

# A BRIDGE TO THE FUTURE: A GENDER-BASED APPROACH TO THE IMPLEMENTATION OF THE RIGHT TO ADEQUATE HOUSING CASE STUDY OF THE PHILIPPINES

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**1. THE RIGHT TO ADEQUATE HOUSING: SOME CLARIFICATIONS**

The realization of international human rights standards entails a comprehensive process and should not simply be equated with token-giving. Hence, the right to adequate housing does not end with the mere provision of physical shelter. Although this particular right has been the subject of numerous debates, conferences, deliberations and in depth studies by activists, scholars, United Nations experts and government representatives, it has to be admitted that a disproportionately large number of people still suffer from violations of this right.

It is difficult to give a precise definition of what the right to adequate housing consists. Identifying what constitutes a violation of this right can be just as problematic. For instance, one common misconception is that only homelessness amounts to a violation of the right to adequate housing.

Although we must be careful not to equate homelessness with a violation of this particular right, this is nonetheless an important component of the whole bundle of conditions embodied therein. And it is difficult not to cry “violation” when one sees the serious degree of homelessness worldwide. Depending on how homelessness is defined (whether it means the absence of physical shelter or includes substandard housing conditions), it is estimated that from 100 million to

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one billion people are still homeless worldwide.<sup>1</sup> And although the right to adequate housing is of great importance to homeless people, it is equally important to other sectors of society, especially since the principle of non-discrimination or equality of treatment and opportunity must pervade housing rights.<sup>2</sup>

However, the implementation of the right to adequate housing means so much more than just physical resettlement or the provision of shelter. Any proposed solution will have to consider the interplay of various other factors surrounding the life of any affected individual or family. The place of work, children's schooling, opportunities for growth, health and sanitation, feelings of self-worth, are just few of these relevant factors. Housing has been described as a place "to live in peace, safety and dignity."<sup>3</sup> This definition is premised on the inherent dignity of every human being and must therefore consider at least the following aspects: security of tenure, availability of services, materials, facilities and infrastructure, affordability, habitability, accessibility, location, and cultural adequacy.<sup>4</sup> Moreover, housing rights must, "at the most basic level, provide legal protection against arbitrary eviction" and the provision of legal remedies such as provision of compensation for the evictees.<sup>5</sup>

But neither is it implied here that reliance on the internationally-recognized right to adequate housing will serve as a panacea to all the world's housing problems. For it is recognized that "economic, technical, financial, and political constraints and perspectives will influence how housing rights are perceived and acted upon."<sup>6</sup>

The big challenge therefore, in order to give more attention to the right to adequate housing, is to further clarify its scope and to seek better and effective ways of monitoring implementation. More importantly, the implications of this right to the existing legal status of women must not escape attention. It has been well-articulated that, "the need is to understand better the impact of housing rights violations on women that lead to the undermining of their capacities on the

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<sup>1</sup> U.N. COMMITTEE ON ECONOMIC, SOCIAL & CULTURAL RIGHTS, GENERAL COMMENT NO. 4 ON THE RIGHT TO ADEQUATE HOUSING, U.N. Doc. E/C, 12/1991:4.

<sup>2</sup> Scott Leckie, *From Housing Needs to Housing Rights: An Analysis of the Right to Adequate Housing Under International Human Rights Law*, 72 (prepared for the Human Settlements Programme, International Institute of Environment and Development, London, 1992).

<sup>3</sup> U.N. COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, *supra* note 1.

<sup>4</sup> *Id.*

<sup>5</sup> Leckie, *supra* note 2, at 73.

<sup>6</sup> *Id.* at 1.

one hand and the need to create spaces for the use of women's skills and managerial skills on the other."<sup>7</sup>

The recent HABITAT II Conference, stressed the inter relatedness of specific human rights issues and concepts such that the very concept of "habitat" embodies several human rights to housing and shelter, the right to community, the right to environment, etc.<sup>8</sup> Dias adds that, "shelter cannot be seen in isolation from the rights of subsistence and livelihood. Sewage and sanitation issues clearly implicate the right to health, and that the right to affordable and adequate housing would require land policies, urban planning and regulations to check inflationary land development activities," and so on. Most importantly, he emphasized that "the right to be human" forms the core of these concepts, of which "the right to be woman" is a "vital and integral component."<sup>9</sup>

## 2. HOUSING RIGHTS IN THE PHILIPPINES: THE NEED FOR A GENDERED VIEW

A "gender-sensitive" or "gender-aware" policy or program does not promote women's concerns to the exclusion of men. On the contrary, it refers to those policies or programs "which take account of everybody's needs and contributions, including men and women, boys and girls."<sup>10</sup> However, it has also been stated that "one of the crucial elements of gender-aware planning is recognizing that women have different needs from men" and that "it is crucial to acknowledge that needs are not caused by biological differences, but are socially constructed."<sup>11</sup>

Initially, it is relevant to state that in the Philippines, any discussion of the right to adequate housing necessarily leads to a mention of "squatters". For in

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<sup>7</sup> U.N. COMMITTEE, *supra* note 1.

<sup>8</sup> Clarence J. Dias, *The Right to an Adequate Standard of Living: Including Adequate Food and Housing* (November 1998) (on file with author).

<sup>9</sup> *Id.*

<sup>10</sup> U.N. CENTER FOR HUMAN SETTLEMENTS (HABITAT), *Women in Human Settlements Development: Getting the Issues Right* (Wandia Seaforth, ed., 1995) UN Doc. HS/341/95E.

<sup>11</sup> Sara Hlupekile Longwe, *Gender Awareness: the Missing Element in the Third World Development Project*, in *CHANGING PERCEPTIONS: WRITINGS ON GENDER AND DEVELOPMENT*, 149-157 (1991), cited in Sylvia Chant, *Gender, Urban Development and Housing*, U.N. Development Programme (1996).

this Southeast Asian country, the word "squatter"<sup>12</sup> is almost synonymous with survival. It means clinging on to the next available space, holding on to whatever little is left of one's physical belongings and enduring the lack of even the most basic facilities. On the other hand, the word can also invite feelings of contempt from private landowners whose properties have been invaded by these settlers or "squatters".

To be considered a "squatter" in one's own country can be the saddest of ironies. Unfortunately, this situation has become commonplace in the Philippines, where about a third of the population live below the poverty line.<sup>13</sup> Not only are these "squatters" forced to live under subhuman conditions, they must also bear the uncertainty of tenure due to the constant threat of forced evictions and/or house demolitions. Unfortunately, there are no reliable and systematic data existing on the incidence of forced evictions and house demolitions or on the total number of potential targets of such extreme measures.<sup>14</sup> But it is common knowledge that these problems abound as often relayed in the print or broadcast media.

Independent reports show that "women in urban poor communities always fear the possibility of demolition of their shanties which will surely result not only in the loss of economic activities but even problems in relation with finding another place to stay and live, even if only temporary, thus making the performance of women's traditional work even more difficult."<sup>15</sup>

The "traditional work" referred to above pertains to the stereotyped role of Filipino women to take care of and manage the household. Hence, female workers are often overburdened by their dual role as a worker and as the manager of the family's domestic affairs.

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<sup>12</sup> "Squatter" refers to those illegally occupying land not his or her own.

<sup>13</sup> Based on the 1997 Poverty Estimates of the National Statistical and Coordination Board, the Philippines' highest policy making and coordinating body on statistical matters, poverty incidence for the country was estimated at 32.1%. Available at <http://www.nscb.gov.ph/poverty/97poverty.htm>.

<sup>14</sup> *Philippines NGO Report on the Implementation of the International Covenant on Economic, Social and Cultural Rights Concerning the Right to Adequate Housing*, (prepared by the Urban Poor Associates (UPA) in coordination with the Partnership of Philippine Support Services Agencies (PHILSSA) (April 1995).

<sup>15</sup> Philippine NGO Report for the Committee on Elimination of all Forms of Discrimination Against Women (CEDAW), 1 (prepared by SIBOL, a collective initiative for Legal and Social Reforms, January, 1997).

After laboring for hours in the fields under the hot sun, or inside a steamy factory room, the female comes home to face another chain of duties. Outside worker or not, she is nonetheless expected to be the chief performer of the family's domestic chores. Although she often helps male family members earn a living, seldom do the males contribute their share of work in the house. It is this dual responsibility of augmenting the family income and managing domestic tasks that drains women of a large amount of physical energy and mental ease.<sup>16</sup>

Among these types of "traditional work" include caring for the children. It is observed that the Filipina woman worker is handicapped by her relative immobility: "She is reluctant to accept work far from home as she wants to be physically available to her children. For lactating mothers, a workday's noon break provides a midday supply of breast milk for the infant."<sup>17</sup>

Moreover, primarily due to the International Monetary Fund's Structural Adjustment Programs, the government had been diminishing its budget for services. Consequently, women largely carry the brunt of the government's failure to carry out its responsibility for adequate and accessible health care, education, sanitation, housing and others. This is manifested in a way by mothers and elder daughters leaving their homes and who risk working abroad to meet the family's basic needs.<sup>18</sup> For instance, it is common knowledge that a great number of Filipinas work as domestic helpers or entertainers abroad, primarily due to this dire economic need and also partly due to the existing gender gaps in the field of domestic employment.<sup>19</sup> There are an estimated half a million of such women, majority of whom are married and with children.<sup>20</sup>

The NGO report to the Committee on Economic, Social and Cultural Rights quotes the National Commission on the Role of Filipino Women (NCRFW) which said that: "there remain wide gaps in female and male participation rates and employment levels. The lower labor force involvement of women reflects the greater preference given to the employment of males over

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<sup>16</sup> Mary Racelis Hollnsteiner, et al., *The Filipino Woman: Her Role and Status in Philippine Society*, in *WOMEN AS PARTNERS OF MEN IN PROGRESS AND DEVELOPMENT: SURVEY OF EMPIRICAL DATA AND A STATEMENT OF BASIC GOALS FOSTERING MALE-FEMALE PARTNERSHIP*, 14 (1976).

<sup>17</sup> *Id.* at 22.

<sup>18</sup> Philippine NGO Committee Report, *supra* note 15, at 6.

<sup>19</sup> *Id.* at 2.

<sup>20</sup> PHILIPPINE GOVERNMENT'S INITIAL REPORT TO THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, U.N. Doc. E/1986/3/Add.17, 15 (1994).

females and the constraints imposed by domestic responsibilities on women's ability to enter the labor force." It was further cited that women's labor force participation stands at 47 per cent as against men's 80 per cent, both in the 1988 and 1994 labor force surveys.<sup>21</sup> Other related issues include the failure to recognize women's household work, flexible working arrangements and subcontracting, which open doors for exploitation especially of women laborers.<sup>22</sup>

The highly centralized provision of basic services to the urban areas also contribute to the problem by encouraging massive rural to urban migration. This therefore, leads to overpopulation in the urban areas and the consequent failure to attain fairly acceptable living standards. Although there used to be a seeming pattern of Filipinas marrying early and bearing too many children, this has changed in the past few decades, especially in the urban areas. It has been reported that the fertility rate in the region has been steadily declining while the average age for marriage has been increasing.

Another author looks at women's subordinate status in the Philippines as taking many different forms depending on the different classes and ethnic groupings of Filipino women. However, it was viewed that there are nonetheless common areas of subordination: 1) limited access to and control over resources that would benefit them, their households and their communities; 2) curtailed physical mobility; 3) imposed controls on sexuality; 4) threatened or actual sexual violence; and 5) imposed sexual division of labor.<sup>23</sup>

Because all these socio-economic factors contribute to and can greatly affect the family's coping mechanism, the dynamics of which necessarily occurs within the home, the implementation of the right to adequate housing becomes a very crucial issue. As will be further discussed in the succeeding chapters, the implementation of this right extends to areas which are not limited to the four walls and a roof that consist the physical dwelling.

Whether the issue is the provision of physical shelter, access to basic facilities or employment, vulnerability to domestic violence or forced evictions, it can be gleaned that advocating a gender approach in the implementation of the

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<sup>21</sup> NATIONAL COMMISSION ON THE ROLE OF FILIPINO WOMEN (NCRFW), *Filipino Women Facts and Figures* (1995).

<sup>22</sup> Philippine NGO Committee Report, *supra* note 15, at 3.

<sup>23</sup> Anna Maria M. Gonzales Biglang Awa & Sarah B. del Castillo Redoblado, *A Framework for Women and the Built Environment*, Alternative Planning Initiatives, Inc. 3 (1993).

right to adequate housing is not easy. In fact, it can be made even more complex and problematic by the above mentioned factors. But this is where the challenge lies, and the only way a real and long-lasting solution can be achieved. Neither does this suggest that we should ignore the rights of male victims altogether. The internationally recognized right to adequate housing, just like all human rights, requires an equal and non-discriminatory application. However, it has also been widely accepted that the recognition of the age-old subjugation of women necessitates some affirmative action and a gender-sensitive approach to achieving genuine and substantive equality.

### 3. METHODOLOGY: A GENDER-BASED APPROACH WITHIN THE HUMAN RIGHTS FRAMEWORK

International human rights standards and procedures are perceived to be gender-neutral; this neutrality often amounts in practice to a disregard of women, in human rights as everywhere else. What women have learned from history is that their needs and interests – and their rights – are neither automatically recognized nor guaranteed unless they articulate them and fight for them.<sup>24</sup>

The above-described reality underscores the importance of maintaining the gender perspective in the study and analysis of human rights norms. Otherwise, the *de facto* discrimination of women will never be challenged and women's oppression will continue to be regarded as part of the *status quo*.

The field of economic, social and cultural rights is especially problematic since their full recognition entails a great deal of change in perspectives and priorities. Add to these difficulties an analysis of gender constructs, and one can get totally enmeshed in a complicated web of unrecognized rights and unarticulated violations.

In the case of the Philippines for example, the continuous pattern of discrimination against women had been perpetuated for several periods in its history. From the colonial to the present time, women had been constantly neglected in decision making processes, their specific needs and characteristics hidden in gender-neutral statistics, and other such forms of neglect.

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<sup>24</sup> Katarina Tomasevski, WOMEN AND HUMAN RIGHTS, x (1993).

In her Ph.D. dissertation on women and the right to housing in Kenya,<sup>25</sup> architect Diana Lee-Smith identified gender contracts -- subsistence and market gender contracts -- which reveal the logic behind the strategies used by men and women in dealing with each other and for getting access to property in the form of land and housing. Her analysis "revealed a situation in Kenya where men have a lot of power through their control of property and are not required to deliver much to women according to the gender contract. Women run the risk of being left landless and homeless because of its terms."

Although the context of Lee-Smith's study remains the field of women and housing,

its purpose is to throw useful light on what may be done in housing policy to create more equitable access for women and men. The various stages of exploration of the issue have concluded with insights into the underlying social structures that create inequitable access to housing for women. Housing policies built upon this understanding are more likely to succeed than those which fail to recognize the deeply held social values upon which gender inequities are based.<sup>26</sup>

The obligation of women to provide subsistence for their families is not kept in place simply by the maintenance of the gender contracts at cultural, institutional and interpersonal levels. It seems to be also kept in place by women's lack of access to property which keeps them in a subordinate position to men by being economically powerless.<sup>27</sup>

Along the same lines, it had also been proven that, in most parts of the world, women are generally disadvantaged in the area of human settlements. A United Nations document<sup>28</sup> states that women form a large proportion of the population of urban poor communities, where housing and other services are inadequate. Women's housing concerns are largely ignored at the national policy-making level, and are therefore unrecognized and unplanned for. Nearly one third of the world's households are headed by women. They spend more time in the

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<sup>25</sup> Diana Lee-Smith, *My House is My Husband, a Kenyan Study of Women's Study to Land and Housing* (1997) (unpublished dissertation, Lund University).

<sup>26</sup> *Id.* at 15-16.

<sup>27</sup> *Id.* at 177.

<sup>28</sup> U.N. CENTER FOR HUMAN SETTLEMENTS, *Women in Human Settlements Development, Getting the Issues Right* (1995).

house than any other family member as many women conduct economic activities in the house.<sup>29</sup>

Lee-Smith then concludes that,

a gendered approach to housing policy has great potential. I recommend that women's property rights and their housing production capability should be the two elements of such a policy, and that it should support the values and objectives of women's community-based organizations by formally incorporating these organizations into the policy-making process.<sup>30</sup>

More concretely, a gendered approach will require a greater sensitivity to the various factors affecting women's oppression in the field of housing rights. As discussed above, women have almost always been lost in general statistics and their needs overshadowed by what men perceive to be a "gender-neutral" field.

On the contrary, the field of the right to adequate housing can hardly be dismissed as being gender-neutral. For instance, it has been argued that, "inadequacies in dwellings, community amenities and infrastructure play a major role in intensifying reproductive work, which, given gender divisions of household labor, rebounds disproportionately upon women."<sup>31</sup>

Moreover, women, whose specific social roles dictate their activities, will have different senses of space and time from men. "Women and men's space may be expressed in the same number of square meters, but may have different meanings for each group as a result of their social roles. Concepts of what is safe and unsafe, large or small, will differ accordingly."<sup>32</sup> Likewise, poorly consolidated household not only affects women's comfort and well-being, but makes their reproductive chores more difficult and time-consuming, as well as influencing their abilities to generate income.<sup>33</sup>

While the author does not attempt to follow the same multidisciplinary approach in an equally comprehensive and empirical manner, the work that Lee-

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<sup>29</sup> Lee-Smith, *supra* note 25, at 177.

<sup>30</sup> *Id.* at 182.

<sup>31</sup> Sylvia Chant, *Gender, Urban Development and Housing*, U.N. DEVELOPMENT PROGRAMME 38 (1996).

<sup>32</sup> Biglang Awa & Redollado, *supra* note 23, at 5.

<sup>33</sup> Chant, *supra* note 31, at 15.



Smith did on women and housing in Kenya provides the impetus and the inspiration that a case study of a particular country which one knows relatively well, gives much hope for change.

The present study aims to make an analysis of existing laws and their implementation while examining the soundness of relevant policies in the context of the existing situation. For it is agreed that "while legal approaches can obviously achieve a good deal, these must be coupled with an examination of broader social trends and political realities, especially at the national level."<sup>34</sup> Hence, this paper seeks to achieve the following minimum objectives:

1. To clarify the scope of the right to adequate housing and the extent of governmental obligations in the Philippine context.
2. To examine the implications of the right to adequate housing to the existing legal status of women in the Philippines;
3. To be able to make realistic recommendations towards an effective enforcement of the right to adequate housing to benefit all, men and women alike.

It may also be relevant to point out that linking women and housing concerns do not necessarily contribute to the further oppression of women by confining her within the home or the so-called "private sphere". It had been argued that, while the home can be the site of women's oppression, it can also be "a potential site of women's autonomy, independence and freedom."<sup>35</sup> This is likewise consistent with the rights based approach that perceives social economic and cultural issues as "rights" rather than as simple "needs". The two approaches complement each other such that the former (gender-based approach) provides the much-needed gender perspective to make the latter's (rights-based approach) application comprehensive and non-discriminatory.

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<sup>34</sup> Tokunbo Ige, *The Role of Lawyers in the Realization of Economic, Social and Cultural Rights: A General Overview*, in I.C.J. REV. 83 (Special Issue, 1995) (citing Danilo Turk in UN Doc. E/CN.4/Sub.2/1992/16).

<sup>35</sup> Leilani Farha, *Is There a Woman in the House? Women and the Right to Housing*, in A RESOURCE GUIDE TO WOMEN'S INTERNATIONAL HUMAN RIGHTS (1998).

#### 4. THE PHILIPPINES: A NATIONAL SITUATIONER

It had been stressed on several occasions that any form of analysis will have to consider the context within which it is being made. Hence, a case study of the Philippines on the implementation of the right to adequate housing will not be complete without first giving some background information on the human settlements system of the country. It is then hoped that the brief situationer that follows will provide the reader not only a better understanding of the country, but will also aid in the formulation of more appropriate solutions to the nagging social problems which contribute to the country's dismal performance in the housing rights front.

The development of Philippine settlements is traceable to three distinct historical periods: pre-colonial, colonial and post-colonial. During pre-colonial times, the Philippine settlements were generally riverine and coastal in orientation and distant from each other since the most dominant livelihood of the people were farming and fishing.<sup>36</sup>

Spanish colonization dramatically shifted village formation from a riverine and coastal orientation to population centers known as *poblacion* or plaza complex. The *poblacion* consisted of a residential area surrounding a church which was situated generally across a municipal hall. Later, in the 1900s, the American policy of developing roads and transport facilities to enhance commerce and trade led to the growth of settlements along the major throughfares following a linear pattern.

By the end of the American regime, Philippine settlements were a combination of riverine and coastal settlements, of Spanish type *poblaciones* around the town plazas and of rows of settlements along the highways.<sup>37</sup>

Urbanization in the Philippines emerged from a vast countryside radially situated around pockets of economic, political and cultural centers with Manila at the apex of these hierarchy of settlements. These centers constituted the trading network that had the United States and European capitals as final points in the 19<sup>th</sup> century and solely, the United States in subsequent years. From 1896, Manila

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<sup>36</sup> Encarnacion N. Rarallo, *Philippine Scenario*, in PHILIPPINE SHELTER SYSTEM AND HUMAN SETTLEMENTS 8 (1983).

<sup>37</sup> *Id.* at 9.

was starting to become overcrowded. Factory and similar workers, employees of commercial houses, and of the government and minor professionals started to concentrate in the city.<sup>38</sup>

Since 1948, the country has been experiencing a continuously growing urban population. Internal migration from rural to urban centers appears to be the most significant contributor to urban growth. In Metro Manila, it accounted for about half the population gain in recent years.<sup>39</sup> Poor housing conditions had been a characteristic feature of urbanization in the Philippines since the turn of the 19<sup>th</sup> century. Even before the outbreak of World War II, the presence of slums and squatter communities had underscored for the government the existence of a grave housing problem which then led to the creation of the People's Homesite Corporation (PHC) and the National Housing Commission (NHC). After WW II, an ever present housing problem had become more apparent and real, as indicated by the existence of sprawling squatters and slum settlements in Manila and other cities all over the country.<sup>40</sup>

From 1946 to 1965, the attempts of the government to improve the housing situation were mainly circumscribed by the absence of a central coordinating agency to plan, implement and evaluate housing projects of private and public agencies. In fact, it was only in the 1960s that government initiated efforts to systematically gather data to identify housing needs, housing demands, housing backlogs, housing costs, etc.- baseline data necessary for planning purposes to identify resources needed, both financial and organizational for the government to cope with the housing problem.<sup>41</sup>

In the last two decades, the Philippines urbanized at a very fast pace, manifested in the phenomenal growth of towns and cities and the increase in urban population. By 1990, the Philippines was already 48.6 per cent urban, with an urban population of 29 million out of 60.7 million in total population. The urban growth rate was 5.14 per cent, more than double the national growth rate of 2.33 per cent.<sup>42</sup>

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<sup>38</sup> Jose L. Merin, *The Political Economy of Housing in the Philippines, 1946-1980*, in PHILIPPINE SHELTER SYSTEM AND HUMAN SETTLEMENTS 20 (1983).

<sup>39</sup> Rarallo, *supra* note 36.

<sup>40</sup> Merin, *supra* note 38, at 21.

<sup>41</sup> *Id.* at 22.

<sup>42</sup> Prepared by the NATIONAL COMMISSION ON THE ROLE OF FILIPINO WOMEN [hereinafter NCRFW], PHILIPPINE PLAN FOR GENDER -RESPONSIVE DEVELOPMENT 81.

From 1980 to 1990, urban population increased by about 6.85 million people or 1.34 million households, a growth rate 15 times faster than that of the rural population, also attributable to heavy rural to urban migration. Women form 51 per cent of the urban population and 38 per cent of them are in the productive bracket.<sup>43</sup>

Scores of squatter colonies in practically any vacant or idle land including river easements and along railroad tracks, blighted areas, are common sights in Philippine urban areas. Based on the 1990 Census on Population and Housing, 1.5 million households will need new housing while some 444,000 living in doubled-up household will need to be provided separate units. An estimated 1,355 million households are substandard and deemed unfit for habitation, while an additional 442,000 households need immediate relocation. Another 7,000 homeless families are badly in need of physical shelters as they are currently dwelling in the streets, parks and alleys, transferring from place to place with their meager belongings stacked in shabby wooden pushcarts.<sup>44</sup> From these data, it is estimated that some 8.5 million new housing units need to be provided by the year 2025.<sup>45</sup>

## 5. THE RIGHT TO ADEQUATE HOUSING IN INTERNATIONAL LAW

I used to think I was poor. Then they told me I wasn't poor, I was needy. They told me it was self-defeating to think of myself as needy, I was deprived. Then they told me underprivileged was overused, I was disadvantaged. I still don't have a dime. But I have a great vocabulary.

- Jules Feiffer

The international standards relevant to an analysis of the right to adequate housing may be divided into two general categories: a) the international covenants and treaties which create binding obligations and b) the declarations, resolutions and general comments, which are recommendatory in nature hence not imposing mandatory obligations on States but which nonetheless serve to clarify the nature of the right.

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<sup>43</sup> *Id.*

<sup>44</sup> *Id.*, at 42.

<sup>45</sup> *Id.*

### *5.1. Binding International Instruments*

#### **a) The Universal Declaration on Human Rights**

Before making a brief listing of these two categories of rights, it is but proper to start with the Universal Declaration of Human Rights (UDHR) which can be classed as a category in itself. The right to adequate housing was expressly identified in this document which has been strongly argued as having achieved the status of international customary law.<sup>46</sup> Noted scholars in the field of housing rights support this view.<sup>47</sup> Prof. Philip Alston,<sup>48</sup> for his part, asserts that the UDHR is an authoritative interpretation of U.N. Charter provisions and which has been repeatedly affirmed and cited by the international community and by individual states.<sup>49</sup> Prof. Sieghart states that "although the juridical status of the UDHR cannot be said to be free from doubt, there are substantial grounds for saying that it now constitutes a binding obligation for member States of the UN, and some grounds also for saying that it has now become part of customary international law, and so binds all States."<sup>50</sup>

In particular, Article 25 (1) of the UDHR provides that:

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

Other articles in the UDHR with potential relevance to the right to adequate housing are:

Article 22. Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international cooperation and in accordance with the organization and

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<sup>46</sup> PAUL SIEGHART, *THE INTERNATIONAL LAW OF HUMAN RIGHTS* 53 (1983).

<sup>47</sup> Leckie, *supra* note 2, at 15.

<sup>48</sup> Alston is the Chairperson of the U.N. Committee on Economic, Social and Cultural Rights.

<sup>49</sup> Philip Alston, *International Law and the Right to Food*, in *THE RIGHT TO FOOD* 22 (Alston and Tomasevski, eds., 1984).

<sup>50</sup> Sieghart, *supra* note 46 at 54

resources of each state, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 28. Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

**b) International Covenant on Economic, Social and Cultural Rights (CESCR)<sup>51</sup>**

Forming part of the International Bill of Human Rights,<sup>52</sup> the CESCR is the main document which institutionalized the right to adequate housing as a human right thus imposing a clear obligation on States parties to recognize, respect, protect and fulfil this particular right.

Article 11(1) of the CESCR provides that:

The states parties to the present covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The states parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

Other than the CESCR, there are other international human rights treaties which expressly guarantee the right to adequate housing for particular sectors of society. The relevant provisions in these treaties are also reproduced below.

**c) International Convention on the Elimination of Racial Discrimination (CERD)<sup>53</sup>**

Article 5(e)(iii) states:

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<sup>51</sup> U.N. G.A. Res. 2200 A (XXI) (1966).

<sup>52</sup> The International Bill of Human Rights consists of the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

<sup>53</sup> U.N. G.A. Res. 2106 A (XX) (1966).

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

**d) United Nations Convention on the Rights of the Child<sup>54</sup>**

Article 27.3 provides:

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

**e) United Nations Convention Relating to the Status of Refugees<sup>55</sup>**

Article 21 provides:

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

### ***5.2. Non-binding International Instruments***

Having only the status of declarations, the following instruments are not considered legally binding on States. But although their provisions are merely recommendatory in character, they nonetheless represent some international consensus and could thus serve to clarify the nature of this particular right. Hence, while it could be difficult to base legal arguments solely upon these

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<sup>54</sup> U.N. G.A. Res. 44/25 (1989).

<sup>55</sup> U.N. CONFERENCE OF Plenipotentiaries of the Status of Refugees and Stateless Persons (1951).

instruments, they could serve as a useful “substantiating basis” of the right to adequate housing.<sup>56</sup> Moreso, the consistent reiteration of this particular right serves not only to increase public awareness but also to strengthen its wide international acceptance as a human right making it even more difficult for States to refuse to recognize the same.

**a) Vancouver Declaration on Human Settlements<sup>57</sup>**

Paragraph 8 of Section III provides:

Adequate shelter and services are a basic human right which places an obligation upon governments to ensure their attainment by all people, beginning with direct assistance to the least advantaged through guided programmes of self-help and community action. Governments should endeavour to remove all impediments hindering the attainment of these goals. Of special importance is the elimination of social and racial segregation, *inter alia*, through the creation of better balanced communities, which blend different social groups, occupations, housing and amenities.

Also, Chapter II (A.3) states:

The ideologies of States are reflected in their human settlement policies. These being powerful instruments for change, they must not be used to dispossess people from their homes or land or to entrench privilege and exploitation. The human settlements policies must be in conformity with the declaration of principles and the Universal Declaration of Human Rights.

**b) United Nations Declaration on Social Progress and Development<sup>58</sup>**

Part II provides:

Social progress and development shall aim at the continuing raising of the material and spiritual standards of living of all members of society, with respect for and in compliance with human rights and fundamental freedoms, through the attainment of the following main goals: The

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<sup>56</sup> Leckie, *supra* note 2, at 15.

<sup>57</sup> U.N. CONFERENCE ON HUMAN SETTLEMENTS (1976).

<sup>58</sup> U.N. G.A. Res. 2542 (XXIV) (1969).



provision for all, particularly persons in low income groups and large families, of adequate housing and community services.

**c) Declaration on the Right to Development<sup>59</sup>**

Article 8.1 provides that:

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

**d) International Labor Organization (ILO) Recommendation No. 115 on Worker's Housing<sup>60</sup>**

Principle 2 states:

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

**e) Istanbul Declaration on Human Settlements<sup>61</sup>**

Paragraph 8 provides:

We reaffirm our commitment to the full and progressive realization of the right to adequate housing as provided for in international instruments. To that end, we shall seek the active participation of our public, private and non-governmental partners at all levels to ensure legal security of tenure, protection from discrimination and equal access to affordable, adequate housing for all persons and their families.

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<sup>59</sup> U.N. G A. Res. 41/128 (1986).

<sup>60</sup> ILO GOVERNING BODY, 4<sup>th</sup> Sess. (1961).

<sup>61</sup> U.N. CONFERENCE ON HUMAN SETTLEMENTS (1996).

f) **Declaration on the Rights of Disabled Persons**<sup>62</sup>

Article 9 states:

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

### *5.2. Implementing Mechanisms*

While the importance of these sources of the law are critical, the most important element of any legal system, and especially human rights, is the process leading towards their eventual realization and fulfillment. Without such endeavors, these guarantees will remain solely aspirations and not concrete realities.<sup>63</sup>

Based on years of experience in the housing rights field, Mr. Leckie's words above rings true and had been repeatedly stressed in most academic discourses, journal articles and conference reports. Indeed, there already exist a number of comprehensive standards, instruments and other legal documents, but what is lacking is the follow through or the implementation aspect, which is what ultimately matters to the suffering multitudes. It behooves the international community therefore, to maximize these international standards and to come up with concrete and effective ways to utilize them for genuine people empowerment.

#### **5.2.1. Economic, Social and Cultural Rights in general**

Although this paper deals with the right to adequate housing, it is also important to look into the nature of economic, social and cultural rights in general, owing not only to the permeability and inter relatedness of the

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<sup>62</sup> U.N. G.A. Res. 3447 (XXX) (1975).

<sup>63</sup> Leckie, *supra* note 2 at 33.

component rights, but also to clarify the intent behind international standards and how they are meant to be implemented.

The Limburg Principles on the Implementation of the Covenant on Economic, Social and Cultural Rights<sup>64</sup> provides valuable clarification to and further elaboration of the often misinterpreted provisions of the CESC. It clarified, among others, the scope of “taking steps...by all appropriate means...” in Article 2(1) of the Covenant, the meaning of “to achieve progressively the full realization of the rights” and “to the maximum of its available resources” and several other ambiguous terms in the Covenant. More importantly however, the Limburg Principles also enumerated the instances when a State party may be found to be in violation of its commitments made under the CESC. Among others, a State party will be found in violation if:<sup>65</sup>

- a) it fails to take a step which it is required to take by the Covenant;
- b) it fails to remove promptly obstacles which it is under a duty to remove to permit the immediate fulfillment of a right;
- c) it fails to implement without delay a right which it is required by the Covenant to provide immediately;
- d) it willfully fails to meet a generally accepted international minimum standard of achievement, which is within its powers to meet;
- e) it applies a limitation to a right recognized in the Covenant other than in accordance with the Covenant;
- f) it deliberately retards or halts the progressive realization of rights, unless it is acting within a limitation permitted by the Covenant or it does so due to a lack of available resources or *force majeure*;

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<sup>64</sup> A group of distinguished experts in international law, convened by the International Commission of Jurists, the Faculty of Law of the University of Limburg (Maastricht, The Netherlands) and the Urban Morgan Institute for Human Rights, University of Cincinnati, Ohio (Ohio, USA), met in Maastricht on 2-6 June 1986 to consider the nature and scope of the obligations of States parties to the International Covenant on Economic, Social and Cultural Rights, the consideration of States parties Reports by the newly constituted ECOSOC Committee on Economic, Social and Cultural Rights, and international cooperation under Part IV of the Covenant.

<sup>65</sup> THE LIMBURG PRINCIPLES, para. 72.

g) it fails to submit reports as required under the Covenant.

This enumeration of violations is further elaborated in the more recent Maastricht Guidelines on Violation of Economic, Social and Cultural Rights.<sup>66</sup> This document elaborates on the three different levels of State obligations regarding economic, social and cultural rights, namely, the obligations to respect, protect and fulfill, failing in one of which will constitute a violation of such rights.<sup>67</sup>

The Maastricht guidelines state that the obligation of respect requires States to refrain from interfering with the enjoyment of economic, social and cultural rights. Thus, the right to housing is violated if the State engages in arbitrary or forced evictions. The obligation to protect requires States to prevent violations of such rights by third parties. Thus, the failure to ensure that private employers comply with basic labor standards may amount to a violation of the right to work or the right to just and favorable conditions of work. The obligation to fulfill requires States to take appropriate legislative, administrative, budgetary, judicial and other measures towards the full realization of such rights. Thus, the failure of States to provide essential primary health care to those in need may amount to a violation.<sup>68</sup>

It is also important to consider that it is in the implementation aspect where the legal approach needs to be complemented by parallel approaches. In the broad arena of poverty for instance, it has been proposed that "the focus on poverty requires a move away from the emphasis on legislative measures as the key method for implementing human rights obligations. Attention is focusing instead on economic policies and measures."<sup>69</sup> Prof. Tomasevski adds that governments

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<sup>66</sup> This document was created on the occasion of the 10<sup>th</sup> anniversary of the LIMBURG PRINCIPLES on the Implementation of the International Covenant on Economic, Social and Cultural Rights, when a group of more than thirty experts met in Maastricht from 22-26 January 1997 at the invitation of the International Commission of Jurists (Geneva, Switzerland), the Urban Morgan Institute on Human Rights (Cincinnati, Ohio, USA) and the Center for Human Rights of the Faculty of Law of Maastricht University (the Netherlands). The participants unanimously agreed on the enumerated guidelines as reflecting the evolution of international law since 1986.

<sup>67</sup> MAASTRICHT GUIDELINES, para. 6.

<sup>68</sup> *Id.*

<sup>69</sup> Katarina Tomasevski, *Justiciability of Economic, Social and Cultural Rights*, 216 I.C.J. REV. 216 (1995).

need to create an “enabling environment” to create conditions for the realization of economic, social and cultural rights.<sup>70</sup>

However, care must be taken to avoid this argument as being interpreted to mean that economic, social and cultural rights should be confined to the sphere of “policies and measures”. For it is precisely this misconception which has prompted governments into believing that they can get away with non-recognition of economic, social and cultural rights of certain sectors or the society as a whole. Here then, is where the rights-based approach needs to be emphasized if only to reiterate the status of economic, social and cultural rights as rights, and not as mere social needs which may or may not be granted by the State depending on its inclination.

#### 5.2.2. The Right to Adequate Housing in Particular

Following the declaration of the 1987 International Year of Shelter for the Homeless (IYSH), a United Nations Global Shelter Strategy (GSS) was formulated which contains the minimum requirements for an international housing policy. The GSS, which was unanimously agreed upon by all governments in 1988, primarily aims at the attainment of adequate housing for everyone by the year 2000.<sup>71</sup>

##### a) The Global Strategy for Shelter to the Year 2000<sup>72</sup>

Point 13 states:

The right to adequate housing is universally recognized by the community of nations. All nations without exception, have some form of obligation, in the shelter sector, as exemplified by their creation of ministries or housing agencies, by their allocation of funds, to the housing sector, and by their policies, programmes and projects. All citizens of all States, poor as they may be, have a right to expect their Governments to be concerned about their shelter needs, and to accept a fundamental obligation to protect and improve houses and neighborhoods, rather than damage or destroy them.

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<sup>70</sup> *Id.*, at 217.

<sup>71</sup> CENTRE ON HOUSING RIGHTS AND EVICTIONS (COHRE), *Legal Provisions on Housing Rights: International and National Approaches*, 33 (1994).

<sup>72</sup> U.N. G.A. Res. 43/181 (1988).

### b) The Habitat Agenda

The right to adequate housing as a human right was most recently affirmed at the Second United Nations Conference on Human Settlements (Habitat II) held in June 1996 at Istanbul, Turkey.<sup>73</sup> The General Assembly decided that the objectives of the Conference, in addressing human settlements issues in the context of sustainable human settlements, would be:

- a) in the long term, to arrest the deterioration of global human settlements conditions and ultimately create conditions for achieving improvements in the living environment of all people on a sustainable basis, with special attention to the needs and contributions of women and vulnerable groups whose quality of life and participation in development have been hampered by exclusion and inequality, which affect the poor in general.<sup>74</sup>

This Conference produced two final documents, the “Istanbul Declaration” and the “Habitat Agenda” focusing on the two main themes of “adequate shelter for all” and “sustainable human settlements in an urbanizing world.” The latter reaffirmed the commitment to the “full and progressive realization of the right to adequate housing,” as provided for in international instruments, and it recognized an obligation by governments to obtain shelter and to protect and improve dwellings and neighborhoods.<sup>75</sup>

### c) General Comments of the Committee on Economic, Social and Cultural Rights (CESCR)

Viewed by a number of scholars as the most authoritative interpretation of the right to adequate housing in international law, General Comment No. 4 of the CESCR<sup>76</sup> stresses, first and foremost, that the right to adequate housing applies to everyone and that it should not be interpreted in the narrow sense of providing “a roof over one’s head” or viewing shelter exclusively as a commodity.

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<sup>73</sup> U.N. G.A. Res. 47/180, U.N. CONFERENCE ON HUMAN SETTLEMENTS (*Habitat II*), para. 1 (1992).

<sup>74</sup> *Id.* para. 2(a).

<sup>75</sup> U.N. CONFERENCE ON HUMAN SETTLEMENTS (*HABITAT II*), U.N. Doc. A/Conf.165/14, paras. 26 and 39 (1996).

<sup>76</sup> COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, U.N. Doc E/C.12/1991/4, 114-120 (1991).

The General Comment states that “while reference to ‘himself and his family’ reflects assumptions as to gender roles and economic activity patterns commonly accepted in 1966 when the Covenant was adopted, the phrase cannot be read today as implying any limitation upon the applicability of the right to individuals or to female-headed households, or other such groups. Thus, the concept of ‘family’ must be understood in a wide sense. Further, individuals, as well as families, are entitled to adequate housing regardless of age, economic status, group or other affiliation or status and other such factors. In particular, enjoyment of this right must, in accordance with article 2.2 of the Covenant, not be subject to any form of discrimination.”<sup>77</sup>

Moreover, the Committee explained the meaning of “adequate” in the context of the “right to adequate housing” as comprising the following components: a) Legal security of tenure, including legal protection from forced evictions; b) Availability of services, materials, facilities and infrastructure; c) Affordability, such that other basic needs are not compromised; d) Habitability, providing inhabitants with enough space, physical safety, and protection from cold, heat, rain and other threats; e) Accessibility especially for members of disadvantaged groups; f) Location which allows access to employment options, health care services, schools, child care centers, and other social facilities; and g) Cultural adequacy which enables cultural identity and diversity of housing.<sup>78</sup>

It is also interesting to note the Committee’s statement that “[S]tates parties must give due priority to those social groups living in unfavorable conditions by giving them particular consideration.” And that, although the Committee is aware that external factors can affect living conditions, “the obligations found in the Covenant continue to apply and are perhaps even more pertinent during times of economic contraction.”<sup>79</sup>

*i. Forced Evictions*

Aside from the above mentioned General Comment No. 4 of the Committee, which stated that the right to adequate housing under the Covenant on Economic, Social and Cultural Rights include protection against forced

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<sup>77</sup> *Id.* para. 6.

<sup>78</sup> *Id.* para. 9.

<sup>79</sup> *Id.* para. 11.

evictions,<sup>80</sup> the Committee issued another General Comment especially devoted to the issue of forced evictions.

General Comment No. 7<sup>81</sup> defined forced evictions 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.”<sup>82</sup> Aside from stating that forced evictions are inconsistent with the norms of the Covenant, the Committee stated that all possible alternatives must be taken prior to resorting to forced evictions, to minimize the use of force.<sup>83</sup>

More importantly, General Comment No. 7 stated that evictions should not result in rendering individuals homeless or vulnerable to the violations of other human rights. If the persons affected cannot provide for themselves, the State party is obliged to take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement and/or access to productive land, is available.<sup>84</sup>

*i. Security of Tenure*

It is also relevant to note the CESCR’s emphasis on “security of tenure” as a way of preventing forced evictions, harassment and other threats. In the same general comment, the CESCR stressed that, “all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.”<sup>85</sup>

Likewise, the Secretary-General’s analytical report on forced evictions<sup>86</sup> refers to the need to confer security of tenure when it stated that: “Governments are often not required to do more than refrain from forced evictions in order to respect the right to adequate housing, as long as a commitment to provide support to the self-help housing efforts of the poor exists – through technical, legal and

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<sup>80</sup> GENERAL COMMENT NO. 4, para. 8(a) (1991).

<sup>81</sup> GENERAL COMMENT NO. 7: The right to adequate housing (art. 11[1] of the Covenant): Forced Evictions, in UN Doc. E/C.12/1997/4.

<sup>82</sup> *Id.*, para. 4.

<sup>83</sup> *Id.*, paras. 13 and 14.

<sup>84</sup> *Id.*, para. 17.

<sup>85</sup> Sieghart, *supra* note 46.

<sup>86</sup> UN Doc. E/CN.4/1994/20.



financial assistance. In this situation, one of the most far-reaching measures is the provision of security of tenure.<sup>187</sup>

**d) Reports of the Special Rapporteur on the Right to Adequate Housing**

The Commission on Human Rights, through the endorsement of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities, appointed Mr. Rajindar Sachar as the Special Rapporteur on promoting the realization of the right to adequate housing. In that capacity, Mr. Sachar has submitted two progress reports and a final report. His initial progress report<sup>88</sup> provided a detailed legal analysis of States' legal obligations to respect, protect and fulfil housing rights, including the question of their justiciability.

The Special Rapporteur's second progress report<sup>89</sup> on the other hand, identified the common misconceptions and misinterpretations of the right to adequate housing and sought to clarify the same so as to remove these obstacles to the full realization of the right.

In his final report,<sup>90</sup> Mr. Sachar presented recent developments on housing rights, a detailed conceptual analysis of the right to adequate housing *vis-a-vis* other human rights, and gave indicators for measuring States parties' compliance with their international obligations in the field of housing rights. Most importantly, the Special Rapporteur gave valuable recommendations not only to States parties to the Covenant on Economic, Social and Cultural Rights, but also to the United Nations Human Rights bodies, specialized agencies, regional bodies, as well as to non-governmental and community-based organizations.

## **6. BRIEF OVERVIEW OF WOMEN'S RIGHTS IN INTERNATIONAL LAW**

The growing interest in women and housing rights is reflected not only in international legislation and social research, but in theoretical legal discourse as well. The importance of stressing a gender perspective in the study of economic,

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<sup>87</sup> *Id.*, para. 160.

<sup>88</sup> U.N. Doc. E/CN.4/Sub.2/1993/15.

<sup>89</sup> U.N. Doc. E/CN.4/Sub.2/1994/20.

<sup>90</sup> U.N. Doc. E/CN.4/Sub.2/1995/12.

social and cultural rights in general and the right to adequate housing in particular, is but a logical consequence of the need to articulate human rights from a gender-sensitive point of view.

In a very recent article, it was asserted that “[T]he right to housing and its attached protections are particularly relevant for women, especially in light of the fact that over recent years, there has been a dramatic increase in the number of women-headed households globally, which of course has resulted in a close relationship between women and housing, where a woman’s survival is integrally linked to the state of her housing.”<sup>91</sup> In yet another, the recent attention being given by the United Nations human rights bodies such as the Sub-Commission on the Prevention of Discrimination and Protection of Minorities was greatly welcomed as the “first of its kind” to recognize the specific problems women face when pursuing their right to adequate housing.<sup>92</sup>

#### *6.1. As relating to economic, social and cultural rights in general*

The principle of non-discrimination lies at the heart of international human rights law that it is provided for in almost all the general and specific international and regional human rights instruments. It is fundamental to the concept of human rights arising from its primary characteristic of universality.<sup>93</sup> The only exception to this general rule is when there is a clear and cogent reason, such as restricting the right to vote to adults, or providing special protection to certain vulnerable groups.<sup>94</sup> Hence, Articles 2 and 7 of the UDHR clearly provide that:

Article 2. Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

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<sup>91</sup> Farha, *supra* note 35, at 14.

<sup>92</sup> Mignon Senders, *Women and the Right to Adequate Housing, a UN Perspective* (1998) (unpublished thesis dissertation, on file with author).

<sup>93</sup> Paul Sieghart, *Non-Discrimination*, in *THE INTERNATIONAL LAW OF HUMAN RIGHTS*, 75 (1983).

<sup>94</sup> *Id.*

Article 7. All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

The CESCR on the other hand, provides that:

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

Article 3. The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

More specifically, Article 3 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)<sup>95</sup> reads:

The States Parties shall, take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

It had also been stated that the human rights principle of non-discrimination is "conceptually the closest to development, at least in theory, as it aims to assist those most disadvantaged."<sup>96</sup> Hence, Tomasevski adds that not only is it important to operationalize the principle of non-discrimination in the context of development, but that the obligation of States to promote this principle and to eradicate all forms of discrimination is immediate, since non-discrimination applies to all rights and freedoms.

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<sup>95</sup> U.N. G.A. Res. 34/180 (1979).

<sup>96</sup> Katarina Tomasevski, *Indicators*, in *ECONOMIC, SOCIAL AND CULTURAL RIGHTS, A TEXTBOOK*, 391 (Eide, Krause and Rosas, eds., 1995).

### *6.2. The right to adequate housing in particular*

It had been commented that the language of Article 11 of the Covenant on Economic, Social and Cultural Rights “is far from being gender sensitive.”<sup>97</sup> Hence, this creates a need to look into other sources of international legal standards to form the basis for adopting a gender-based approach to the interpretation of the right to adequate housing.

The most relevant provision relating to women and the right to adequate housing can be found in article 14 of CEDAW which states that:

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

Sadly, the above provision specifically relates only to rural women, which can give the misleading impression that urban women are not entitled to the same rights.

#### **6.2.1. Beijing Platform for Action**

The Beijing Platform for Action enumerates twelve critical areas of concern.<sup>98</sup> Among these identified areas, the areas of poverty, economy, violence and human rights come closest to the issue of women and the right to adequate housing. But it is also apparent that the other critical areas of concern will inevitably affect this particular right, in one way or another. They are cross-cutting issues, so to speak.

The lack of direct reference to the right to adequate housing either in the CEDAW or in the Beijing Platform for Action should not be taken to mean that

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<sup>97</sup>Dias, *supra* note 8.

<sup>98</sup> The twelve critical areas of concern are: women and poverty, education and training of women, women and health, violence against women, women and armed conflict, women and the economy, women in power and decision-making, institutional mechanisms for the advancement of women, human rights of women, women and the media, women and the environment, and the girl-child.

this is not an important issue for women. Far from it; in fact, the right to adequate housing cuts across several identifiable human rights<sup>99</sup> and cannot be easily dismissed as consisting the mere provision of physical shelter. As mentioned in the previous chapter, the right to adequate housing has the several minimum core components, which includes safety, health, provision of basic services and security.

### 6.2.2. The Global Strategy for Shelter to the Year 2000

The Global Strategy for Shelter to the Year 2000<sup>100</sup> has, among its fundamental principles, the following:

d) Women - and women's organizations - fill a crucial role as contributors to the solution of human settlements problems, which should be fully recognized and reflected in equal participation of women in the elaboration of housing policies, programmes and projects, and the specific interests and capabilities of women should be adequately represented at all levels of planning, implementing, monitoring and evaluating of housing policies, programmes and projects.

In line with this principle, it was recognized that in formulating shelter policies, two levels of participation by women are essential: 1) the direct participation by women in formulating such policies, and 2) the inclusion of gender-specific considerations in policy formulation.<sup>101</sup> This recognition was also aided by the fact that there are now increasing numbers of women-headed households due to the patterns of disintegration of family and kinship.<sup>102</sup> Despite this fact, women are more often than not still ignored at all levels of policy making and implementation simply because of the traditional notion that households are headed by men and that women's needs are subsumed under those of their husbands and fathers.

In view of the above and other related factors, the Global Strategy for Shelter to the Year 2000 contains the following recommendations:

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<sup>99</sup> See Leckie, *supra* note 2, at 41-52.

<sup>100</sup> U.N. G.A. Res. 43/181 (1988).

<sup>101</sup> U.N. CENTER FOR HUMAN SETTLEMENTS (HABITAT), *Focus on Women 9* (A summary of recommendations from the report on a UNCHS [Habitat] Seminar to Promote the Participation of Women in All Phases of the Global Strategy for Shelter to the Year 2000 [1991]).

<sup>102</sup> *Id*

- 1) Focus on poor and low income women, and not try to cover all levels;
- 2) Ensure that the relations between male and female members of households and societies be structured in such a way that the advance made by one generation of women are not lost to the next -- and that the new relationships be embodied in law;
- 3) Advocate a "paradigm shift" -- from central government to community levels. Here, NGOs and CBOs should function as a bridge between the official, male-dominated, policy-making mechanism, thereby facilitating the emergence of a "shared language" -- as distinct from the technical language often used by central government agencies;
- 4) Facilitate further elaboration by UNCHS (Habitat) of the women's strategy in the Global Strategy, particularly with regard to infrastructural components needed in human settlements development, such as water, roads, transport, land, education and health; &
- 5) Increase knowledge and awareness of current environmental issues, including the vital contribution made by women;<sup>103</sup> among others.

### 6.2.3. The Habitat Agenda

The Habitat Agenda was one of two major documents produced in the 1996 United Nations Conference held at Istanbul, Turkey. Aside from coming up with recommendations to improve the status of human settlements worldwide, the conference also came up with specific policies involving women.

Section D, paragraph 46 of the Habitat Agenda provides:

We commit ourselves to the goal of gender equality in human settlements development. We further commit ourselves to:

- a) integrating gender perspectives in human settlements-related legislation, policies, programmes and projects through the application of gender-sensitive analysis;
- b) developing conceptual and practical methodologies for incorporating gender perspectives in human settlements planning, development and evaluation, including the development of indicators;

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<sup>103</sup> *Id.* at 18-20.

- c) collecting, analysing and disseminating gender-disaggregated data and information on human settlements issues, including statistical means that recognize and make visible the unremunerated work of women, for use in policy or programme planning and implementation;
- d) integrating a gender perspective in the design and implementation of environmentally sound and sustainable resource management mechanisms, production techniques and infrastructure development in rural and urban areas;
- e) formulating and strengthening policies and practices to promote the full and equal participation of women in human settlements planning and decision-making.

#### 6.2.4. Special Rapporteur on the right to adequate housing

The Special Rapporteur on the right to adequate housing<sup>104</sup> mentioned in the previous chapter has devoted some paragraphs on the particular link between women's rights and the right to adequate housing. From all information available, Mr. Sachar said that it is very clear that women across the world continue to suffer from discrimination in the attainment of all aspects of the right to housing: land security, inheritance rights to land and property, access to credit facilities, availability of essential housing services and upgrading resettlement areas, to mention a few.<sup>105</sup>

In addition to the existing inequities in land ownership, women also continue to be the hardest hit by evictions and inadequate resettlement, as supported by the report of the Secretary-General of the Commission on the Status of Women (CSW) which states that, "Resettlement and evictions should be avoided, since they particularly increase the vulnerability of women and children and because women bear the brunt of traumatized and dislocated communities."<sup>106</sup>

The Special Rapporteur also emphasized that "securing of the right to housing can lead to the attainment of other rights and create possibilities for the improvement of the living environment. Again, he cited the CSW statement to

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<sup>104</sup> U.N. Doc., *supra* note 90.

<sup>105</sup> *Id.* para. 45.

<sup>106</sup> *Id.* para. 47 (citing UN Doc. E/CN.6/1994/3, para. 5.)

the effect that security of tenure promotes greater participation of women in the community and in helping households escape the "poverty trap."<sup>107</sup>

Also pointed out in a report by the Secretary-General to the Commission on the Status of Women,<sup>108</sup> "resettlement and evictions should be avoided, since they particularly increase the vulnerability of women and children and because women bear the brunt of traumatized and dislocated communities."

#### 6.2.5. Sub-Commission on the Prevention of Discrimination and the Protection of Minorities

Women and housing rights activists were elated by the increasing attention given by United Nations human rights bodies to the subject. Some concrete manifestations of this attention are the two succeeding resolutions issued by the United Nations Sub-Commission on the Prevention of Discrimination and Protection of Minorities on the issue of women and the right to land, property and housing (1997 and 1998).

In its Resolution 1997/19,<sup>109</sup> the Sub-Commission observed that "women face particular constraints in securing and maintaining their right to housing because of the continued existence of gender-biased laws, policies, customs and traditions, which exclude women from acquiring land, security of tenure and inheritance rights to land and property,"<sup>110</sup> and that "more women than men live in absolute poverty and that female-headed households comprise one-fourth of all households worldwide."<sup>111</sup> Hence, it encouraged both governments and United Nations bodies and organs to pay increasing attention to women's rights in the field of land, property and housing by incorporating them in their agenda and activities.

Sub-Commission Resolution 1998/15, on the other hand, reiterated the previous year's resolution and stated that, "women's inequality will not always be remedied by the identical treatment of men and women and that adequate remedies may require that women be treated differently from men based on a consideration of women's specific socio-economic context." In this regard, the

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<sup>107</sup> *Id.* para. 49 (citing UN Doc. E/CN.6/1994/3, paras. 46-47.)

<sup>108</sup> U.N. Doc. E/CN.6/1994/3, para. 5.

<sup>109</sup> Subcommission Res. 1997/19 (1997).

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*



resolution urged governments to fully comply with their international obligations concerning women's rights to property, land and housing, including security of tenure and an adequate standard of living while similarly calling on all United Nations agencies to pay special attention to this matter.

### *6.3 An Inter-Disciplinary View of Women and Settlements*

It has been recognized as early as 1975, at the beginning of the United Nations Decade for Women, that several erroneous assumptions have been made regarding women and human settlements issues which have led to the formulation of policies that failed to take into account women's specific needs.<sup>112</sup> Among these identified misconceptions are: that a household consists of a nuclear family of husband, wife and children; that within the family there is a clear division of labor in which the man of the family, as the "breadwinner", is involved in productive work outside the home, while the woman takes overall responsibility for reproductive and domestic work; that there is equal control over resources and power of decision-making within the household between the man and the woman in matters affecting the household's livelihood.<sup>113</sup>

All too often, housing acts to reinforce disadvantage and inequality, not least on the grounds of shelter. It has been proved that not only do inadequate dwellings and deficient services affect people's labor, but some individuals may encounter very limited access to any form of shelter and the security that normally accompanies this.<sup>114</sup>

A clear instance is when government-sponsored housing programs exclude female-headed households based on assumptions of small or fluctuating income, lack of time, resources and/or skills to construct dwellings as rapidly as their male counterparts or simply based on the fact that beneficiaries are equated with male-headed nuclear households.<sup>115</sup> These stereotypes are dangerous in that

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<sup>112</sup> U.N. CENTRE FOR HUMAN SETTLEMENTS AND THIRD WORLD PERSPECTIVES, 97-105 (Hemalata C. Dandekar, ed., 1991).

<sup>113</sup> *Id.*

<sup>114</sup> Chant, *supra* note 31, at 31.

<sup>115</sup> *Id.*, at 34-35.

they disregard the reality that households in urban areas are diverse and that the number of female-headed households is a growing phenomenon.<sup>116</sup>

It had likewise been observed that inadequacies in dwellings, community amenities and infrastructure greatly affect the productivity of women. One illustration that deficient housing impacts not only the gender-differentiated problems of reproductive labor, but productive labor as well, is the nearly absolute lack of subsidized community child-care facilities in Third World cities.<sup>117</sup> This deficiency makes it difficult for lone mothers with young children to combine employment with reproductive responsibilities. This is in addition to the clear effects on women's economic activities which are usually done at home (informal or community-based), due to lack of opportunities or discrimination in formal employment, and the traditional domestic responsibilities reposed on them.

In view of these factors, Caroline Moser uses an analysis of women's "triple roles"<sup>118</sup> (reproduction, production and community management) as a framework in raising gender awareness and influencing social planning. One of her main thrusts is to show that the lack of recognition of women's unpaid work in their homes and communities has led to discriminatory policies which only served to intensify gender inequalities.

Naila Kabeer, on the other hand, uses the "social relations" framework in asserting that "gender awareness in policy and planning requires a prior analysis of the social relations of production within relevant institutions of family, market, state and community in order to understand how gender and other inequalities are created and reproduced through their separate and combined interactions."<sup>119</sup>

Pamela L. Sayne for her part, argues that the gender bias in housing development programs and policies of market economies "erodes the dignity and livelihood of women particularly." She adds that women "have traditionally been

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<sup>116</sup> *Id.*

<sup>117</sup> *Id.*, at 39.

<sup>118</sup> CAROLINE MOSER, GENDER, PLANNING AND DEVELOPMENT: THEORY, PRACTICE AND TRAINING (1993).

<sup>119</sup> NAILA KABEER, REVERSED REALITIES: GENDER HIERARCHIES IN DEVELOPMENT THOUGHT 281.

marginalized by or excluded from the profit-oriented market economy in modernized societies, restricting the right to housing and related human needs."<sup>120</sup>

Lastly, it is important to note that the gender concept means more than the biological differences between men and women. Rather, it refers to the social relations between men and women, which, unlike biological differences, are constantly changing. A distinction has been made between practical and strategic gender needs:<sup>121</sup>

**Practical needs** are those that have to do with women's socially accepted roles in society. They concern such things as better health care and improving drinking water supplies. The measures these needs require do not challenge the subordinate position of women in society, or the prevailing division of labor between men and women. Consequently, they seldom arouse controversy or hostile reactions.

**Strategic needs**, on the other hand, involve efforts to strengthen the position of women *vis-a-vis* men as a step toward the ultimate goal of establishing a social structure in which women suffer no discrimination of any form. Here we confront such issues as equality before the law, legal protection against physical abuse and the right of autonomy over one's own body. Measures to meet such needs are often provocative inasmuch as they do call women's subordinate status into question.

## 7. CASE STUDY: THE PHILIPPINES AND THE RIGHT TO ADEQUATE HOUSING

### *7.1. Implementation of National and International Standards*

The Philippines is one of the few countries in the world which has ratified most human rights conventions without any reservations. This had been the case especially for those international instruments relevant to this study, namely, the Universal Declaration on Human Rights,<sup>122</sup> the International Covenant on

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<sup>120</sup> Pamela Sayne, *Ideology as Law: Is there a Room for Difference in the Right to Housing?* in SHELTER, WOMEN AND DEVELOPMENT, FIRST AND THIRD WORLD PERSPECTIVES, 97-105 (Hemalata C. Dandekar, ed., 1991).

<sup>121</sup> HABITAT II, International Workshop on Women's Access, Control, and Tenure of Land, Property and Settlement in Gavle, Sweden (9-11 October 1995). Available at <http://www.lm.se/habitat/objectives/html>.

<sup>122</sup> Signed by the Philippines on December 10, 1948.

Economic, Social and Cultural Rights,<sup>123</sup> and the Convention on the Elimination of All Forms of Discrimination Against Women.<sup>124</sup>

It had been a settled rule of international law that a State cannot plead the absence of municipal law in failing to observe its obligations under international law. Citing *Finnish Ships Arbitration*<sup>125</sup>, which states that: "as to the manner in which its municipal law is framed, the State has under international law a complete liberty of action, and its municipal law is a domestic matter in which no other State is entitled to concern itself, provided that the municipal law is such as to give effect to all the international obligations of the State," Prof. Starke concludes that "this ruling may even import a duty upon a state, in an appropriate case, to pass the necessary legislation to fulfil its international obligations."<sup>126</sup>

Although there is at present no clear consensus on the matter, it can be safely assumed that the Philippines follows a semi-dualist and semi-monist approach with regard to the application of international law within the domestic legal system. That is, the Constitution adopts the principle of automatic incorporation for international customary law and requires Senate concurrence for international treaties and other agreements. All necessary requisites for validity having been complied with, there is no known legal impediment for the application in the Philippines of international instruments or other international legal principles relating to the right to adequate housing.

It had been commented some years back that in the Philippines, "the legislative situation regarding housing rights and the corresponding right not to be arbitrarily evicted from one's home is extremely positive, and on the face of things, constitutes one of the most protective of any legal system anywhere."<sup>127</sup> However, it was also observed in the same document that, "a series of impervious loopholes in other laws serve to diffuse the largely favorable clauses of the national Constitution and the law on housing and urban development."<sup>128</sup>

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<sup>123</sup> Signed by the Philippines on 19 December 1966 and ratified on 7 January 1974.

<sup>124</sup> Signed by the Philippines on 15 July 1980 and ratified on 5 August 1981.

<sup>125</sup> U.N. Reports of International Arbitral Awards, Vol. 3, 1484.

<sup>126</sup> I.A. SHEARER, STARKE'S INTERNATIONAL LAW 78 (1994).

<sup>127</sup> *Prima Facie Violations of Article 11 (1) of the Covenant on Economic, Social and Cultural Rights by the Government of the Philippines*, submitted by the Habitat International Coalition to the 9<sup>th</sup> Session of the Committee on Economic, Social and Cultural Rights 4 (1993).

<sup>128</sup> *Id.*

To determine these legal standards, a summary of local laws relevant to the implementation of the right to adequate housing follows.

**a) 1987 Constitution**

Article 13, sections 9 and 10 state:

Section 9. The State shall, by law, and for the common good, undertake, in cooperation with the private sector, a continuing program of urban land reform and housing which will make available at affordable cost decent housing and basic services to underprivileged and homeless citizens in urban centers and resettlement areas. It shall also promote adequate employment opportunities to such citizens. In the implementation of such programs, the State shall respect the rights of small property owners.<sup>129</sup>

Section 10. Urban or rural poor dwellers shall not be evicted nor their dwellings demolished, except in accordance with law and in a just and humane manner. No resettlement of urban or rural dwellers shall be undertaken without consultation with them and the communities where they are relocated.<sup>130</sup>

**b) Social Reform and Poverty Alleviation Act**

Republic Act No. 8425,<sup>131</sup> or the Social Reform and Poverty Alleviation Act, created the Anti-Poverty Commission to institutionalize the social reform and poverty alleviation programs of the government. Among its objectives are to:

1) Adopt an area-based, sectoral and focused intervention to poverty alleviation wherein every poor Filipino family shall be empowered to meet its minimum basic needs of health, food and nutrition, water and environmental sanitation, income security, shelter and decent housing, peace and order, education and functional literacy, participation in governance, and family care and psycho-social integrity;

3) Institutionalize and enhance the Social Reform Agenda, hereinafter known as the SRA, which embodies the results of the series of consultations and summits on poverty alleviation;

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<sup>129</sup> CONST. art. XIII, sec. 9.

<sup>130</sup> CONST. art. XIII, sec.10.

<sup>131</sup> Rep. Act. No. 8425 (1997).

...f) The SRA shall pursue a gender-responsive approach to fight poverty;

RA 8425 defines “poor” as referring to “individuals and families whose income fall below the poverty threshold as defined by the National Economic and Development Authority and/or cannot afford in a sustained manner to provide their minimum basic needs of food, health, education, housing and other essential amenities of life.”<sup>132</sup>

### c) Urban Development and Housing Act

Perhaps the most important piece of national legislation dealing with the right to adequate housing, Republic Act 7279 or the Urban Development and Housing Act (UDHA) was meant to embody the State’s policy of a comprehensive and continuing urban development and housing program and promote the following objectives:<sup>133</sup>

(a) Uplift the conditions of the underprivileged and homeless citizens in urban areas and in resettlement areas by making available to them decent housing at affordable cost, basic services, and employment opportunities;

(b) Provide for the rational use and development of urban land in order to bring about the following:

(1) Equitable utilization of residential lands in urban and urbanizable areas with particular attention to the needs and requirements of the underprivileged and homeless citizens and not merely on the basis of market forces;

(2) Optimization of the use and productivity of land and urban resources;

(3) Development of urban areas conducive to commercial and industrial activities which can generate more economic opportunities for the people;

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<sup>132</sup> Rep. Act No. 8425 (1997), sec. 3(o).

<sup>133</sup> Rep. Act No. 7279 (1992), sec. 2.

(4) Reduction in urban dysfunctions, particularly those that adversely affect public health, safety and ecology; and

(5) Access to land and housing by the underprivileged and homeless citizens;

(c) Adopt workable policies to regulate and direct urban growth and expansion towards a dispersed urban net and more balanced urban-rural interdependence;

(d) Provide for an equitable land tenure system that shall guarantee security of tenure to Program beneficiaries but shall respect the rights of small property owners and ensure the payment of just compensation;

(e) Encourage more effective people's participation in the urban development process; and

(f) Improve the capability of local government units in undertaking urban development and housing programs and projects.

#### **d) Repeal of Anti-Squatting Law**

Presidential Decree 772<sup>134</sup> was one of the controversial laws enacted during the time of former President Marcos. This law imposed a penalty of imprisonment for a period of six months to one year for individuals found guilty of "squatting"<sup>135</sup> and a maximum penalty of five years for corporations and associations, with a fine of one thousand to five thousand pesos at the discretion of the court.

The law has been consistently viewed by activists and NGOs as inconsistent with laws meant to promote the right to adequate housing. The

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<sup>134</sup> Pres. Decree No. 772 (1975).

<sup>135</sup> "Squatting" has been defined in Section 1 of Pres. Decree No. 772 as "any person who, with the use of force, intimidation or threat, or taking advantage of the absence or tolerance of the landowner, succeeds in occupying or possessing the property of the latter against his will for residential, commercial or any other purposes."

definition of laws liable under PD 772 was seen as “broad enough to include most if not all of the intended beneficiaries of laws dealing with the right to shelter.”<sup>136</sup>

After persistent lobbying by urban poor groups, which began with the passage of RA 7279 in 1992, to the housing summits in 1995 and 1996, former President Fidel Ramos finally signed into law Republic Act 8368<sup>137</sup> decriminalizing squatting. However, note must be taken of the fact that RA 8368 also provides that, “Nothing herein shall be construed to nullify, eliminate, or diminish in any way Section 27 of Republic Act No. 7279 or any of its provisions relative to sanctions against professional squatters and squatting syndicates.”<sup>138</sup>

Hence, the so-called “squatting” has not been entirely decriminalized after all. The government continues to distinguish between so-called “legitimate squatters” or those urban poor in need of assistance for housing and “professional squatters” or those who can afford housing but choose the squatting option to avoid paying for housing or, worse, for economic gain.<sup>139</sup> And it must be noted that despite all the publicity and repeated reference to “professional squatters” and “squatting syndicates,” the government has yet to arrest a syndicate member or leader.<sup>140</sup>

### *7.2. Actual Implementation / Identifying Violations*

As enunciated in the Maastricht guidelines to the implementation of economic, social and cultural rights, obligations can be divided into the obligations to respect, protect and fulfill. In the recent past, another layer has been added to constitute the commonly accepted methodology of evaluating a State Party’s implementation of economic, social and cultural rights. That is the four layers of obligations - to respect, to promote, to protect and to fulfil, with the obligations to respect and promote frequently overlapping. At any rate, these four layers of obligations are meant to correct the notion that while the

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<sup>136</sup> URBAN POOR ASSOCIATES [hereinafter UPA], *Philippine NGO Report on the Implementation of the International Covenant on Economic, Social and Cultural Rights Concerning the Right to Adequate Housing, in coordination with the PARTNERSHIP OF PHILIPPINE SUPPORT SERVICES AGENCIES (PHILSSA)*, 8 (1995).

<sup>137</sup> Rep. Act No. 8368 (1997).

<sup>138</sup> Rep. Act No. 8368 (1997), sec. 4.

<sup>139</sup> Philippines’ Initial Report to the CESCR, para. 368.

<sup>140</sup> UPA, *supra* note 136, at 15.



implementation of civil and political rights require immediate state action, economic, social and cultural rights can be protracted in the guise of "progressive realization".

The shortcomings and practical limitations of the "progressive realization" approach has even led some scholars to advocate the "violations approach"<sup>141</sup> or monitoring state compliance through the identification of violations rather than the tedious and complicated "progressive realization" standard. In fact, this proposed violations approach, appears to be the path being taken by the Committee on Economic, Social and Cultural Rights as can be gleaned from its concluding comments to State Parties' reports in its past sessions.<sup>142</sup>

Hence, by identifying the four layers of obligations of States with respect to the exercise of economic, social and cultural rights, it will be seen that this category of rights (as compared to civil and political rights) actually entail both positive and negative obligations, as well as both immediate and progressive implementation.

For it has been clarified that while Article 2 of the Covenant on Economic, Social and Cultural Rights provides that States shall take steps to "achieve progressively" the full realization of economic, social and cultural rights, this should not be taken to mean a derogation of the State's obligation to move as expeditiously as possible towards the realization of these rights.<sup>143</sup> On the contrary, most of these rights are of immediate application and that the obligation "to take steps" is by itself an immediate one.<sup>144</sup> Prof. Alston<sup>145</sup> adds that, "States parties are required, no matter what their resource or other constraints might be, to take, immediately, whatever steps they can towards the achievement of the relevant objectives. At a minimum, this might involve the drawing up of a detailed plan of action for the progressive achievement of the right."

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<sup>141</sup> See Audrey Chapman, A "Violations Approach" for Monitoring the International Covenant on Economic, Social and Cultural Rights, in 18 HUMAN RIGHTS QUARTERLY, 23-26 (1996).

<sup>142</sup> *Id.*, at 46-65.

<sup>143</sup> Asbjorn Eide, *Economic, Social and Cultural Rights as Human Rights*, in ECONOMIC, SOCIAL AND CULTURAL RIGHTS: A TEXTBOOK, 37 (Eide, Krause and Rosas, eds, 1995).

<sup>144</sup> Philip Alston, *The International Covenant on Economic, Social and Cultural Rights*, in MANUAL ON HUMAN RIGHTS REPORTING, 84 (1997).

<sup>145</sup> *Id.*, at 84-85.

The Philippine government's efforts to comply with its international obligations will thus be briefly analyzed within the parameters set by these four layers. Although there are apparent overlaps in these four categories, it will still be useful to try to identify the programs and actions which fall under each obligation.

**a) Obligation to Respect**

In terms of the right to housing, the "obligation to respect" requires the State party and all of its organs and agents, "to abstain from carrying out, sponsoring or tolerating any practice, policy or legal measure violating the integrity of the individual or infringing upon his or her freedom to use those material or other resources available to them in a way they find most appropriate to satisfy individual, family, household or community housing needs."<sup>146</sup> Among the measures identified include self-help initiatives by housing rights beneficiaries, the rights to freely organize and assemble, avoiding the practice of arbitrary or forced evictions, exercise of the principles of non-discrimination and the like.<sup>147</sup>

Judging by the existing constitutional and statutory provisions on non-discrimination, in general and housing rights in particular, including the recent repeal of the Anti-Squatting law, and the various related anti-poverty measures, the Philippine government can be deemed to be in substantial compliance with this particular level of obligation, at least in theory. As mentioned earlier, it has been observed to possess "one of the most protective legal systems anywhere." But as is often the case, what happens in practice is a different matter altogether.

Simply put, the increasing number of forced evictions,<sup>148</sup> the substantial number of individuals and families without adequate housing facilities, the failure of government to provide acceptable solutions to the deep-rooted housing problems, all point to some clear violations of this layer of obligation.

**b) Obligation to Promote**

The obligation to promote on the other hand, urges governments not only to recognize the various aspects of the right to adequate housing, but also to ensure that "sufficient legal and policy emphasis is placed on their full

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<sup>146</sup> Scott Leckie, *The Right to Housing*, in ECONOMIC, SOCIAL AND CULTURAL RIGHTS: A TEXTBOOK, 113 (Eide, Krause and Rosas, eds., 1995).

<sup>147</sup> *Id.*

<sup>148</sup> Jowel Canuday, *165,000 Families Face Losing Homes in 1999*, available at <http://www.inquirer.net>.

realization.”<sup>149</sup> This includes a mandatory review of existing laws, the immediate repeal of those which are inconsistent with international standards and the identification of benchmarks towards the full enjoyment of the right by everyone.

The Philippine government deserves credit for developing a comprehensive housing program wherein provision for housing is “construed to include the improvement of environmental conditions in marginal settlements and the development of viable communities with necessary facilities, services and amenities so that education, recreation, culture, etc., are integrated into the lives of the residents,” which, coupled with viable credit programs, became the basis for the National Shelter Programme. Programs included slum upgrading, relocation and resettlement of “squatters” and construction of dwelling units for middle and lower income groups.<sup>150</sup>

However, following the UN Habitat’s recommendation to adopt an “enabling strategy” approach in dealing with the housing rights problem, the Philippine government began to use the “non-interventionist” policy on shelter but tried to maintain the total systems approach of the previous administration. Primarily due to the increasing costs of undertaking direct housing construction, the government opted to become a facilitator instead, whose primary task is to ensure that all resources are mobilized and that the private and community sectors can contribute in full to shelter development.<sup>151</sup>

Despite all these programs however, the actual data available and can be gathered from government agencies on methods of evaluating progress in the implementation of the right to adequate housing predominantly consisted of statistics on structures built, households benefited, loans granted and other quantitative indicators. Unfortunately, this treatment only illustrates the narrow view of the right to adequate housing as the provision of a roof over one’s head. These policies reveal a tendency to treat the implementation of the right to adequate housing in terms of quantitative instead of qualitative criteria. Consequently, the overall impact of the various long and short term projects are hardly felt nor amply verified.

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<sup>149</sup> *Id.*

<sup>150</sup> U.N. Doc., *supra*, note 20, paras. 349-353.

<sup>151</sup> *Id.*, paras. 357-358.

c) **Obligation to Protect**

The obligation to protect the right to adequate housing requires States and their agents to prevent violations of any aspects of the individual's right to housing by any third party (other individuals or non-state actors).<sup>152</sup> This layer of obligation also entails the creation of mechanisms and establishment of entities in charge of monitoring the implementation of the right to adequate housing.

For this purpose, the Housing Urban Development and Coordinating Council (HUDCC) was created in 1986 to replace the former Ministry of Human Settlements, as the policy-making and coordinating body on housing and urban development and which has administrative supervision over the key housing agencies.

The key agencies for housing were identified as: the National Home Mortgage Financing Corporation (NHMFC) which provides mortgage financing for housing; the National Housing Authority (NHA) which undertakes the production of housing units focusing on the lowest 30 percent of the population, development of home lots and the provision of security of tenure; the Home Insurance and Guaranty Corporation (HIGC) which provides insurance for housing loans and mortgages; and the Housing and Land Use Regulatory Board (HLURB) which performs the regulatory functions regarding housing and land use activities. The funding agencies are the Social Security System (SSS), Government Service Insurance System (GSIS), and the Home Development Mutual Fund or PAG-IBIG Fund.<sup>153</sup>

The HUDCC, for its part, adopted the following eight-point policy thrust to guide its projects for the period 1993-1998:<sup>154</sup>

1. Housing as a means of social intervention and catalyst for economic activity;
2. People-centred and aided self-help approach to housing;
3. Maximum multi-sectoral participation;

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<sup>152</sup> Leckie, *supra* note 146, at 114.

<sup>153</sup> U.N. Doc., *supra* note 20, at para. 355.

<sup>154</sup> *Id.*, at para. 361.

4. Easier land access for housing;
5. Development of regional growth poles;
6. Sustainability and affordability of housing finance;
7. Maintenance of ecological balance in urban development and housing; and
8. Improvement of housing delivery system;

The enactment of the Urban Development and Housing Act<sup>155</sup> is considered as the flagship law in implementing the Philippine government's obligation to promote the right to adequate housing. With the aid of the housing agencies mentioned above, and the policy thrusts enumerated, it is hoped that this layer of obligation is satisfied. However, NGOs actively working in this field do not quite agree. For instance, despite the clear provisions against demolitions or forced evictions under this law, these acts continue to be perpetrated with impunity. As will be discussed in greater detail below, the law contains loopholes which are only serving the interests of a few at the expense of the suffering urban poor population.

#### **d) Obligation to Fulfill**

The obligation to fulfill the right to adequate housing is said to be the most "interventionary and positive in nature" as it involves matters of "public expenditure, governmental regulation of the economy and land market, housing subsidies, monitoring rent levels and other housing costs, the provision of public housing, basic services, taxation, and subsequent redistributive economic measures."<sup>156</sup>

However, it is also very important to note that "the ultimate objective of provisions relating to the right to housing is the elimination of the obligation to fulfil, and a conceptualization of the right to housing as a system of guarantees to equal access to resources, including guarantees of freedom, so that every

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<sup>155</sup> Rep. Act No. 7279 (1992).

<sup>156</sup> Leckie, *supra* note 146, at 115.

individual is enabled to provide for his or her own needs.”<sup>157</sup> Thus, while it is relevant to identify those programs and policies meant to fulfill the government's obligations concerning the right to adequate housing, it is also necessary to evaluate whether they are geared towards encouraging self-help initiatives without abdicating institutional responsibility at all stages.

In this layer of obligation, it is relevant to cite initiatives such as those enumerated in the Medium-Term Development Plan 1993-1998. These include the provision of low-cost housing to the poorest 50 per cent of the population, close monitoring of the implementation of the Urban Development and Housing Act, slum upgrading and resettlement programs, allocation of more resources to various housing programs and encouragement of private sector participation in areas of social housing, land development and house construction.<sup>158</sup>

In the counterpart NGO report,<sup>159</sup> it has been observed however, that although the government's report to the CESCR mentions the socio-economic reasons behind the massive rural-to-urban migration, government officials and agents act as if squatters are opportunists who migrated to the cities to grab private lands and take advantage of other people's property.

Among its housing programs, the government “continues to make distant relocation a priority project though it is aware that studies show up to 80 per cent of families relocated move back to the cities and live in worse housing conditions than they did before eviction.”<sup>160</sup>

Housing projects of the National Housing Authority (NHA) are far too expensive for its targeted beneficiaries. For instance, the NHA assumes that 20 per cent of a family's income can go to rent or amortization charges.<sup>161</sup> However, latest statistics on the general population show that families only spend an average of 15 % on shelter while some 50 % goes to food. Poverty statistics even show that among the poor families, the expenses for food can reach to as high as 63 to 76 per

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<sup>157</sup> Leckie, *supra* note 2, at 65 (citing Tomasevski, Katarina, “Human Rights Indicators: The Right to Food as a Test Case” in *THE RIGHT TO FOOD*, 135-167 [Alston and Tomasevski, eds., 1984]).

<sup>158</sup> U.N. Doc. *supra* note 20, at para. 360.

<sup>159</sup> UPA, *supra* note 14, at 7, para. 24.

<sup>160</sup> *Id.*, at 14, para. 58.

<sup>161</sup> *Id.*, at para. 43.

cent<sup>162</sup> which leaves very little for housing, education, health, clothing, and other incidental expenses.

The government itself continues to decry the perennial housing backlog<sup>163</sup> despite its glorious pronouncements year after year, to solve the severe housing crisis. This in itself is a sad manifestation that it is falling far short of its own targets.

Government estimates that there are currently three million homeless Filipino households and more than 500,000 dwelling units needed by the growing population. In Metro Manila alone, seven out of ten families do not own their houses while one of every four households is a squatter.<sup>164</sup>

### *7.3. Effects / Implications on Women's Rights*

In 1992, a landmark legislation entitled Women in Nation Building Act<sup>165</sup> was enacted, providing certain rights and benefits for women and imposing responsibilities on the government.

In this study made by Prof. Asteya Santiago<sup>166</sup>, she identified not only the rights and benefits granted to women by this particular law, but also the responsibilities which lay on the government. Among these rights and benefits include:

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<sup>162</sup> *Id.*, at 11, paras. 45-46.

<sup>163</sup> Former HUDCC Chairman Dionisio dela Serna once said that "the housing shortage is characterized by a .873 units housing backlog and 2.583 million units for future need, or a total of 3.72 million units short. And that, at an estimated P150,000 per dwelling unit, the financing need amounts to P558.6 billion (\$14 billion)" in 1 *THE PHILIPPINE HOUSING* 47 (1998).

<sup>164</sup> Russel Velarde, *Population and Urbanization: A Perspective*, in 1 *THE PHILIPPINE HOUSING PLUS* 41 (1998).

<sup>165</sup> Rep. Act No. 7192 (1992), sec. 5.

<sup>166</sup> Prof. Santiago teaches at the University of the Philippines. Her article, *Women's Access. Control and Tenure of Land, Property and Settlement: The Case of the Philippines*, was prepared for the Gavle Workshop on October 9-11, 1995. Available at <http://www.lm.se/habitat/santiago.html>.

- a) The capacity to act and enter into contracts which shall, in every respect be equal to that of men under similar circumstances, regardless of their civil status;<sup>167</sup>
- b) Equal access to membership in all social, civic, and recreational clubs, committees, associations and similar other organizations devoted to public purpose. They shall be entitled to the same rights and privileges accorded to their spouses if they belong to the same organization;<sup>168</sup>
- c) Equal benefit and direct participation in the development programs and projects of all government departments which ensure the involvement of women in the development process; and
- d) Assurance that all government departments and agencies shall revise all their regulations, circulars, issuances, and procedures to remove gender bias thereon.<sup>169</sup>

Prof. Santiago also identified the following duties imposed by RA 7192 on the government:

- a) to provide income and employment opportunities to women in the rural areas and thus prevent their heavy migration from rural to urban areas or to foreign countries;
- b) to undertake an assessment of the extent to which the government departments and offices integrate women in the development process and of the impact of said programs or projects including their implications in enhancing women's self-reliance in improving their income;
- c) to ensure the active participation of women and women's organizations in the development programs and/or projects, including their involvement in the planning, design, implementation, management, monitoring and evaluation thereof;
- d) to collect sex-disaggregated data and include such data in its program, project, paper proposal or strategy;

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<sup>167</sup> Rep. Act No. 7192 (1992), sec. 5.

<sup>168</sup> *Id.*, at sec. 6.

<sup>169</sup> *Id.*, at sec. 2.



- e) to ensure that programs and/or projects are designed so that the percentage of women who receive assistance is approximately proportionate to either their traditional participation in the targeted activities or their proportion of the population, whichever is higher.

In the same paper, Prof. Santiago emphasized that, legally, there is no difference between men and women's rights to inheritance, access and tenure to land, and to the requirements affecting registration, transfer and disposition of land. This principle of non-discrimination is clearly guaranteed by the following constitutional provisions:

The State recognizes the role of women in nation-building and shall ensure the fundamental equality before the law of women and men.<sup>170</sup>

The State shall protect working women by providing safe and healthful working conditions, taking into account their maternal functions, and such facilities and opportunities that will enhance their welfare and enable them to realize their full potential in the service of the nation.<sup>171</sup>

These constitutional provisions serve as a framework not only for RA 7192 but also for amendments of other laws including the Civil Code, a part of which was revised to make the laws on family relations conform to the gender equality standard set by the Constitution.

Consequently, almost other aspects of governance moved towards incorporating the gender perspective not only in policy formulation and legislation, but in creating the implementing strategies as well. However, there is still a long way to go before such changes are felt as the implementation aspect continues to be problematic owing to limitations ranging from deep-seated patriarchal attitudes to simple lack of logistics to reach out to the vast majority. On paper at least, it may be consoling to note that serious efforts are being taken to address these problems and limitations.

For instance, the Philippine government's initial report to the CESCR devoted a paragraph to women's concerns and stated that, special focus is given to women's needs in the development of housing programs.<sup>172</sup> It cited the following

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<sup>170</sup> CONST., art. II, sec. 14 .

<sup>171</sup> CONST., art. XIII, sec. 14.

<sup>172</sup> U.N. Doc., *supra* note 20 at para. 403.

programs and projects under the Philippine Development Plan for Women 1989-1992, as the government's blueprint for integrating women in development. Though it may have been rendered obsolete by more recent initiatives, these programs, nonetheless, encapsulize the efforts already undertaken for a more effective integration of women's concerns.

- a) Consciousness-raising and education in housing needs assessment, housing finance, housing production, housing regulation, housing research and studies;
- b) Popular information dissemination on housing programs and projects;
- c) Women organizing for education and training in housing, organizational development and institution-building for housing cooperatives, and housing loan guarantee groups; and
- d) Data improvement on women and housing.<sup>173</sup>

As a result of these initiatives, women are deemed to have become active participants in the government's housing program. Not only do the housing program beneficiaries reflect a higher number of women headed households or individual women,<sup>174</sup> they are also increasing in number in management positions in relevant housing agencies ranging from 32 per cent in the National Housing Authority to 53 percent in the Home Development Mutual Fund and the Housing Urban and Development Coordinating Council with the latter also having a woman as its head.<sup>175</sup>

However, it has been admitted that due to lack of information-dissemination on the fact that both men and women are eligible to apply for all government housing programs, a good number of women still transact business with their husband's consent or are asked a special power of attorney from the latter. Moreover, the cumbersome application process involved most often discourages women from applying themselves as they are already kept busy by their numerous and unending household tasks and responsibilities.

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<sup>173</sup> *Id.*

<sup>174</sup> Twenty two percent of slum upgrading contracts were executed by women as heads of families, while 46 per cent of the Community Mortgage Program beneficiaries are women, 52 per cent in cooperative housing and 50 percent in medium-rise housing. *Data cited in NCRFW, Philippine Plan for Gender-Responsive Development*, Chapter 5 on Urban Development and Housing, 81-82.

<sup>175</sup> *Id.*

These continuing practices only reveal further that the seeming advances made in the field of women's rights remain but superficial ones. For they apparently have not resolved the deep-seated inequities perpetrated by long years of discrimination in the legal, social, economic and cultural spheres.

#### *7.4. Forced Evictions*

Although discussed previously, it is worth devoting a new section on the topic of forced evictions to further understand why these occur, how the government had been dealing with this matter and how the gender dimension comes in.

As a matter of policy, forced evictions are not allowed in the Philippines. In this regard, Section 28 of the Urban Development and Housing Act (RA 7279) provides:

Eviction or demolition as a practice shall be discouraged. Eviction or demolition, however, may be allowed under the following situations:

- (a) When persons or entities occupy danger areas such as *esteros*, railroad tracks, garbage dumps, riverbanks, shorelines, waterways, and other public places such as sidewalks, roads, parks, and playgrounds;
- (b) When government infrastructure projects with available funding are about to be implemented; or
- (c) When there is a court order for eviction and demolition.

In the execution of eviction or demolition orders involving underprivileged and homeless citizens, the following shall be mandatory:

- 1) Notice upon the effected persons or entities at least thirty (30) days prior to the date of eviction or demolition;
- 2) Adequate consultations on the matter of settlement with the duly designated representatives of the families to be resettled and the affected communities in the areas where they are to be relocated;

- 3) Presence of local government officials or their representatives during eviction or demolition;
- 4) Proper identification of all persons taking part in the demolition;
- 5) Execution of eviction or demolition only during regular office hours from Mondays to Fridays and during good weather, unless the affected families consent otherwise;
- 6) No use of heavy equipment for demolition except for structures that are permanent and of concrete materials;
- 7) Proper uniforms for members of the Philippine National Police who shall occupy the first line of law enforcement and observe proper disturbance control procedures; and
- 8) Adequate relocation, whether temporary or permanent: Provided, however, That in cases of eviction and demolition pursuant to a court order involving underprivileged and homeless citizens, relocation shall be undertaken by the local government unit concerned and the National Housing Authority with the assistance of other government agencies within forty-five (45) days from service of notice of final judgment by the court, after which period the said order shall be executed: Provided, further, That should relocation not be possible within the said period, financial assistance in the amount equivalent to the prevailing minimum daily wage multiplied by sixty (60) days shall be extended to the affected families by the local government unit concerned.

This Department of the Interior and Local Government and the Housing and Urban Development Coordinating Council shall jointly promulgate the necessary rules and regulations to carry out the above provision.<sup>176</sup>

Despite these clear legal provisions and subsequent Implementing Rules and Regulations issued, rampant violations are continuously being committed. In a recent report on Evictions in Metro Manila,<sup>177</sup> it was stated that in the last ten

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<sup>176</sup> Rep. Act No. 7279 (1992).

<sup>177</sup> URBAN POOR ASSOCIATES (*hereinafter* UPA), *Forced Evictions and Housing Rights Abuses in Asia*, Second Report (1996-97).

years, 100,000 people have been evicted on an annual basis. Of all the persons evicted only a small fraction (1/4 - 1/3) are relocated or received some form of compensation as required by law. It is generally the case that prior to any international event (such as beauty pageants, the APEC meeting, world conferences, etc), squatters are evicted. A more recent study even calculated that a total of 165,000 families face the risk of losing their homes to demolitions or forced evictions mainly due to ongoing development projects.<sup>178</sup>

Worse, a great number of these demolition incidents were violent. Guns, tanks, teargas canisters and attack dogs were used to scare the evictees. Infants and children died, women suffered miscarriages and nervous breakdowns, residents were beaten up and detained.<sup>179</sup> As if these violations of the clear guidelines were not enough, the required notice was hardly ever complied with. For instance, even if the residents were informed of the exact dates that the demolition activities will take place, they were done a few days earlier to catch the people by surprise and to prevent them from organizing to resist the demolition. As a result, the unpleasant consequences described above occurred.

In May 1995, the United Nations CESCER affirmed that massive evictions were indeed taking place in the Philippines, stating that it could not accept the government's explanation that it could not do anything to stop the forced evictions.

As earlier mentioned, the United Nations system has recognized the adverse effects of forced evictions on women through Sub-Commission Resolution 1997/19 which acknowledged that women are disproportionately affected by the practice of forced evictions. In the CESCER's General Comment No. 7, it has likewise been recognized that women are especially vulnerable in these situations due to the extent of statutory and other forms of discrimination as well as women's particular vulnerability to acts of violence and sexual abuse when they are rendered homeless.

Despite the limited research available on the issue of forced evictions and its impact on women, those who have lived through forced eviction processes and

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<sup>178</sup> Canuday, *supra* note 148.

<sup>179</sup> UPA, *supra*, footnote 177, at 141.

those who have worked and assisted these victims “know that forced eviction is and must be understood to be a women’s human rights issue.”<sup>180</sup>

In the Philippines, it has been observed that forced evictions are especially traumatic for women. Based on actual interviews conducted by Urban Poor Associates in March 1995 and Lihok Filipina Foundation in Cebu City from February to April 1994, women suffered from severe migraine headaches, interrupted menstrual cycles which made them irritable and quarrelsome in and out of the home, miscarriages for pregnant women. Women also tend to worry more about their children’s interrupted schooling, loss of income sources and where to get their family’s meals. These realities are often overlooked in evaluating the general effects of demolitions or forced eviction of houses or even in the consideration of resettlement sites or other alternative housing programs simply due to the lack of a gender perspective from the planning to the implementation stages.

### *7.5. Initiatives*

#### **7.5.1. Commission on Human Rights**

The Commission on Human Rights is a constitutional body tasked to protect and promote human rights<sup>181</sup> in the Philippines. It is granted several powers and functions, one of which is to monitor the Philippine government’s compliance with international treaty obligations.<sup>182</sup>

As mentioned in Chapter 5.4.2., the Commission on Human Rights had been in a dilemma as to whether or not it should take cognizance of cases of forced evictions and/or house demolitions as part of its mandate. This dilemma was resolved in favor of exercising jurisdiction. In fact, as early as 26 July 1990, the Commission on Human Rights, under then Chairperson Mary Concepcion Bautista, entered into a memorandum of agreement with heads of other government agencies<sup>183</sup> regarding the guidelines for the conduct of house

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<sup>180</sup> Leilani Farha, *The Case of Forced Evictions*, COMMON GROUNDS: VIOLENCE AGAINST WOMEN IN WAR AND ARMED CONFLICT SITUATIONS, 81 (1998).

<sup>181</sup> CONST., art. XIII, sec. 17.

<sup>182</sup> CONST., art. XIII, sec. 18 (7).

<sup>183</sup> The signatory agencies consisted of the Housing and Urban Development Coordinating Council, the Presidential Commission for Urban Poor, the Department of Budget

demolitions. The Agreement was based on Article XIII Sections 1 and 10 of the Constitution prohibiting the conduct of forced evictions and allowing the state to regulate the use of property and its increments.

This Memorandum of Agreement expressly states that "the eviction of families without any provision for adequate relocation sites with basic services is not a just and humane procedure." It likewise imposed a moratorium on house demolitions except for certain enumerated instances therein.<sup>184</sup> The guidelines annexed to the Agreements were mainly based on Republic Act 7279 or the Urban Development Housing Act discussed earlier. Among the more important provisions in these implementing guidelines are:

that adequate consultations with the affected residents be given in the form of an official notice given at least 30 days prior to the scheduled demolition and a series of dialogues discussing the reason for the urgency of the project; possible relocation sites; mechanics, procedures and timetables; and options available to the community;

that government assistance to the affected residents is available, in the form of options either to avail of the "back to the countryside" program, or to avail of temporary or permanent relocation sites with basic

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and Management, the Department of Local Government and Community development, the National Housing Authority, the Public Estates Authority, the Department of Public Works and Highways and the local government units (cities and municipalities) in the National Capital Region.

<sup>184</sup> Found in para. 1 of the Agreement which states that the moratorium on forced evictions shall not apply to:

- a) Ejectment covered by court orders, whether promulgated before or after this Agreement;
- b) Ejectment in connection with relocation projects participated in by the National Housing Authority, where adequate consultations with concerned communities is practiced, as well as ejectment and relocation projects from either public or privately owned property, provided there is certification by the Presidential Commission for the Urban Poor that such projects have undergone adequate consultation processes and are to be conducted in a just and humane manner;
- c) Demolitions of structures directly and actually obstructing access to public areas such as roads and sidewalks and those living in danger zones;
- d) Demolitions of structures standing in the way of urgent infrastructure projects or local improvement projects with 1) scheduled start-up of completion dates within the moratorium period; and 2) approved and adequate funding, the determination of which will be certified by the Housing and Urban Development Coordinating Council;
- e) Structures erected after date of this Agreement;

services, and provided on a "best efforts" basis by the National Housing Authority or the concerned local government agency, or to choose direct financial assistance to enable self-relocation.<sup>185</sup>

and that actual demolition operations be conducted within the following rules:

- only after a final dialogue has been conducted or attempted at least 24 hours before start of the demolitions;
- a duly authorized representative of the local government unit, the PCUP and the DSWD shall be present during the demolition to ensure proper coordination and provision of the needs and services of the squatter families;
- all participants in the demolition activities shall display proper identification;
- the demolitions will be conducted only on Mondays to Fridays, between 0800 and 1500 hours unless otherwise agreed upon by the affected families. No demolitions shall take place during rainy days or the occurrence of natural calamities;
- no heavy equipment shall be used for demolition except for permanent or concrete structures;
- the affected families shall be allowed to dismantle their own residences to save their possessions;
- no member of the demolition crew may involve themselves in any police action;
- the duly-authorized law enforcers shall wear their name tags and complete uniform and shall not actively participate in the demolition;<sup>186</sup>

In a resolution issued by the Commission entitled, "Violent Demolitions are Gross Violations of Human Rights", it condemned the illegal and violent demolitions of homes of the urban poor of Metro Manila and other parts of the country as gross violations of the human rights of the occupants, especially the

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<sup>185</sup> Rep. Act No. 7279 (1992).

<sup>186</sup> Rep. Act No. 7279 (1992).



children. Moreover, the Commission urged the law enforcers to observe the rule of law and the constitutional mandate for just and humane treatment of the poor people by stopping all demolitions of squatters' housing sites pending further investigation of the complaints filed against them.<sup>187</sup>

As a result of these initiatives and pronouncements, the CHR had since been besieged by numerous complaints coming from affected families of violent and forced evictions. Unfortunately, most of these complaints were either dismissed or archived and only a handful were forwarded to the proper courts for prosecution and/or further investigation.

It is very disappointing to note however, that in most of the complaints which were archived or dismissed for alleged lack of merit, the Commission<sup>188</sup> simply relied on the evidence presented by the complainants and did not bother to conduct a deeper and more thorough investigation. Aside from the seeming lack of sensitivity to the plight of the victims in general, there was not even a hint of effort taken to analyze the effects on the women victims, why they came in droves and how their sufferings differed from the men.

In fairness to the Philippine CHR however, it has, in the past issued resolutions in favor of the evictees and even granted some form of financial compensation to alleviate their plight. It must be recalled however, that the Philippine CHR is limited by earlier Supreme Court interpretation of its preventive capacity, hence the notion that it can only act when a violation has already occurred.

#### 7.5.2. National Commission on the Role of Filipino Women

The National Commission on the Role of Filipino Women (NCRFW) is the agency designated to monitor measures taken by all ministries, bureaus, agencies and other government offices directed under Letter of Instruction No. 974 issued on 5 January 1980, to take measures specified therein for the implementation of the provisions of the Constitution, of laws and of international conventions and other agreements relating to the elimination of discrimination

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<sup>187</sup> COM. ON H.R., *A Decade Report 1987-1996*, 3 (1997).

<sup>188</sup> Based on Resolutions issued by the National Capital Region Office of the CHR from 1997 to 1998.

against women and their integration in partnership with men in the national development effort.<sup>189</sup>

As the main government agency tasked to coordinate gender-mainstreaming efforts, it has the difficult task of changing not only policies and programs but attitudes and thinking as well. Its mandate thus covers all spheres of governance thus making it quite difficult to oversee the proper implementation of gender-sensitive programs. This may be done through gender focal points in every government agency. Nonetheless, although it has not been clarified how exactly the NCRFW will work with the “proper” housing agencies, the Philippine Plan for Gender-Responsive Development has listed down some of its programs and projects in the field of housing:

- 1) Information Program - a communication plan shall be developed using the print, broadcast and television media. The information program shall be aimed at increasing the level of awareness on gender concerns in shelter and urban development among the general public, and promoting the housing programs.
- 2) Capability-Building/Training Programs and Projects - capability-building/training programs shall include, among others, the following:
  - a) Leadership training on shelter and urban development for women
  - b) Gender sensitivity and gender responsive planning particularly for development officers and policy-makers at all levels and for women professionals, e.g. developers, architects, etc.
  - c) Skills training relative to housing construction, maintenance and repair
  - d) Cooperativism
3. Pilot Projects - women-friendly pilot projects shall be undertaken for possible replication, especially in depressed areas, such as:
  - a) Day care or child-minding centers
  - b) Garbage/waste disposal system and management

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<sup>189</sup> Initial Report of the Philippines to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), U.N. Doc. CEDAW/C/5/Add. (1982).

c) Management of community facilities

To ensure the effective implementation of these projects, support mechanisms are likewise put in place which include close coordination with government agencies, lobbying with the legislature for appropriate amendments to existing laws, and strengthening of networking with NGOs and people's organizations.

### 7.5.3. Non-Governmental Organizations (NGOs)

This study will not be complete without at least mentioning the enormous contribution made by the non-governmental organization in assisting the urban poor attain their right to adequate housing through actual field projects and active lobbying with concerned national and international agencies.

NGOs have made enormous contributions in defining the scope of various human rights norms and in monitoring their proper implementation in various jurisdictions. International and local NGOs have established themselves as a major force in the protection and promotion of human rights. Their contributions range from activist and watchdog functions, to non-partisan research and documentation work, and from civil litigation to empowerment projects.<sup>190</sup> A number of NGOs have established documentation centers or databases on human rights, or collect information relevant to human rights work. More often, they are better placed to collect information, particularly as it pertains to inadequacies in the protection of human rights, than are government ministries.<sup>191</sup>

In the field of housing rights, the most active international NGOs are the Habitat International Coalition (HIC) and the Centre on Housing Rights and Evictions (COHRE). HIC is a global movement of 350 civil society organizations from seventy countries. Its membership consists of groups working on a range of issues around human settlements, women's rights to property, land and inheritance, children's rights, land rights, environment and evictions and displacement. The principal organ of HIC charged with coordinating and

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<sup>190</sup> Cecil Bernard & Peter Wille, *The Preparation and Drafting of a National Report*, in *MANUAL ON HUMAN RIGHTS REPORTING* 33 (1997).

<sup>191</sup> Laurie S. Wiseberg, *Human Rights Information and Documentation*, in *MANUAL ON HUMAN RIGHTS REPORTING* 52 (1997).

providing guidance in all areas of work related to the right to housing and forced evictions is its Housing Rights Committee (HIC-HRC).<sup>192</sup>

COHRE, on the other hand, is an international NGO established in 1992 and committed to ensuring the full enjoyment of the human right to adequate housing for everyone through reliance upon the full spectrum of civil, cultural, economic, political and social rights. It also works with a continually expanding network of non-governmental, community-based and grassroots organizations in all regions throughout the world.<sup>193</sup>

In the Philippines, community-based and legal NGOs actively assist the victims of violations of their right to adequate housing. The Urban Poor Associates for instance, had been very active in documenting cases of forced evictions, reporting them to local and international authorities and lobbying for timely and appropriate action. Most of the alternative data gathered for this paper were sourced from this particular NGO. There are also various other NGOs like the Community Organization Training and Research Advocacy Institute (CO-TRAIN), Lihok Pilipina, Women's Crisis Center and the Women's Legal Bureau, to name but a few of those actively working to incorporate gender concerns in pursuing the people's economic, social and cultural rights in general and the right to adequate housing in particular.

## 8. CONCLUSIONS AND RECOMMENDATIONS

While it is true that efforts are being undertaken to speed up and improve the implementation of the right to adequate housing in the Philippines, it is equally true that the problems are hardly eradicated, and are in fact, getting worse. That is, though the Philippines may be in a better position than most other countries in terms of enacting laws and policies in compliance with its international treaty obligations, it is not faring any better in the realization of these treaties' objectives. Based on the dual standard of "obligations of conduct" and "obligations of results", it may be concluded that the Philippines as a state

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<sup>192</sup> Miloon Kothari, *Homelessness and the Right to Adequate Housing*, THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: FIFTY YEARS AND BEYOND 209-210 (Y. Danieli, E. Stamatopoulou, C. Dias, eds.) 1998.

<sup>193</sup> COHRE Progress Report, January 1996 to June 1998.

party to the International Covenant on Economic, Social and Cultural Rights, has miserably failed in both.

This failure may be attributed to the fact that in the case of the urban poor, where most of the data analyses for this study were based, the government has consistently taken an indifferent attitude towards the serious concerns of the various sectors affected. Almost in all cases, the housing problem is treated in terms of quantitative measures: as “housing backlogs”, “credit and mortgage beneficiaries”, “household units” and hardly as involving thinking, feeling, and living human beings whose concerns vary far more widely than these statistical and quantitative indicators could show. Besides, it is not enough that aggregated national statistics be presented to illustrate the status of implementation of particular human rights. It has been suggested that, “special attention be given to any worse-off regions or areas and to any specific groups or subgroups which appear to be particularly vulnerable or disadvantaged.”<sup>194</sup>

A clear illustration of this indifference is the government's seeming helplessness to do anything about the rampant and continuous acts of forced evictions being committed almost daily in the urban areas and the glaring impunity for those committing these inhumane acts. Another instance is the worsening living conditions of a growing number of inhabitants in the urban areas, whether as a result of massive population growth, uncontrolled rural to urban migration or as a simple case of neglect on the part of policymakers and implementors.

Here is where the importance of adopting a gender-based approach within the human rights framework will prove most useful. The international legal standards have been put in place for a more guided observance of gender mainstreaming. However, domestic application will greatly depend not only on political will but on persistent and sustained implementation of measures aimed at fully integrating the concerns of both men and women and cutting across all sectors of society.

It is admitted that the women's sector is not a homogenous group and will thus have varying concerns that may even be more complicated than the male and female differentiation. Nonetheless, it is still necessary to recognize these differences as an important initial step towards dismantling deep-seated stereotypes and oppressive patriarchal notions of power and superiority. Finding

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<sup>194</sup> C. Dias, *supra* note 8.

appropriate solutions to their problems, no matter how well-intentioned, is far from being a simple undertaking.

In this context, it is hoped that the following recommendations will somehow contribute towards coming up not only with better but also more realistic ways of implementing the right to adequate housing using a gender based approach.

Surely, the efforts mentioned in the preceding chapters will go a long way in achieving a truly gender-sensitive implementation of the right to adequate housing. However, care must be taken that these objectives are translated from mere rhetoric to real action. Aside from the allocation of the needed resources, implementors must take seriously the information dissemination and data gathering aspects (e.g., reliable and up-to-date gender-disaggregated data) and take serious efforts to conduct training that will not only raise gender awareness but eschew deep-seated biases and culturally-ingrained gender stereotypes.

Since the Constitution serves as the legal framework for all governmental policies and actions, its utility must be maximized. There are quite a lot of good constitutional provisions recognizing the people's right to adequate housing and upholding women's rights but which have either not been translated into implementable legislation or are hardly invoked in judicial cases.

This then leads to another related recommendation of recognizing the justiciability of economic, social and cultural rights by giving them emphasis as rights instead of mere governmental policies subject to availability of resources. Chairperson Philip Alston of the United Nations Committee on Economic, Social and Cultural Rights has reiterated that a country's lack of resources can never be an excuse to a State-Party's non-compliance with its treaty obligation to promote economic, social and cultural rights. He added that the phrase "its available resources" refers to both the resources of the State Party itself and to those which are available to it from the international community "through international assistance and cooperation."<sup>195</sup> Hence it would do well for the Philippines to be more candid not only about its ability to finance projects relating to housing rights, but also in admitting where its real priorities lie, instead of continually leading the people on with its empty promises and homegrown rhetorics.

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<sup>195</sup> Philip Alston, *The International Covenant on Economic, Social and Cultural Rights*, in U.N. MANUAL ON HUMAN RIGHTS REPORTING 84-85 (1997).

Recognizing the justiciability of economic, social and cultural rights in general and the right to adequate housing in particular will consequently require a strengthening of its judicial and quasi-judicial bodies possessing jurisdiction over human rights cases. The judiciary, from the Supreme Court to the lower courts, will need to give a human rights orientation to its judicial decisions and acquire a gender-sensitive outlook in making judgments.

A clear instance where the courts may take an activist and progressive stance to promote and protect the right to adequate housing is in adjudicating cases of forced evictions and other violent acts undermining this right. With regard to forced evictions, it may adopt a more careful attitude by interpreting the legal provisions on exceptions to prohibitions to demolition activities, strictly in favor of the evictees instead of the evictors (private developers, government-owned or controlled corporations, local government officials and others).

Another possibility is in interpreting and adjudicating cases of domestic violence. This interesting link between the right to adequate housing and violence against women inside their own homes, provides another clear instance of the need for adopting a gendered approach to human rights. Although the theoretical nuances of domestic violence were not discussed at length in this study, it was not meant to diminish its importance as a relevant issue in the analysis of the implementation of the right to adequate housing. For even without recourse to lengthy discourse on the complex issues surrounding this phenomena, it simply cannot be denied that domestic violence goes against the very concept of "a place to live in peace, security and dignity" from which the whole analysis of the right to adequate housing is based. Moreover, this had been described as a "unique and progressive approach to the fundamental form of oppression experienced by women."<sup>196</sup>

The Philippine Commission on Human Rights (CHR), on the other hand, as the main institution tasked with the protection and promotion of human rights, will have to be more flexible in interpreting its mandate so as to allow a more active role in the implementation of economic, social and cultural rights, particularly the right to adequate housing. The call for the judiciary to adopt a more activist and gender-sensitive approach to the handling of forced eviction and domestic violence cases similarly applies to the work of the Philippine CHR. For it must not be forgotten that taking a gender-based approach in all its activities will

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<sup>196</sup> See Farha, *supra* note 180, at 81-82 (citing initiatives by the National Campaign for Housing Rights in India).

set the proper example for other authorities, especially government agencies, to do the same.

The National Commission on the Role of Filipino Women (NCRFW), on the other hand, has great potential in ensuring that the gender-based approach is seriously taken in all government programs. Its information and capacity-building projects in the field of urban development and housing will certainly be more effective if clearly incorporated in the ongoing projects of all the housing agencies identified. This close coordination appears to be lacking in the present system. Although the Philippine Reports to the CEDAW Committee claim some form of coordination, a closer look at the reports of the housing agencies deny such gender-dimension. NCRFW's expertise in the field of women's concerns, coupled with NGO participation, will certainly help improve the government's policies in the field of housing rights more gender-responsive.

This then leads us to another extremely important aspect of cooperation – that of linking up with non-governmental organizations. Although it is difficult to generalize, a number of NGOs working in the field of economic, social and cultural rights, particularly housing rights, have done extensive research and made enormous contributions not only in developing and further clarifying, but also in pressuring governments into complying with their obligations *vis-a-vis* the citizenry.

In the Philippines, the NGOs proliferated and were strengthened during the notorious Marcos era fighting against violations of civil and political rights. Now that the nature of human rights violations has changed, the NGOs have consequently shifted focus to economic, social and cultural rights. Judging by the effectiveness of their struggle in resisting the human rights violations during the past dictatorship, there is reason to believe that this strength can be reasonably translated in the field of economic, social and cultural rights albeit without necessarily abandoning the cause of civil and political rights. This is also in line with the principle of indivisibility and interrelatedness of all forms of human rights.

Moreover, the NGOs' grassroots orientation makes it easier for the government to reach out to the poorest masses, who should be the foremost targets of its policies and programs in the first place. With their assistance, the government agencies concerned will hopefully gain a deeper understanding of the people's needs and priorities and come up with more appropriate solutions to the housing problems at hand. In this regard, government agencies should allow



maximum NGO participation in the implementation of programs geared towards promoting the right to adequate housing with the view that they bring in and represent the people's needs and interests. Needless to say, NGOs with a strong tradition towards advocating gender concerns are most vital in this process.

Last and most importantly, a people-centred planning and management strategy must be always kept in mind. That is, the government must strengthen its "enabling" role in letting the urban poor become more actively involved in the whole process of planning, construction, operation and maintenance of their needs and demands for an adequate and sustainable living. And it is important that in this process, women's needs and concerns are clearly articulated not by others for them, but through their own distinct voices.