and accountability and the rule of law.

3.4 Secretary General’s Statement and Decision of the Policy Committee

In 2008 the Secretary-General re-confirmed the centrality of human rights in the development work of the United Nations and the unique role and mandate of the United Nations. As a consequence, human rights messages were to be used in guiding senior officials’ interaction with member states. Resident Coordinators would be expected to play a pivotal role in mainstreaming human rights at country level.

3.5 UN’s Overall Approach in Mainstreaming HRBA

The *United Nations Development Group – Human Rights Mainstreaming Mechanism* (UNDG-HRM) was set up in 2009 at the request of the Secretary General to institutionalize mainstreaming of human rights in the UN’s development work. It aims to strengthen coordinated UN responses to requests from member states for support in their efforts to fulfill international human rights obligations. It is co-chaired by OHCHR and UNDP, and UN-Habitat is a member.

At the UN system level, UNDG-HRM aims to strengthen system wide coherence, advocacy, knowledge sharing and accountability for results focusing on Resident Coordinators, Regional UNDG teams and UN country teams (UNCTs). Over the past few years an increasingly large number of UNCTs have successfully been employing a HRBA approach in the context of Delivering as One. UNCTs have reported to UNDG-HRM that applying a HRBA to the UNDAF has enabled them to have much more focus on vulnerable groups and non-discrimination in their UN common programmes. The most recent example of this is Nepal’s UNDAF, to which UN-Habitat contributed. In addition, by engaging with the Universal Periodic Review, UN Treaty Bodies and Special Rapporteurs, they were more effective in addressing human rights issues.

A Multi-Donor Trust Fund was made operational this year to support UNDG-HRM operations.

The *OHCHR* leads global human rights efforts and speaks out objectively in the face of human rights violations worldwide. It provides a forum for identifying, highlighting and developing responses to today’s human rights challenges, and acts as the principal focal point of human rights research, education, public information, and advocacy activities in the United Nations system. It is tasked with mainstreaming human rights within the United Nations, which means injecting a human rights perspective into the activities of all United Nations entities. It services the Human Rights Council, which is the main United Nations intergovernmental body responsible for human rights

An important innovation of the Human Rights Council is the *Universal Periodic Review* (UPR) created in 2006. It entails an assessment of the human rights records of all 193 UN member states once every four and a half years. The UPR is a state-driven process that provides the opportunity for each state to declare the actions they have taken to improve the human rights situations in their countries and to fulfill their human rights obligations. UN agencies and UN Country Teams can make submissions to the UPR through the agency of OHCHR.

It is also possible to take up human rights issues through the Treaty Bodies. The Committee on Economic, Social and Cultural Rights (CESCR) is the body of independent experts that monitors implementation of the International Covenant on Economic, Social and Cultural Rights (ICESR) by its states parties.

All state parties are obliged to submit regular reports to the Committee on how the rights are being implemented. States must report initially within two years of accepting the Covenant and thereafter every five years. The Committee examines each report and addresses its concerns and recommendations to the state party in the form of "concluding observations".

With regard to individual complaints, CESCR will receive the competence to receive and consider communications when the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights enters into force. Other treaty bodies have considered housing and forced eviction issues. This provides a window for interaction on the rights to adequate housing and basic services by UN-Habitat.

Special rapporteurs is a title given to persons working in their individual capacities working within the scope of "Special Procedures" mechanisms, who bear a specific mandate from the United Nations Human Rights Council²⁴. There are special rapporteurs on the rights to adequate housing and safe water and sanitation. The mandate granted by the United Nations to special rapporteurs has been to "examine, monitor, advise and publicly report" on human rights problems through:

- Receiving information on individual cases of violations;
- Requesting explanations from governments by means of urgent appeals and allegation letters;
- Performing official missions to specific countries to investigate the status of the right to housing and present the respective report to the UN Human Rights Council;
- Submitting an annual report to the UN Human Rights Council in Geneva, and depending on their mandate, to the UN General Assembly in New York, which address specific themes or specific reports on country missions performed by the rapporteur.

Collaboration with the special rapporteur on the human right to safe drinking water and sanitation has been constructive, particularly in terms of UN-Habitat supplying the results of practical field experience to buttress the rapporteur's advocacy. There has been little direct collaboration with the special rapporteur

²⁴ <http://www.ohchr.org/EN/HRBodies/SP/Pages/Introduction.aspx>

on adequate housing.

It is clear from the above description that OHCHR plays a pivotal role as a guardian and interpreter of the human rights system. Any future framework for mainstreaming adopted by UN-Habitat needs to factor in this reality so as to respond to its signals and messages in the most productive and harmonious manner.

3.6 Other UN Agencies

In 2011 UNDG-HRM undertook a survey of its eighteen members to map progress in mainstreaming human rights. Its findings were that five have explicit mainstreaming policies (OHCHR, UNDP, UNESCO, UNFPA and UNICEF); two are in the process of developing policies (FAO and UN WOMEN); eight have policies that include human rights as part of their overall mandate (DESA, ILO, UNAIDS, UN-Habitat, ONHCR, WFP and WHO); and three had no policy (UNEP, UNIDO and UNOPS).

The most common agency activities are training, advocacy and technical support and advice. Seventeen out of eighteen members have developed knowledge products on operationalizing human rights. But gaps are evident, particularly in the area of case studies and lessons learned. Case studies only made up 4 per cent of the total number of knowledge products surveyed²⁵. There were only four documents on lessons learned and the impact of human rights-based programming. Furthermore, few knowledge products were addressed to national counterparts despite their weak capacity having been identified as the outstanding challenge in applying a HRBA.

The above information tentatively tends to point to agencies' HRBA strategies as having attacked relatively soft targets relating to in-house capacity. More remains to be done in concretizing HRBA for duty-bearers and rights-holders and working out how to maximize development benefits accruing from application of the approach.

The mapping exercise identified a number of challenges in mainstreaming a HRBA and these should be addressed in UN-Habitat's strategy. These are:

- Lack of corporate commitment and political resistance;
- Lack of financial and staff resources to do mainstreaming;
- Lack of accountability for human rights mainstreaming - depends too much on staff goodwill;
- Burden of multiple mainstreaming - gender, youth etc.;
- Lack of evidence on the impact and benefit of HRBA; and,
- Lengthy time frame for measuring impact of HRBA results.

²⁵ Case studies can be found in knowledge products that primarily addressed other matters. However, there is evidence that the number of dedicated case studies addressing impact has increased since the date of publication.

Experiences from some UN agencies that are standard-setters in HRBA can provide guidance to UN-Habitat. UNFPA has acknowledged that because HRBA is a relatively new approach, there is, as inferred above from the analysis of the UNDG-HRM survey, a lack of solid evidence to prove its effectiveness and limited operational guidance on how human rights are best integrated into programmes. UNFPA has endeavoured to address these shortcomings by producing guidance to staff, duty-bearers and rights-holders in the form of a comprehensive document that can also be used as training manual.²⁶

Likewise, UNODC has produced a guidance note for staff with a view to providing practical guidance on implementing HRBA, including a section on how human rights can be integrated into UNODC programming in practice.²⁷ This has particular relevance to staff in the field undertaking technical assistance.

UNAIDS, in conjunction with OHCHR, has produced guidelines on HIV/AIDS and human rights for the guidance of partners in the field.²⁸ It has also pioneered the setting up of a successful Reference Group on HIV/AIDS and Human Rights.

3.7 Donor governments

The position of member states in general is made evident in the fact that they have committed to human rights instruments. For human rights mainstreaming to be implemented in UN-Habitat, policy and financial support will be required from donor governments. Without this there is less likelihood of a HRBA being put into practice.

A rapid scan reveals that most donors make promotion of human rights a central plank of their development assistance policies and programmes, but with varying degrees of emphasis. About half of OECD countries have a legal development framework but only *Canada* incorporates the HRBA into its legislation. The others explicitly adopt HRBA into development objectives but without legislative back up. Human rights objectives are often linked to promotion of good governance and democracy. The Millennium Development Goals (MDGs) are also commonly mentioned although with decreasing frequency and priority as compared to human rights more generally.

The most recent statement from a major donor is by *Denmark*. This makes combating poverty and promoting human rights together with democracy, sustainable development, peace and stability, all within the context of “the United Nations Charter, the Universal Declaration of Human Rights, and United Nations conventions on human rights” as its principal objective.²⁹

²⁶ UNFPA, *A Human Rights Based Approach to Programming*, 2010.

²⁷ UNODC, *Promotion and Protection of Human Rights – Guidance Note for UNODC Staff*, Vienna, 2011

²⁸ OHCHR, UNAIDS, *International Guidelines on HIV/AIDS and Human Rights: 2006 Consolidated Version*, Geneva, 2006

²⁹ Ministry of Foreign Affairs of Denmark, *The Right to a Better Life; Strategy for Denmark’s Development Cooperation*, Copenhagen, 2012

Sweden has long put human rights at the centre of its development assistance strategy and its latest policy document confirms this.³⁰ The *Norwegian Government* states “The Government will continue to focus its efforts on priority areas where Norway can make the greatest contribution: the environment and sustainable development; peace building, human rights and humanitarian assistance; oil and clean energy; women and gender equality; good governance and the fight against corruption; and efforts to reach the health-related Millennium Development Goals.”³¹

The legal framework for *Spanish Development Policy* (1998) considers that human rights are guiding principles. The Strategic Plan for 2005-8 considers human rights “defence” as a horizontal policy, and the plan for 2009-12 establishes HRBA as one approach.³² The *Netherlands* explicitly favours an integrated approach to human development of which human rights (together with good governance) is regarded as an important pillar.³³

USAID accords high priority to human rights.³⁴ *Japan* has human rights as one of its four key considerations, in conjunction with democracy.³⁵ The *European Union* has not adopted HRBA but there is a growing commitment to human rights, which together with democracy, is one of a number of focus areas.³⁶ *Germany’s* cross-sectoral Strategy affirms the central role of human rights in its development policy. The Action Plan on Human Rights, 2010-2012 sets out the development policy guidelines established by the Federal Ministry for Economic Cooperation and Development (BMZ) for the formulation of Germany’s official development assistance.³⁷

4 Human Rights Responsibilities of UN-Habitat

4.1 Right to Adequate Housing

One of the first references to the right to adequate housing is found in article 25(1) of the UDHR. Using similar wording, the ICESCR, widely seen as the central instrument of the right to adequate housing, refers to the “the right of everyone

³⁰ Ministry of Foreign Affairs, Sweden, *Change for Freedom: Policy for Democratic Development and Human Rights in Swedish Development Cooperation 2010-2014*, n.d.

³¹ http://www.regjeringen.no/en/dep/ud/selected-topics/development_cooperation.html?id=1159

³² http://www.maec.es/SiteCollectionDocuments/Cooperación%20española/Publicaciones/Plan_Director_Ing.pdf

³³ <http://www.government.nl/ministries/bz/policy-and-budget>

³⁴ <http://www.usaid.gov/what-we-do/democracy-human-rights-and-governance/protecting-human-rights>

³⁵ http://www.mofa.go.jp/policy/other/bluebook/2009/html/h3/h3_02.html

³⁶ http://ec.europa.eu/europeaid/what/human-rights/index_en.htm

³⁷ http://www.bmz.de/en/publications/type_of_publication/strategies/Strategie_papier305_04_2011.pdf

to an adequate standard of living for himself and his family, including adequate food, clothing, and housing....”.³⁸

The Rome Statute of the International Criminal Court also supports the right to adequate housing. It recognizes in art. 8 that extensive destruction and appropriation of property that is not justified by military necessity and carried out unlawfully and wantonly is a war crime.

The right to adequate housing is also supported by various other internationally binding legal instruments³⁹ and recognized in many regional agreements, not to mention being referenced in a number of national constitutions.⁴⁰

Various conferences, declarations and plans of action such as the Vancouver Declaration on Human Settlements (1976), Agenda 21 (1992), the Istanbul Declaration on Human Settlements and the Habitat Agenda (1996) and the Millennium Declaration and Millennium Development Goals have clarified and reaffirmed member state’s commitments to the right to adequate housing.

General Comments 4 (1991)⁴¹ and 7 (1997)⁴² and 16 (2005)⁴³ of the ICESCR have clarified the right to adequate housing. They are quite wide ranging in their significance and consequence and detailed in the principles for their application.

The key elements of General Comment 4 address what is required for housing to be adequate shelter. Adequate shelter is not provided by “merely having a roof over one’s head.... Rather it should be seen as the right to live somewhere in security, peace and dignity”. There are seven core elements:

1. Legal security of tenure, including protection against forced evictions;
2. Availability of services, including safe drinking water, adequate sanitation, energy for cooking, heating, lighting, food storage and refuse disposal;
3. Affordability, in that housing costs should not compromise occupants’ enjoyment of other human rights;
4. Accessibility, taking into account the needs of disadvantaged and marginalized groups;
5. Habitability - providing physical safety, adequate space, protection from the elements;

³⁸ UN-Habitat, Office of the High Commissioner for Human Rights, *The Right to Adequate Housing – Fact Sheet 21(Rev.1)*, Geneva, November 2009, p.11.

³⁹ <http://www.ohchr.org/EN/Issues/Housing/Pages/InternationalStandards.aspx>

⁴⁰ *ibid.* p. 11-12, 15 and Habitat International Coalition, *A Handbook on UN Basic Principles and Guidelines on Development-based Evictions and Displacement*, New Delhi, 2010, p.4.

⁴¹ <http://www.unhchr.ch/tbs/doc.nsf/0/469f4d91a9378221c12563ed0053547e>

⁴² <http://www.unhchr.ch/tbs/doc.nsf/0/959f71e476284596802564c3005d8d50>

⁴³ [http://www.unhchr.ch/tbs/doc.nsf/0/7c6dc1dee6268e32c125708f0050dbf6/\\$FILE/G0543539.pdf](http://www.unhchr.ch/tbs/doc.nsf/0/7c6dc1dee6268e32c125708f0050dbf6/$FILE/G0543539.pdf)

6. Location, in relation to employment opportunities, health care, schools, childcare centres or if located in polluted or dangerous areas; and,
7. Cultural Adequacy.

General Comment 4 further states that “the right to adequate housing cannot be viewed in isolation from other human 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...” State parties must give priority to social groups living in unfavourable conditions. Fulfillment of the right to adequate housing means that under almost all conditions there will have to be a national housing strategy.

General Comment 7 addresses forced evictions, confirming that they normally violate human rights and evictions accompanied by force can only be justified in exceptional circumstances. States must refrain from forced evictions and ensure that the law is enforced against its agents or third parties. In this context therefore the State's obligation is not qualified by considerations relating to its available resources. National legislation against forced evictions is a *sine qua non* for building a system of effective protection.

General Comment 16 reflects on ensuring equality between men and women and reaffirming the principle of non-discrimination in the application the right to adequate housing.

The “Pinheiro Principles”⁴⁴ on housing and property restitution for refugees and other displaced persons reflect much of the above, although they are not a treaty or a formal law and thus do not have the same legal status accorded such texts. Nevertheless, the Principles do have persuasive authority and were formally approved by an official United Nations human rights body - the Sub-Commission on Protection and Promotion of Human Rights. Principle 2 states “that all refugees and displaced persons have the right to have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived...”. Principle 18 prescribes that Principle 2 should be recognized by state as an essential component of the rule of law and that a legal framework should wherever possible be consolidated into a single law.

4.2 Right to Safe Drinking Water and Sanitation

The right to water is not a self-standing human right in international treaties.⁴⁵ Nonetheless, international human rights law entails specific obligations. In 2002 the CESCR adopted General Comment No. 15. This defined the right of everyone

⁴⁴ “Housing and property restitution in the context of the return of refugees and internally displaced persons. Final Report of the Special Rapporteur, Paulo Sérgio Pinheiro” (E/CN.4/Sub.2/2005/17). See also FAO, UN-Habitat, et.al, *Handbook on Housing and Property Restitution for Refugees and Displaced Persons, Implementing the Pinheiro Principles*, 2007.

⁴⁵ UN-Habitat, Office of the High Commissioner for Human Rights, World Health Organization, *The Right to Water – Fact Sheet No. 35*, Geneva, 2010

to sufficient, safe, acceptable, and physically accessible and affordable water for personal and domestic uses. The Committee emphasized that that the right to water was part of the right to an adequate standard of living, as were rights to adequate food, clothing and housing.⁴⁶

In 2007, OHCHR conducted a study at the request of the Human Rights Council and concluded that the time had come to recognize access to safe water and drinking water and sanitation as a human right. It should be noted that access to these services is a component of the right to adequate housing. Specific obligations in relation to safe drinking water and sanitation have been recognized in core human rights treaties, mainly as part of the right to an adequate standard of living and the right to health. Examples of such treaties are the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) (art. 14(2)), Convention on the Rights of the Child (arts. 24 and 27(3)), amongst others. It is also acknowledged in various regional instruments. In the course of 2010, the UN General Assembly and the Human Rights Council explicitly recognized the human right to water and sanitation.

General Comment 15 also clarified the scope and content of the right as follows:

- The water supply for each person should be sufficient and continuous to cover personal and domestic uses;
- Water for personal use must be safe and acceptable; and,
- Water and sanitation facilities must be physically accessible for all sections of the population, taking into account the needs of persons with disabilities, women, children and the elderly; water must be affordable to all.⁴⁷

4.3 Human Rights Principles

There are a number of human rights principles that serve as basic tenets that underlie the entire body of human international rights law and prescribe the HRBA framework, which UN-Habitat, in common with other UN bodies, will need to address. These may be summarized as follows:

- *Empowering vulnerable and marginalized groups*, whose rights are most at risk of violation. Therefore under HRBA, social and economic inequalities and unjust distributions of power are addressed.
- *Non-discrimination and equality*. All human beings are entitled to their human rights without discrimination of any kind, such as race, colour, sex, ethnicity, age, language, religion, political or other opinion, national or social origin, disability, property, birth or other status. These are fundamental to the enjoyment of all rights including economic, social and cultural rights and the right to an adequate of living.

⁴⁶ *ibid.* p. 4

⁴⁷ The Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation defines the right in terms of availability, quality, acceptability, accessibility and affordability. See http://www.ohchr.org/Documents/Issues/Water/FAQWater_en.pdf.

- *Consultation and participation.* A fundamental principal of human rights is that they are as much about process as outcome and participation becomes a right in itself, not just best practice.⁴⁸ The views and voice of the most marginalized should be prioritized through reflexive processes of public consultation and participation in decision-making. A right is different to a privilege and cannot be taken away. If the process does not ensure sustainability in the broadest sense, the outcome may just be a temporary privilege.
- *Accountability and the rule of law.* The accountability of duty-bearers distinguishes a rights-based approach from others that only posit a moral obligation. Unequal power relations between duty-bearers and claim-holders may have far reaching effects for all the above principles and therefore specific measures involving empowerment of claim-holders may need to be adopted to compensate to ensure accountability. Where duty-bearers (normally states) fail to comply with legal norms for which they are accountable, aggrieved rights-holders have the right to institute proceedings before competent authorities. This implies a sound legal framework and an independent judiciary in order to avoid impunity.
- *Universality and inalienability.* No human right can be derogated either voluntarily or compulsorily.
- *Indivisibility.* All rights have equal status.
- *Interdependence and interrelatedness.* All rights depend, wholly or in part on the realization of others. Of particular relevance to UN-Habitat is that the facts sheets on the right to adequate housing⁴⁹ and the right to water⁵⁰ both stress the that these rights are preconditions for enjoyment of the right to work, health, social security, vote, privacy, and education.

Special mention must be made here of gender and the rights of women. Seminal documentation from OHCHR and in the Common Understanding both make scant reference to gender, tending to subsume it under non-discrimination and equality. Nonetheless, CEDAW is one of the seven core international human rights treaties, and the inequality of women is one of the most pervasive human rights abuses. It is for this reason that gender mainstreaming is a staple of all UN agency programmes including UN-Habitat. CEDAW, however, is particularly relevant to UN-Habitat in that it secures women's equal right to security of tenure with regard to land, housing and property in international law. It is worth stressing that CEDAW is the second most ratified international human rights treaty with 181 signatories, only being exceeded by the Convention on the Rights of the Child.

⁴⁸ It is a recurring criticism of the MDGs that they entirely focus on outcome. See Darrow, M, *The Millennium Development Goals: Milestones or Millstones? Human Rights Priorities for the Post 2015 Development Agenda*, Yale Human Rights & Development Law Journal Vol. 15 2012 passim

⁴⁹ *ibid.* p. 9

⁵⁰ *ibid.* pp. 12-14

4.4 Balance Sheet of Benefits of HRBA to UN-Habitat

4.4.1 UN-Habitat's Vision

As pointed out earlier in this report, UN-Habitat has already integrated human rights as a cross-cutting theme into all its activities in its most recent strategic plan. The latter has been endorsed by the Committee of Permanent Representatives and will be presented to the Governing Council at its next session in April 2013 for approval. It is anticipated that this commitment will also be further endorsed in the forthcoming Secretary-General's Bulletin on the Organization of the Secretariat of the United Nations Human Settlements Programme in which the mandate of promoting sustainable human settlements development will be conditioned by the use of a human rights-based approach.

However, the adoption of a HRBA does not always yield automatic benefits since the approach comes with a number of potential challenges. Some of the challenges can be addressed by adopting an appropriate HRBA strategy.

4.4.2 HRBA Challenges

The main challenges posed to the HRBA have turned on the usefulness of legislative instruments based on international law to bring about development.

Human rights are often perceived as the province of lawyers who rely on the instruments of justice to remedy breaches of international human rights legislation. But not all failures to live up to human rights obligations are easily justiciable. Indeed, the most justiciable aspects are normally associated with the most severe or gross types of rights violations such as those associated with forced evictions. However, even forced evictions can be difficult to address through legal mechanisms. In many countries appropriate legislation to enforce international human rights does not exist or, if it does, it is ignored. (Some of the most frequent ratifiers of international human rights laws have been the most consistent abusers.) Legal victories may not be enforced and nor bring about any systemic change. Powerful interests can assert counter-rights.

The scope to bring other than the most widespread and egregious violations before international tribunals that can levy penalties is limited at best. One interlocutor observed that this limitation has undermined the implementation of the Pinheiro Principles as they ultimately rely on the goodwill of governments - the duty bearers - to create and enforce the requisite legal framework. In reality many governments in conflict theatres are the instigators and/or the defenders of abuses.

Cases of forced evictions at any one time are innumerable. The costs in time and personnel involved in legal challenges are considerable and UN-Habitat does not have nor is likely to have the infrastructure to take on this task. Finally, the best outcome that can be hoped for following legal action is often just a return to the situation that obtained *status quo ante* rather than a sustainable development improvement.

While the debate on the role of law and legislative instruments in development is a complex one, it is undoubtedly the case that, in certain arenas, legal approaches can be powerful. For example, in South Africa, it is known that millions of life years have been saved through court-ordered access to HIV medication. Conversely, there is some evidence that where litigants have reverted to the courts system to secure the fulfillment of rights, this may have skewed public spending towards the middle classes because of their superior access to the system.⁵¹ However, while not ruling out the legal option entirely, it is argued here that an HRBA strategy for UN-Habitat must largely stand on other foundations other than human rights litigation.

The legalistic provenance of human rights can entail other difficulties. The sometimes obscure and demanding language of human rights can ensure that the discourse remains “up there”, unconnected with the lives of slum dwellers and other marginalized people, and dominated by a professional elite. The inherent contestability of human rights, which are often based on interpretation and disputation, can lead to an inordinate amount of time being devoted to rhetoric and “preaching human rights into existence”. Much of the rhetoric of human rights also suggests that there is a “solution” in it, ignoring that there are inevitable trade-offs and prioritization of limited resources, despite the principle of indivisibility.

The problem is compounded in fragile states where many of the pressing problems associated with human rights lie. The rule of law - in terms of a HRBA supportive legal framework - is often weak and capacity for enforcement may be minimal.

Indeed, taking the rights to housing, and to water and sanitation as an example, it can be argued that, for these rights to be realized, certain preconditions have to be met which go beyond generalized and generic capacity building, training and institution building. More broadly, there is a strong case for arguing that, only if a functioning urban planning regime be put in place can there be any concerted attempt to address urban human rights in an equitable manner. This is not to argue that this proposition does not have its own problems - it may be argued that urban planning is no more immune to elite capture or weak implementation than any other tool. Nevertheless, preconditions for effective implementation will need to be reflected in a suitable HRBA strategy if a human rights-based approach is not to be undermined.

Some commentators are concerned that a focus on rights diminishes the notion of responsibilities. They are concerned that the focus on the state as the duty-bearer relieves citizens from both personal and civic responsibilities and may encourage passivity in responding to development challenges. Furthermore, the state is not the only agent of oppression and marginalization. Abuses of human rights that cause or exacerbate exclusion often emerge from the population at large, sometimes even in spite of the resources of the state having been devoted to supporting human rights. There are habits of living that are important for the

⁵¹ *ibid.* p. 94 - 5

success of the community that cannot be always be legislated, or if they are legislated, are not susceptible to enforcement or may be counterproductive. The voluntary donation of blood for medical transfusions is often quoted as an example of the virtues of voluntarism and good citizenship that would be compromised if subject to state direction.⁵²

The adoption of a HRBA is sometimes deemed to place it in competition with other development philosophies - sustainability, livelihoods, resilience, the MDGs. A HRBA for UN-Habitat will need to be reconciled with these other approaches.

4.4.3 Advantages of HRBA

In the preceding sub-section mention was made of the distractions of legalistic human rights talk. However, there is an important flipside to this argument. The embedding of urban oriented human rights in international law gives them additional legitimacy and changes the way in which they are viewed by member states. Reference to ratified international legislation can give UN-Habitat additional moral leverage in discussions with governments.

There are additional advantages. As compared to other approaches, a HRBA is explicit about the relationship between rights and duties. Other approaches devolve only moral responsibilities that may or may not be sufficient to drive action whereas in a HRBA the value added is that the prescribed duty-bearer has duties and duties imply accountability. The state is the principal duty bearer. If national mechanisms for recourse do not work in a situation where rights are not being met, obligatory reporting to treaty monitoring bodies, in conjunction with the reports of special rapporteurs, not to mention the UPR, may act as levers in encouraging policy and programme development and country level dialogue. UN-Habitat can offer to help state parties meet their international obligations. Not only this, human rights accountability is helpful in strengthening the national policy environment by making choices transparent in that they can be measured against the explicit criteria of prescribed rights.

These explicit criteria are important because they provide improved clarity for decision-makers. Unlike an economic analysis, which is based on an aggregation of costs and benefits that may yield perverse conclusions, the human rights framework provides absolute principles in prescribed situations. For example, child labour is defined as a bad thing irrespective of putative efficiency gains to production.⁵³ Likewise, forced evictions cannot be justified on the grounds of the greater good. In this manner, the rights for which UN-Habitat is responsible become less negotiable and more powerful.

The preceding sub-section raised issues concerning an undue concentration on the responsibilities of duty-bearers and the consequent potential for further marginalizing the excluded from involvement in decisions about their best

⁵² Titmuss, Richard, *The Gift Relationship: From Human Blood to Social Policy*, London, 1970.

⁵³ This example is taken from Darrow, op. cit. p. 101.

interests. However, HRBA entails a countervailing commitment to move away from assessing the needs of beneficiaries towards empowering claim-holders to assert their rights. The added-value of a HRBA is that it requires measures be taken to ensure that the development process is locally owned and that people are recognized as key actors in their own development. If these characteristics are not present, it is not a HRBA. If local actors are not in a position to properly exploit their role as claim-holders, a HRBA obligates their capacity development so that they are able to do so.

Likewise, duty bearers can be deficient in their capacity fulfill their role. The development function of the United Nations is to assist duty-bearers in the development of their capacities to assume their responsibilities.

Therefore, an advantage of a HRBA is that it has implicit within it the engine of success in enabling a development strategy to work. The synergy between enabled duty-bearers and claim-holders can play a decisive role.

But in order to undertake capacity building under a HRBA, something more is required. It is now something of a commonplace observation that poverty is a product of disempowerment and institutionalized exclusion. A HRBA addresses this by providing a safeguarded space that is protected from elite capture. If human rights are unfulfilled, there is an obligation to undertake a power analysis of who is denying rights to whom. This political economy requirement implicit in a HRBA is by no means common to other development approaches. Thus the adoption of a HRBA brings with it added scope for better project and programme design.

HRBA is now a thread binding UN agencies together. This coherence is not confined to normative activities but now extends to cooperation in the field. UN Country Teams have adopted the HRBA to prepare United Nations Development Assistance Frameworks (UNDAF). This provides the opportunity for UN-Habitat to make joint cause with other agencies, sharing common analyses and undertaking joined-up action under the umbrella of Delivering as One. This is likely to deliver an improved development impact.

Collaboration in the field will also strengthen UN-Habitat's hand in addressing human rights shortcomings and violations, especially with regard to forced evictions. Common UNCT submissions to treaty bodies or to the UPR will carry more weight than from a single agency. Similarly, joint action with regard to addressing duty-bearers with regard to egregious violations will have more authority than those emanating from one agency alone.

Much of UN-Habitat's focus over recent years has been on assisting member states with regard to their MDG targets. Although there has been much success, a criticism of the MDGs has been that they only address outcomes. The HRBA approach is fundamentally concerned with *process*: this is likely to help ensure free and meaningful participation. Additionally, the MDGs did not address the issue of inequality. As has been previously pointed out, a HRBA is fundamentally engaged with poverty reduction, reducing exclusion and inequality. The most

recent *State of the World's Cities* report has described how the benefits of city growth have often been captured by a few and benefits restricted to enclaves of prosperity.⁵⁴ A HRBA approach, properly structured, can help address these issues. This is particularly the case in urban development, where the spatial aspects of inequality lend themselves to redress through urban planning and accompanying legal, regulatory and institutional frameworks. It has been commented previously that urban planning is, as are other instruments, susceptible to elite capture. However, UN-Habitat may be able to devise mitigating strategies that reduce this possibility, for example, by supporting the professional independence of planners, thus making planning a viable entry point.

The shortcomings of the MDGs have been recognized in the current negotiations of the post-2015 development goals. As a result, human rights are being proposed as one of three pillars of the new disposition, together with equality and sustainability. To sign up to a HRBA is to prepare for the post-MDG era.⁵⁵

Finally, the explicit adoption of a HRBA will go some way towards improving relations with partners, some of who are sceptical about UN-Habitat's commitment to human rights. Although some partners have unrealistic expectations about the role of a UN agency, the discussion and adoption of a clear HRBA strategy in the context of a structured consultation creates the opportunity for renewed and enhanced partnerships in implementing UN-Habitat's Strategic Plan.

4.4.4 Conclusion

The adoption of a HRBA is not a panacea for all development problems. Nonetheless, the advantages of a HRBA outweigh the disadvantages. Almost all the potential disadvantages can be addressed by the adoption of appropriate policies and strategies.

In normative terms, it equips UN-Habitat to address issues of inequality in a more fundamental way than has been the case previously. It puts the issue of power relationships at the heart of both normative and operational activities. It provides additional leverage and to encourage governments to take urban development issues more seriously and offers additional opportunities for collaborating with other UN agencies in Delivering as One, particularly at country level.

Although a superficial appreciation of a HRBA is that it is primarily a legal tool, closer examination reveals it to be well suited to UN-Habitat's particular *modus operandi*. The right to safe water and sanitation has already benefited from the application of a HRBA. The right to adequate housing is essentially an urban

⁵⁴ UN-Habitat, *State of the World's Cities 2012/13: Prosperity of Cities*, Nairobi, 2012

⁵⁵ UN System Task Team on the Post-2015 UN Development Agenda, *Realizing the Future We Want For All: Report to the Secretary-General*, New York, June 2012.

planning agenda given the range of criteria that govern the adequate provision of housing. Urban planning practice is also a powerful instrument to determine who gets what, where and how in the city and is therefore invaluable in the political analysis that must accompany project and programme formulation.

5 A Corporate HRBA Strategy

Following the preceding analysis of a HRBA, this section pulls together the constituent elements of a strategic approach for UN-Habitat.

5.1 Mainstreaming

The adoption of a HRBA automatically implies mainstreaming within UN-Habitat. This is not a strategic option but is intrinsic to the approach. But what is mainstreaming? Although familiar through gender mainstreaming, there tends to be a lack of critical assessment of the term. Indeed, many have become disenchanted with mainstreaming when there is a lack of clarity and consequent poor impact.

It is argued here that mainstreaming implies an analytical framework that can be applied to all development activities. In the case of gender it is the different experiences of women and men of any given context in a given society; in the case of human rights it is the application of a consistent framework of rights and duties. Mainstreaming a HRBA focuses on the impact of activities on marginalized and excluded groups, not to mention the importance of empowerment and decision-making for those groups. It involves embedding human rights considerations at all stages of activity (design, implementation, monitoring and evaluation) and in all types of action (legislation, policies and programmes). Mainstreaming also requires that a HRBA be systematically integrated into existing activities as well as new ones.

Experience with mainstreaming gender and youth suggest that implementation can be problematic.⁵⁶ The main danger is locating the activity to be mainstreamed in an isolated silo that is associated with a particular sectoral responsibility.

For mainstreaming to be effective, a limited number of clear and unambiguous success criteria and targets at all levels - global, regional and country - are required. This has to be accompanied by a powerful monitoring and evaluation system. A strong network of contacts throughout the agency, such as the Gender Task Force, can do much to operationalize a HRBA. Style is also important. Attempting to preach the HRBA into reality will as often repel as attract. The HRBA must move as quickly as possible to accompanying advocacy by operationalization at the country level.

⁵⁶ Many of the observations made here are abstracted from UN-Habitat, *Evaluation of Gender Mainstreaming in UN-Habitat: Evaluation Report 1/2011*, Nairobi, February 2011.

Above all, mainstreaming must have muscle. It needs to be located in one of the directive units of UN-Habitat. It must be properly staffed and supported by an adequate budget. If it is not suitably supported it will not work. These arguments also apply to secretariat support for advisory bodies.

Moreover, the HRBA needs the consistent support of UN-Habitat leadership. If there is any suggestion that senior management is not fully behind the introduction of the HRBA or that mere lip service is being paid to it, mainstreaming will not happen. Staff will treat the HRBA as a mere cosmetic exercise, divorced from “real work” and will revert to business as usual.

A long-term work plan is required which will have a serious budget and innovative elements, such as setting up a help desk to give free advice, and possibly providing a funding source for the HRBA elements of projects in order to encourage compliance. Experience from Sida, which has had long-term experience of the HRBA, suggests that these measures are necessary for success.

If mainstreaming comes to be regarded as a bureaucratic or tick-box exercise without implications for daily work, and if accountability is weak, then impact is likely to be minimal.

The Performance Document (ePerformance) is now the main tool available for assessing personal performance. To assist in ensuring accountability there needs to be a specific mention of the HRBA in each staff member’s ePerformance appropriate to the level of seniority of the individual.

It is also important that guidelines are established for incorporating the HRBA at all stages of the project cycle. This will require the production of a manual to guide staff in producing ProDocs. The manual will be used in turn by the Programme Review Committee and the Project Office to assess whether each ProDoc meets the HRBA requirements. The manual will also be instrumental for making appropriate assessments during the monitoring and evaluation stages of the project cycle.

The development and life cycle of the HRBA aspects of projects or programmes need to be reflected in the Project Accrual and Accountability System (PAAS), which will also help ensure staff accountability to the larger audience of stakeholders who will be able to access this electronic archive.

5.2 Policy and Programmatic Implications

It is suggested that the watchword for the adoption of the HRBA within UN-Habitat should be *implementation*. The battle for the legitimacy of the HRBA within the UN at large has largely been won and there should be no need to re-fight it from first principles in UN-Habitat. The main potential pitfalls are those of being trapped at the advocacy stage and of treating human rights as rhetoric. Although UN-Habitat is an advocacy and normative agency with a responsibility to set standards, it is also an operational agency. Unless staff are properly trained to make the HRBA concrete at field level and feel confident in their ability

to do so, the danger is that the agency may be trapped at the rhetorical level and use human rights only as window dressing.

The nature of UN-Habitat's *relationship with governments* is crucial in pursuing a HRBA. As a member of the Secretariat of the United Nations, it has to deal with governments on a constructive basis. Governments' obligations on rights to adequate housing and to safe water and sanitation are progressive and this language provides opportunities to engage in productive dialogue without appearing to exercise duress.

On occasions where violations are egregious and on a large scale, and where attempts to establish dialogue have failed, there may be no choice but to provide a robust response. However, on most occasions, UN-Habitat should enter into a dialogue with government duty-bearers and find out who is accountable for what. It may be helpful to undertake a joint situation analysis together with duty bearers to assess alternative courses of action. Although UN-Habitat does not have a presence in all countries, to the extent possible it should have regular dialogue with governments about fulfilling their human rights commitments.

The HRBA is not just about repackaging and relabeling what UN-Habitat does already. Although UN-Habitat carries out many practices that constitute a HRBA in all but name, particularly in respect of its consultative methodologies and pro-poor orientation, the adoption of the approach may well involve interacting with different target groups, working with new and different partners, adopting novel analytical frameworks, and the introduction of new methodologies.

Serious consideration should be given to making stronger linkages between *gender, women's rights and human rights*. As referenced earlier in this report, women's rights have their own place in the canon of human rights law.

There are *generalized HRBA requirements* and should be applied to all UN-Habitat programmatic actions even if a certain activity does not have a specific reference under human rights law, for example, on the urban environment. These generalized requirements have been described earlier in the report, but it is necessary to recap them briefly:

- When activities are being designed an analysis of "*who gets what*" is required;
- The former is essential because a HRBA requires that there is *a focus on the most marginalized* in society;
- The above also goes in hand with the underpinning principle of *non-discrimination and equality* - therefore it has to be ensured that no group is excluded from their rights by reason of race, colour, ethnicity, age, language, religion, gender or any other status defined by international human rights laws;
- *Participation* is required by a HRBA, not just to ensure instrumental success in achieving project objectives, but also to ensure that national stakeholders have genuine ownership and control over all phases of the project cycle. This may require institutional development and capacity

building of civil society, increasing transparency so as to make information available in accessible formats and creating channels for participation of the poorest groups;

- *Interdependence and interrelatedness* - activities must be designed so that the realization of one right maximizes the opportunity for dependent rights to be achieved; and,
- Activities need to be designed to have a clear *accountability* framework. States and other identified duty-bearers need to acknowledge this responsibility and be equipped to handle it, if necessary through capacity-building support given by UN-Habitat. Furthermore, mechanisms of recourse need to be designed to ensure that claim-holders can seek redress if necessary.

It is important to note that these aspects of a HRBA approach are not progressive but immediate in nature. In order for these properties to be reflected in practice, various kinds of analysis will have to be undertaken during the design phase. Examples of analytical tools that can be applied are: stakeholder analysis, risk analysis, role-obligation analysis, causality analysis, and vulnerability assessments. One commentator is of the view that sequenced *Causality, Pattern and Capacity Gap Analyses* are the foundation stones of a HRBA.

Some strategic and programmatic suggestions are made below that can make the general guidance provided above more specific to UN-Habitat.

Consideration has to be given to the most *useful tools* that UN-Habitat has at its disposal to influence the take up of rights. Although there is an inbuilt propensity of a HRBA approach to be both legalistic and reactive, some of the best instruments at UN-Habitat's disposal are proactive and non-legalistic. The importance of urban planning to HRBA is to influence who gets what, where and how in terms of land and infrastructure. By planning in advance and planning at scale, UN-Habitat is able to guide the supply of and affordability of housing, thus increasing the possibility of availability for the urban poor. The HRBA adds value to urban planning by legitimizing prioritization of the interests on the most marginalized in society and their participation in the planning process.

Indeed, it is possible to argue that the creation and implementation of an appropriate form of urban planning is a precondition in many national contexts for the fulfillment of urban human rights obligations. Not all forms of planning lend themselves to this, particularly those that place a premium on urban design or architecture, and some form of methodological reflection may be required to determine the most relevant form of planning to satisfy HRBA requirements.

Another arena where human rights can be made real is through building a HRBA approach into *National Urban Plans and Policies* and *Habitat Country Programme Documents*. Developed in conjunction with duty-bearers and claim-holders they can plot the course for the fulfillment of urban-orientated human rights in the context of continuous dialogue by UN-Habitat with governments. This has implications for the roles of Habitat Programme Managers (HPMs), Field Project Staff and Regional Office staff, their job descriptions and their training.

The activities carried out at country-level to mainstream human rights can be strongly buttressed by assisting governments to introduce *modernized legislation* that incorporate these principles. Many developing countries have legislation that is often colonial in origin and/or content and is ripe for revision. Revised legislation can reference urban human rights obligations the government has entered into, and more specifically lodge non-discrimination, accountability, participation etc. in the text of new law. It would be helpful if a capacity was developed to monitor new urban legislation on a global basis to check if it meets human rights standards, and where it does not, draw this to the attention of governments and if necessary and if practical make offers to assist in improving it in collaboration with OHCHR. Recourse can also be made to UPR and Treaty Bodies *in extremis*.

Land is another important tool through which changes in the tenure regime can tip the balance in favour of land rights for the poor, even though there is no self-standing right to land in international law. Land readjustment is emerging as a potentially powerful device through which land and land rights can be secured for the poor even though evidence suggests that current practice by the private sector uses it as a device to squeeze out the poor. The HRBA approach will help structure the development of the tool so that it is pro-poor, participatory, non-discriminatory and with an in-built accountability of duty-bearers to claim-holders. Work already being undertaken under the GLTN on pro-poor land tools goes a long way to meet these criteria.

The Right to the City (R2C) has been the subject of debate for a number of years. The content is contested ground, but the term is a powerful clarion call for much-needed action. It is suggested that UN-Habitat take on responsibility for the development of the concept and guiding it into international law. This would be a long-term project given the currently limited appetite amongst member states for new human rights law. At a minimum, a R2C could bundle existing and acknowledged urban rights together as an advocacy device for use in the short to medium term and specify minimum essential levels of housing, water and sanitation rights, for example, minimum space standards.

A longer-term project would most probably entail work on the right to land⁵⁷ as an important component of R2C, and more distantly on the urban environment. Further consideration of rights bearing on the structural causes of exclusion, taking into account notions of citizenship, would also seem to be a fruitful area of exploration.

It will be essential for HRBA to be reflected at each stage of *the project cycle*. This is particularly important at the project review and approval stages and a checklist of criteria will need to be developed. Also, human rights impact assessments need to be made during monitoring and evaluation. Human rights

⁵⁷ Report of the Special Rapporteur on Adequate Housing (A/HCR/4/18, paras 26 and 31) called for the Human Rights Council to ensure “the recognition in international rights law of land as a human right”.

considerations are compatible with Results Based Management (RBM) approaches, especially insofar as human rights correlate to results. The HRBA is sometimes deemed to be in contradiction to RBM in terms of its concern for participatory processes, but this does not mean supplanting a results orientation, just adding to it. Monitoring and evaluation will also need to ensure that the structural change elements of HRBA are captured.

All staff will need to be trained so they are comfortable and familiar with HRBA concepts and language. A network of human rights champions who have received extra layers of training needs to be created and they can act as reference points or gurus when staff need additional advice or mentoring. It will be particularly essential to take training to the field as it is at this level that it is likely that most impact can be made.

5.3 Organizational Arrangements for HRBA

5.3.1 Mainstreaming Unit

As indicated in the previous sub-section it is essential that the HRBA has a focus point within UN-Habitat. It will not be associated with any particular focus area so as to preserve its generic nature, and it needs status within the agency. It is therefore recommended that the Mainstreaming Unit (including the HRBA Secretariat) is based in the Project Office. Its staffing complement will combine all those responsible for mainstreaming gender and youth as well as HRBA and will continue to serve those crosscutting areas.

Experience of mainstreaming gender and problems promoting housing rights within the agency indicate that if insufficient staffing and resources are available it is likely to fail or yield disappointing results. It should be led by a senior figure at P5/D1 level who is an expert on mainstreaming and not necessarily primarily on HRBA. The Unit will support the rest of the agency with guidance on interpretation of HRBA, will guide the process of mainstreaming in the agency as a whole – including the preparation and application of guidance documentation - and act as secretariat to the Human Rights in Human Settlements Advisory Board and the UN-Habitat Advisory Group on Gender Issues. The Unit will also be the focal point for the relationship with OHCHR, although in many cases this will be a coordinating function, with individual branches undertaking direct interaction on specialized aspects of the relevant rights. It will liaise with the Geneva Liaison Office concerning inputs into UPR and relations with Treaty Bodies. The Mainstreaming Unit will have particular responsibility for ensuring that the principal HRBA requirements such as non-discrimination, accountability, focus on the most marginalized etc. described in Section 5.2 above are respected in project and programme design and coordinate specialized branch inputs into overall HRBA compliance. As human rights are a cross-cutting issue within the agency, the Mainstreaming Unit will drive global advocacy efforts.

5.3.2 Role of Branches

The *Housing and Slum Upgrading Branch* (and its predecessor branch) has had a long-standing mandate and role in addressing the right to adequate housing and spearheading UN-Habitat's relationship with OHCHR and the human rights

community. As indicated previously, the right to adequate housing is not purely a housing matter. Nonetheless, housing remains the hub of the right, with all seven core elements of adequate housing as described in General Comment 4 (see Section 4.1) having some bearing on purely housing matters. The Housing and Slum Upgrading Branch will therefore take the substantive lead as the specialist entity in the Programme addressing the housing aspects of right to adequate housing, including the issue of forced evictions. This lead role would apply to the both normative and operational applications of programmes undertaken by the Branch. It should be consulted on housing rights as a matter of course by regional offices when field projects touching on housing and slum upgrading are undertaken. It should maintain close contact with the Special Rapporteur on Adequate Housing.

It has been commented earlier in this report that HRBA has major implications for urban planning. The *Urban Planning and Design Branch* will be pivotal in addressing the norms articulated in General Comment 4, particularly those concerning availability of infrastructure services for safe drinking water, sanitation, energy and refuse disposal; affordability; accessibility; and location in relation to employment opportunities, health care, schools, childcare centres; and away from polluted or dangerous areas. Urban planning is also a powerful tool in the delivery of rights affecting the sufficiency and quality of water supply, and the availability, accessibility and affordability of both water and sanitation.

Some of the generalized requirements described by 5.2 can be given purchase through urban planning: namely “who gets what”, a focus on the most marginalized, the promotion of participation, non-discrimination and equality. It is anticipated that there would be further methodological development of planning approaches by the Branch that would accentuate a focus on the human rights elements of a plan. This should involve, amongst other things, generating a balance sheet of the distribution of benefits flowing from plan implementation, including a gender analysis.

Furthermore, the application of HRBA principles can increase the legitimacy of planning, and more particularly the sort of planning - planning in advance and planning at scale - advocated in the *Draft Strategic Plan of UN-Habitat for 2014-19*.⁵⁸ HRBA will anchor urban planning in the realm of international obligations as an essential prerequisite for progressive realization of the right to adequate housing and the rights to safe water and sanitation.

The *Urban Basic Services Branch* and its predecessors have been in advance of the rest of the Programme in applying a HRBA to water and sanitation. Close scrutiny of its experiences will yield a great deal in terms of lessons learned and there is scope for it to take a mentoring role to other branches. What is required now is that it strengthens and deepens its approach in three areas. First, improved linkages with other parts of the Agency are required, particularly with the Housing & Slum Upgrading and Urban Planning & Design Branches in order to more effectively promote the right to safe water and sanitation. There could

⁵⁸ op. cit. p. 12

be more attention for the realization of these rights to occur in respect for the human rights principles, which ensure the adequate attention to process of service provision. Third, the *Draft Strategic Plan of UN-Habitat for 2014-19*⁵⁹ specifies that three additional programmatic clusters for the Urban Basic Services Focus Area include urban waste management, urban mobility, and urban energy. Given that these areas are all referenced as specific housing norms in General Comment 4 they would clearly benefit from a HRBA pursued in concert with the Housing and Slum Upgrading Branch.

The *Urban Legislation, Land and Governance Branch* will have an important role in addressing the land and legal aspects of HRBA. In particular, it will promote human rights compliant national human settlements legislation. It will take a lead role in exploring the potential for development of a much-needed international instrument on the right to land⁶⁰, although this is very much in the nature of a long-haul exercise. This will involve cooperation with the Housing and Slum Upgrading Branch because of the strong linkage with the issue of forced evictions and security of tenure. This work should be undertaken in the context of the further development of R2C, although development of an international consensus on this will most probably take some time.

OHCHR comments: “addressing economic, social and cultural rights also helps to prevent, prepare for and recover from disasters and conflicts. Studies and investigations show that systematic discrimination and inequalities in the enjoyment of economic, social and cultural rights may cause, or exacerbate, social and political tensions leading to conflict or worsening the impact of disasters, and placing obstacles on the road to recovery”.⁶¹ General Comment 4 makes reference *inter alia*: to the need for housing to be secure, for residents to have access to emergency services, to the requirement for occupants to have physical safety, to the priority needs of people living in disaster prone areas, and the need for housing not be built on polluted sites or in proximity to such. This list of requirements clearly links the right to adequate housing and overall economic, social and cultural rights to the risk reduction, disaster preparedness, and urban resilience elements of the strategic plan⁶² for the *Risk Reduction and Rehabilitation Branch*.

The *Urban Economy Branch* is responsible for the improved urban strategies to support local economic development and creation of decent jobs and livelihoods.⁶³ General Comment 4 specifically states that access to employment

⁵⁹ *op. cit.* p. 14

⁶⁰ General Comment 4 states: “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.”

⁶¹ Office of the High Commissioner for Human Rights, *Frequently Asked Questions on Economic, Social and Cultural Rights: Fact Sheet 33*, Geneva, December 2008, p.27.

⁶² *op. cit.* p.15

⁶³ *op. cit.* p.13

options is a component of the right to adequate housing and therefore would benefit from a targeted HRBA approach

Evidence is required based on lessons learned on the sustainable development impact of a HRBA in the urban sector so that they can be fed back into better policies and programmes. The *Draft Strategic Plan of UN-Habitat for 2014-19*⁶⁴ requires the *Research and Capacity Development Branch* to “ensure that the delivery of evidence-based policies and programmes benefit urban stakeholders” and therefore is best placed to assess the impact of rights-based activities.

5.3.3 Role of UN-Habitat’s Liaison Office in Geneva

The human rights community is strongly focused on the United Nations in Geneva. This is where much innovative thinking is done and new initiatives emanate. The OHCHR, a prime mover in the system, has its offices there. Historically UN-Habitat’s Geneva Office has already done much to facilitate connections between OHCHR, the Special Rapporteur on the Right to Safe Drinking Water and Sanitation and UN-Habitat to the extent that there are now close working relations. The Geneva Office has also pioneered the integration of a HRBA in the search for durable solutions in the humanitarian arena through its chairmanship of the Housing, Land and Property Group, and has been instrumental in the development and application of the Pinheiro Principles

It is recommended that the Geneva office becomes the focal point for UN-Habitat’s relationship with the human rights community in Geneva. It should develop a close liaison with OHCHR. This will be done initially on an informal basis without the benefit of a memorandum of understanding (this is a request of OHCHR). An example of common work could be joint statements on human rights violations and joint missions. OHCHR is a source of training capacity on HRBA and the Geneva Liaison Office can assist in making this available to UN-Habitat. It will facilitate relations with the Special Rapporteurs’ offices. It will coordinate UN-Habitat’s inputs into the UPR hearings and into the operations of Treaty Bodies. It is well placed to act as a link between the Geneva humanitarian and human rights communities and field and regional offices. Much of the formulation process on the post-2015 development agenda takes place in Geneva and the Liaison Office could play a vital role in helping in negotiating an urban element in the outcome.

5.3.4 Role of New York Liaison Office

The UNDG-HRM is very important for operationalization of HRBA at field level. The field level is where UN-Habitat has the opportunity to make its greatest impact. Meetings are attended by D2/D1s and therefore it is essential that the Director of the Liaison Office attends personally and relays key messages on behalf of UN-Habitat and keep the Mainstreaming Office abreast of developments. The Director will also spearhead efforts to seek funding from the UNDG-HRM Multi-Donor Trust Fund. It should also maintain contact with that part of the post-2015 development agenda process that takes place in New York.

⁶⁴ op. cit. p.16

5.3.5 Role of Regional Offices

As commented, the main push for adoption of HRBA needs to be at the operational level. This will need to be coordinated by the regional offices and accountability for this will need to be lodged at the regional level. Regional offices' staff will receive in-depth training and potentially become trainers themselves, and certainly expert advisors to the field. HPMs and field project managers should look to the regional offices as their first port of call for support. HPMs are going to be instrumental in inserting HRBA considerations into relations with governments and must be sufficiently comfortable with human rights issues to interact with UNCTs. Furthermore, they will be an important link in the machinery that connects with the UPR and Treaty Bodies. They will also interact with OHCHR regional bodies and special rapporteurs on when on mission.

5.3.6 Creation of Advisory Body

Given the complexity of HRBA, its relative novelty within UN-Habitat, the depth of experience available from elsewhere, the need for information from a wide variety of global sources and need to establish partnerships and common strategies, it is recommended that an advisory committee be established.

The set-up suggested is based on an option called the Human Rights Expert Advisory Group that was considered but discounted in *The Future of the Advisory Group on Forced Evictions* as reviewed above. It was viewed as unlikely to yield any concrete benefits in terms of forced evictions. However, it is felt that the option provides other benefits that warrant more weight having been given to them.

It is considered that the option preferred in *The Future of the Advisory Group on Forced Evictions*⁶⁵, R-AGFE, is a cumbersome and expensive structure that would continue to exhibit some of the internal contradictions that beset its predecessor. In particular, the continued confusion between its advisory, supervisory, activist and implementation roles would tend to blur both its and UN-Habitat's own accountability. UN-Habitat cannot dilute its direct accountability for its actions on human rights to the CPR, the Governing Council and ultimately to the General Assembly.

It is proposed that a *Human Rights Expert Advisory Group* (HRAG) and a sub-committee – the *Intake Group* – be established. The objectives of this set-up are to:

- Provide advice to the Executive Director and senior management with regard to human rights issues in respect of UN-Habitat policies, strategies and projects.
- To bring human rights issues to the attention of the Executive Director and senior management for appropriate action.
- To support the Executive Director in advocating a strong human rights-based approach to human settlements in urban development.

⁶⁵ op. cit. p.16

- To facilitate dissemination of information between partners.
- To facilitate the formation of strategic alliances between the partners represented on the group and UN-Habitat in addressing specific human rights issues.

HRAG would address human rights in general, but it would have a sub-committee – The Intake Group – specifically to address the issue of forced evictions. It would act as a clearing house for all cases referred to it, making recommendations for action as appropriate directly to senior managers. It would only refer the most pressing and important cases to the HRAG. The latter would look at human rights more from a general and strategic perspective.

HRAG would be independent and impartial and members would not be expected to be available for any engagement with UN-Habitat in any paid capacity. Any potential conflicts of interest will need to be disclosed by Group members. The agenda for discussion would be set by a UN-Habitat secretariat that would service the Group. Recommendations emanating from meetings would be acted on at the discretion of the Executive Director. The Secretariat would produce minutes of the discussions that would not attribute views expressed in the meeting to any individual. The minutes would be publically available documents posted on UN-Habitat's website in a timely manner. The Secretariat would report back to the Advisory Committee on actions taken on its recommendations.

It is anticipated that the Advisory Group would have annual face-to-face meetings and two or three virtual meetings over electronic media per year. In the intervening periods strategic documents would be circulated for comment.

It is anticipated that a typical programme of work will involve *inter alia*, review of country strategies, proposed national legislation, key programme and project documents, policy documents, work programmes, review of training materials and capacity building manuals, assessment of monitoring indicators and human rights indexes, and serious cases of forced evictions - all from a human rights perspective. In addition, the opportunity would be taken at meetings - wherever possible and practicable - to develop partnerships for joined-up action based a differentiation of roles that reflects each entity's comparative advantage.

The role of the chair, who will be selected by the Executive Director, will be crucial, as he or she will act as the mouthpiece of HRAG. The chair will have the right to speak publically on any human rights issue after having engaged in dialogue with the HRAG Secretariat and sought the agreement of the Advisory Group to do so. All statements will be made with the disclaimer that they are being made independently of UN-Habitat.

The membership of the Group would be drawn from related UN and multilateral agencies including OHCHR, academic institutions, CPR members representing G77 and China, WEOG and Transition Countries, professional bodies, local authority associations, independent experts, grassroots organizations and civil society organizations. It will be gender and regionally balanced. It is recommended that there is a defined cross-membership of one or two persons

with the UN-Habitat Advisory Group on Gender because of the commonality of human rights considerations. Membership should be limited to 15 persons to keep costs within bounds and allow for efficient meetings.

The Intake Group would be composed of the Chair of HRAG, the OHCHR representative on HRAG and a member of the secretariat.

As a general comment there is currently a proliferation of stakeholder consultation bodies in UN-Habitat. It is recommended that the corporate architecture of these arrangements be reviewed.

6 Next Steps

After a decision of the Executive Director on the recommendations of this report, a *ProDoc* will have to be devised to guide implementation. It will detail objectives, activities to be undertaken, staffing requirements, organizational structure, outputs and outcomes, and a budget so that the HRBA can be implemented.

It is anticipated that the ProDoc will be prepared contemporaneously with a *Public Policy Statement* that will confirm a decision of the Executive Director to mainstream human rights and pursue a HRBA in the Programme.

A *Guidance Note* for UN-Habitat staff should be produced on how to promote and protect human rights should be produced immediately after the ProDoc has been approved.⁶⁶ It can be a concise document in the form of a Quick Guide that will allow HRBA to be put into practice immediately within the agency. Piloting of the guidance note should take place first of all to see how well it works in practice before it is finalized.

Work should begin as soon as the guidance note is finalized on a more *Comprehensive Guide to HRBA* that is accompanied by training materials for use by both staff and duty-bearers and claim-holders.⁶⁷ Particular attention should be paid to preparation of guidance to field staff which can either be incorporated in the comprehensive guide or be the subject of a targeted publication.

A *Catalogue of Good HRBA practices* could augment the above guidelines.

A *training cascade* should be designed immediately. It should start with senior managers so that they become champions of change but then quickly ripple out to staff at large. The first discussions should centre on the why of HRBA, showing what it can deliver in terms of a better development approach. Discussions will reach the level of adequate agreement but will be sufficient to raise the anticipation and excitement level among staff. The next stage will be the how.

⁶⁶ The note prepared by UNODC, *op. cit.*, is a good model for this.

⁶⁷ The UNFPA manual, *op. cit.*, provides a suitable example.

The following stage will focus on the development of *key indicators* for internal monitoring and for decision-makers, duty-bearers and claim-holders in order to assure local ownership. This activity should be undertaken in tandem with consideration of development of an Urban Human Rights Index (alternatively an Inclusiveness Index). Consideration should be given to the designation of Human Rights Cities in conjunction with the Index.

Decisions will have to be made once the implications of HRBA become clear as to those activities that are already *HRBA compliant*, those which are not but cannot be changed, and those that can. All new activities should be made HRBA compliant from the inception of the public policy statement.

UN-Habitat will have to deepen its engagement with the development of the *Post 2015 Development Goals* in order to capture new evolutions in development philosophy and methodology in order to implant these into UN-Habitat's HRBA. It goes almost without saying that UN-Habitat needs to have key urban issues reflected in the new goals.

There is an expressed demand for *additional tools addressing human rights violations in the form of forced evictions* to be developed. It had been a common complaint that the security of tenure index had been dropped, but it is pleasing to report that progress has been made in this area.⁶⁸ Other tools concerning, for example, monitoring of forced evictions, need to be identified and designed.

R2C needs to be further developed as concept so as to capture the fullest extent of existing human rights obligations. Once this has been done, conceptual development work should be undertaken so as to capture recent thinking about what needs to be done to secure cities from structurally embedded exclusion. In particular, consideration needs to be given to promoting a human right to land.

Growing interest in HRBA in donor countries may open the door to *additional sources of funding*. Evidence has been given a-plenty in this report that human rights are embedded in the development strategies of many donor countries. There has been a suggestion that the Peacebuilding Fund may be a funding source. The UNDG-HRM Multi-Donor Trust Fund should be targeted as a source of financing, particularly to reinforce the adoption and application of HRBA at field level. A fund raising strategy should be devised. The scope for setting up a dedicated human rights trust fund in UN-Habitat might usefully be explored.

⁶⁸ United Nations, *Millennium Development Goals Report 2012*, New York, 2012, p. 57.