



Defending Roma Housing Rights in Slovakia

A Training Manual on International Law and the Right to Adequate Housing

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Copies are available from:
COHRE International Secretariat
83 Rue de Montbrillant
1202 Geneva, Switzerland
Tel: +41.22.734.1028
Fax: +41.22.733.8336
Email: cohre@cohre.org
Website: www.cohre.org

European Roma Rights Center
Nyár utca 12, 1072 Budapest, Hungary
PO Box 906/93, 1086 Budapest 62, Hungary
Tel: +36.1.413.2200
Fax: +36.1.413.2201
Email: errc@errc.org
Website: www.errc.org

Milan Šimečka Foundation
Panenska ulica 4
Bratislava, Slovakia
Tel/Fax: +421.25.443.3552
Email: nms@nadaciams.sk

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About the Project “Defending Roma Housing Rights in Slovakia”

Roma (Gypsies) remain to date the most deprived ethnic group of Europe. Almost everywhere, their fundamental rights are threatened. Disturbing cases of racist violence targeting Roma have occurred in recent years. Discrimination against Roma in employment, education, health care, housing, administrative and other services is common in many societies. Hate speech against Roma deepens the negative stereotypes which pervade European public opinion.

Due to the high level of racism and discrimination against Roma prevailing in Slovakia, the project implementers undertook, within the project framework, to map out the most serious practical and legal issues affecting Roma with respect to access to housing rights; initiate strategic litigation in at least four cases of Romani housing rights violations, produce a training manual for defending Romani housing rights and conduct a training workshop for Romani activists on how to defend their housing rights.

Research activities under the project have identified the following as the housing rights violations which most affect the Romani community in Slovakia:

- Racial segregation;
- Informal housing/substandard slum settlements;
- Homelessness, including so-called “hidden homelessness”;
- Forced evictions;
- Overcrowding/severe overcrowding;
- Discrimination in the allocation of state-provided housing/other discrimination;
- Freedom of movement issues/decisions by authorities to refuse to allow Roma to move into certain areas, or vigilante actions by locals to prevent Roma from moving into certain areas (where these actions are not stopped by authorities); and
- Obstruction of land use/denial of planning permission.

About the Project Implementers

Centre on Housing Rights and Evictions

Established in 1994, the Centre on Housing Rights and Evictions (COHRE) is an independent, international, non-governmental human rights organisation that is committed to ensuring the full enjoyment of housing rights for everyone, everywhere. COHRE pursues this objective through an integrated approach to human rights that incorporates the full spectrum of civil, cultural, economic, political and social rights.

European Roma Rights Center

The European Roma Rights Center (ERRC) is an international public interest law organisation which monitors the human rights situation of Roma and provides legal defence in cases of human rights abuse. Since its

establishment in 1996, the ERRC has undertaken first-hand field research in more than a dozen countries, including Slovakia, and has disseminated numerous publications, from book-length studies to advocacy letters and public statements. ERRC publications about Slovakia and other countries, as well as additional information about the organisation, are available on the Internet at <http://www.errc.org>. The ERRC is a cooperating member of the International Helsinki Federation for Human Rights and has consultative status with the Council of Europe and the Economic and Social Council of the United Nations.

Milan Šimečka Foundation

Since its establishment in 1991, the Milan Šimečka Foundation has focused on human rights activities throughout Slovakia. The Foundation distinguishes itself by:

- its interest in continual protection of disadvantaged groups (at present especially, but not exclusively, the Roma) and pointing to abuses of their human rights, discrimination and marginalisation;
- its effort to act as a conscience and challenge for society with respect to relations between majority and minority and consequences of negative phenomena stemming from their coexistence (xenophobia, racism, segregation, social exclusion);
- the need to interconnect all levels of solutions to the problem (local, regional, national, international and global);
- the effort to offer alternatives to official policies and government strategies using a variety of techniques (critical thinking, think-tank, watchdog, lobbying), latest findings and specific experience from the field; and
- its mission based on the spiritual message of the person whose name the Milan Šimečka Foundation carries.

About This Resource Manual

Human rights education can be defined as a process of learning, discovery, and action that cultivates the knowledge, skills, attitudes, habits and behaviour needed for people to effectively know, assert, and vindicate their human rights consistent with the Universal Declaration and to respect the rights of others.

- Richard Pierre Claude, 1998

The purpose or goal of human rights education is **empowerment in order to bring about social change**. Ultimately, human rights education inspires people to **take control** of their own lives and the decisions that affect their lives. Many Roma who do not know their rights are more vulnerable to having them abused and often lack the language and conceptual framework to effectively advocate for them. Growing consensus around the world recognises education for and about human rights as essential. It can contribute to the building of free, just, and peaceful societies. Human rights education is also increasingly recognised as an effective strategy to prevent human rights abuses.

With this premise in mind, COHRE, the ERRC and the MSF have developed this resource manual as a guide for Romani housing rights activists and for those interested in becoming involved in housing rights issues, and/or for use as a resource during training programmes. The manual provides information, articles and activities, which will transfer to the user, within the specific context of housing issues faced by Roma in Slovakia:

- An understanding of the various components of the right to adequate housing and economic and social rights generally;
- Knowledge of relevant international and domestic legal standards pertaining to the protection and promotion of the right to adequate housing;
- An understanding of the inter-relatedness between housing rights violations and other human rights violations, particularly violations of economic, social and cultural rights;
- Expertise in various thematic areas related to housing rights, including women's housing rights, forced eviction, and housing and property restitution;
- A practical guide to the different activities that housing rights activists and others can employ to ensure access to adequate for housing for Roma, including:
 - Monitoring;
 - Documentation;
 - Domestic and International Advocacy; and
 - Legal Action.

The manual includes, in the appendix, translations of the relevant international and European legal standards and documents pertaining to the right to housing, which will serve as a useful resource in the housing rights activities in which you engage in the future.

Because people must **be aware of** and **informed about** the issues affecting them and the choices available to them in order to effectively participate in the development, implementation and evaluation of social and economic policies, the information presented in this manual is supplemented with specific housing rights issues reported by Roma in Slovakia during independent research undertaken within the project framework. Unless specified otherwise, Maria Hušová, Alexander Mušinka, Jarmila Vaňová, Lenka Vavreková and Zuzana Veselská conducted the research presented in this manual on behalf of the project implementers.

The manual incorporates curriculum developed by the Canadian Human Rights Foundation, whose contribution is gratefully acknowledged.

List of Acronyms

CAT – Committee Against Torture
CEDAW – Committee on the Elimination of Discrimination Against Women
CERD – Committee on the Elimination of Racial Discrimination
CESCR – Committee on Economic, Social and Cultural Rights
COHRE – Centre on Housing Rights and Evictions
ECHR – European Court of Human Rights
ERRC – European Roma Rights Center
ESC – Economic, Social and Cultural
HRC – Human Rights Committee
ICCPR – International Convention on Civil and Political Rights
ICERD – International Convention on the Elimination of All Forms of Racial
Discrimination
ICESCR – International Covenant on Economic, Social and Cultural Rights
MSF – Milan Šimečka Foundation
NGO – Non-governmental organisation

Slovak Republic (2000)

Concluding observations of the Committee on the Elimination of Racial Discrimination: Slovak Republic. 14/08/2000. UN Doc. A/55/18, at paragraphs 252-270.

The Committee is concerned about settlement patterns with regard to the Roma minority. The Committee is particularly concerned about the fact that two municipalities issued decrees banning Roma from their territory and the duration of proceedings to lift them. The Committee recommends that the State party review legislation regulating local residence permits, investigate promptly and thoroughly incidents of discrimination in access to housing and give speedy consideration to these issues. The Committee invites the State party to monitor trends which give rise to racial segregation and indicate its findings in subsequent reports.

Slovak Republic (2003)

Third Report on Slovakia of the European Commission Against Racism and Intolerance. Adopted on June 27, 2003, at paragraph 58.

ECRI is very concerned that the situation as regards housing for many Roma communities remains grave, with large numbers of Roma living in settlements lacking even the basic amenities such as water, sanitation and electricity. The conditions are so critical in some settlements that there is a real threat of health epidemics, while it seems clear that the families - and particularly children - living under such conditions cannot possibly hope to participate in society on an equal footing in other areas of life such as education and employment.

I. FRAMING THE DISCUSSION ABOUT HOUSING RIGHTS

Worksheet 1: Questionnaire on Housing Rights

Read each statement and mark whether you agree or disagree. Use the comments column to elaborate on your answer. Please base your responses on your immediate feeling as you read each statement.

Statements	Agree	Disagree	Comments
The right to housing is equally important to other human rights.			
Housing rights are only an issue in the developing world.			
There is no clear definition of a housing rights violation.			
If property rights are guaranteed, there is little need to be concerned about housing rights.			
A government does not have to take immediate action to promote and protect Economic, Social and Cultural Rights.			
The only effective way to protect housing rights is through legislation.			
In a free market, the government does not have to ensure that people have access to affordable housing.			
As long as a dwelling has the basic amenities (running water, sanitation, energy for cooking) it should be considered adequate.			

Statements	Agree	Disagree	Comments
Housing rights cannot be fully implemented because the costs involved are unaffordable.			
National laws do not recognise housing rights, thus, neither can international law.			
Adequate housing must be near to employment options,			

health care services, schools, child-care centres and other social facilities.			
Poor people live in slums because they are too lazy to help themselves.			
Generally, residents of subsidised housing are taking advantage of the system.			
Homeless people are usually drug addicts or drunks.			
The right to housing cannot be enforced through the courts.			
When national wealth increases, housing conditions and home ownership will automatically improve.			

Why Take a Rights-Based Approach to Housing Issues?

Q: There are many different ways to try to achieve housing rights for all. Some people try to do it by bringing about political change; others focus on development, or on grassroots struggle. Why do you advocate a rights-based approach to the housing rights issue?

A: Scott Leckie, Executive Director of COHRE

The most important argument for favouring a rights based approach is that it puts everything into a **common legal framework**. This framework creates legally binding obligations and duties upon one side (which is the state) and creates legally enforceable entitlements and rights on behalf of others (which are the people). Applying a rights framework says that every person in the world should have a right to basic minimum core requirements – a certain body of entitlements that must be provided in some way by the state. If they refuse to do that there are certain mechanisms and procedures in place that people can evoke very easily that should lead to governments changing their laws and policies so that they actually provide these things.

A rights based approach creates a common, **clear conceptual framework** for addressing these wider issues. It forces governments to spend money if they take rights seriously and to do actions that are going to benefit the largest number of people rather than the elite or whatever groups may be affiliated with the government. And it creates a framework, a formula, for measuring if they actually are doing that.

It's a way to **hold governments accountable under law**. It's not simply saying, "The government didn't perform well so we are going to vote it out so

that more people get housing.” The rights based approach says, “The government has consciously done certain things or not done certain things and as a result of that it has violated the rights of its citizens”. These timeless universal standards place the individual in a very different role vis-à-vis the society, or the state, if you look at it through the lens of human rights or if you look at it through the lens of human development or pure politics.

Some countries which are very progressive and which actually do care about the plight of the poor or the lower middle classes and which you would expect to be pro Economic Social and Cultural rights are in fact reluctant to recognise them. Sweden is the classic example. It is the ultimate welfare state and Social Democrats have held control for about eighty-five years. They support in principle the concept of ESC rights but they don't support that the judges should be the ones who should decide whether or not these rights are being kept, because it is not democratic. That's a very big issue that is not relevant to most countries, but it is a strong argument against a rights based approach in a country where you know that a social democratic party that prides itself on taking care of needs of the population is going to stay in power for a very long time.

This is another reason for taking a rights based approach: **it doesn't matter who is in power** because the government (whether it is right wing, moderate or left wing) would have to apply the same principals. So this is a way of really keeping and strengthening the fact that everyone, from the minute they are born to the minute they die should have access to these basic requirements. Politics does change. Politics does favour some groups and not others. But human rights are so basic, so central to human life that you have to have them notwithstanding who's in power. If you only have a political framework, many groups lose out if their party doesn't win. The rights- based approach says: You will win no matter what.

The whole thing of being able to invoke human rights is also another major advantage of a rights based approach; it **provides you with remedies** that you would normally not have at all. If you were to be working in a purely political context, and you didn't get housing or education or a job, there's no one to turn to (or you could go to your Member of Parliament, maybe). Applying a rights based approach allows you to actually turn to official institutions and say “Hey, I know you have an obligation to see that this particular right of mine is protected, but I don't have that protection! Something's going wrong and we need an independent body to decide if you are doing something wrong and force you to do something about it.”

A *purely* legal approach is probably not the wisest way to go. There should be a **combination** of that with popular struggle, with education, with support and so on. International and domestic NGOs and human rights activists should work together with local and national institutions all driving in the same direction. That yields the best results.

There are people, very good people, who believe that the human rights approach is so legalistic, so formal, that it doesn't recognise the real reality.

Romani slum dwellers for instance, live outside the legal system, and basically create their own solutions. Some people argue that writing a constitution or a statute does nothing to help them. The only thing that really matters is that they get more money in their pockets, that they mobilise and get together and start improving their situation on their own because the role of the government is going to be so minimal anyway that Roma have to do it themselves. I think this is not an unreasonable view, but my own perspective would always be, better we combine forces and look at things through the lens of human rights and see what you can do at political, economic, and other levels to make it a reality.

Defining Housing Rights

Housing Rights are Human Rights

Housing rights involve more than the right to access to shelter. Rather, they include the following indivisible, interdependent and interrelated human rights:

- The human right to adequate housing.
- The human right to an adequate standard of living.
- The human right to access to safe drinking water and sanitation.
- The human right to the highest attainable standard of physical and mental health.
- The human right to a safe and healthy environment.
- The human right of the child to an environment appropriate for physical and mental development.
- The human right to access to resources, including energy for cooking, heating, and lighting.
- The human right of access to basic services, schools, transportation and employment options.
- The human right to affordability in housing, such that other basic needs are not threatened or compromised.
- The human right to freedom from discrimination in access to housing and related services based on sex, race and ethnicity, or any other status.
- The human right to choose one's residence, to determine where and how to live and to freedom of movement.
- The human right to freedom from arbitrary interference with one's privacy, family or home.
- The human right to security, including legal security of tenure.

- The human right to equal protection of the law and judicial remedies for the redress of violations of the human right to adequate housing.
- The human right to protection from forced evictions and the destruction or demolition of one's home including in situations of military occupation, international and civil armed conflict, establishment and construction of alien settlements, population transfer, and development projects

Worksheet 2: Romani Housing Rights in Slovakia

1. What are the principal housing rights problems you believe affect Roma in Slovakia? List five in the chart below.

Housing Rights Problems

Defining “Adequate” Housing

The majority of Roma in Slovakia live in housing which is considered inadequate. According to international human rights law, an adequate house must provide more than four walls and a roof. General Comment No. 4, adopted by the UN Committee on Economic, Social and Cultural Rights, elaborates the seven *minimum* criteria of housing adequacy, and provides the single most authoritative interpretation of the right to adequate housing under international human rights law. These are the seven core components of adequate housing according to international human rights law:

- Security of Tenure;
- Availability of Services, Materials, Facilities and Infrastructure;
- Affordability;
- Habitability;
- Accessibility;
- Location; and
- Cultural Adequacy.

Romani Women: While lack of access to stable and secure housing adversely affects many Roma, Romani women bear the brunt of housing poverty and housing discrimination. Women are also disproportionately affected by the often-violent practice of forced eviction. Overburdened with caring for children, managing households and generating income, women rely heavily on proper and secure housing for their economic and personal well being. Lack of security in the area of housing and land deprives Romani women of economic autonomy, physical safety and personal dignity, and serves to marginalise Romani women by contributing to the feminisation of poverty and their continued social subjugation. Without adequate housing, Romani women cannot enjoy other fundamental rights, such as the right to privacy, the right to the highest attainable standard of health, or the right to self-determination. Thus, it is important that Romani women’s housing rights be addressed, promoted and protected.

Security of Tenure. Security of tenure is the cornerstone of the right to adequate housing. Secure tenure protects people against arbitrary forced eviction, harassment and other threats. Most informal Romani settlements and communities lack legal security of tenure. At the time this publication went to press, there were approximately 300 Romani settlements in Slovakia, though not every resident lacked security of tenure. Security of tenure is a key issue for Roma and particularly Romani women. Tenure for Romani women is often dependent upon their relationship to a male. The majority of Romani

common-law or marital partners who are denied legal residence in a given area, or legal security of tenure, are women. Victims of domestic violence, without legal claim in the home and facing obstacles to obtaining housing on their own, often face the choice of homelessness or remaining prisoners of violence.

The Importance of Legal Security of Tenure

Living without secure tenure means in essence that people do not control what happens to the homes they occupy. Many Roma living without legal security of tenure in Slovakia live in segregated conditions and suffer the denial of access to other fundamental rights and freedoms as a result. The following cases highlight the problems faced by persons living without legal security of tenure.

- Residents of the Kostolanská Romani neighbourhood in the village Kecerovce live in makeshift huts on land they do not own. A three-person commission was established in September 2003 within the local council to deal with the construction of illegal housing, particularly within the Kostolanská neighbourhood. Several Roma from the area reported that Ms Anna Bombárová, the mayor of Kecerovce, had visited them in the presence of police and threatened to evict them and destroy their homes. Ms Anna Bombárová stated to a project researcher that, in Spring 2004, those Roma with homes illegally constructed on land they do not own will be given formal demolition notices. When asked what would happen to the Roma facing homelessness, Ms Bombárová replied that this did not interest her and that “they could go back to where they had come from”.
- Several long-time Romani residents of the Romani ghetto in the village of Svinia live in makeshift homes on land which does not belong to them. As permanent residence is linked to legal security of tenure under Slovak law, despite being married to residents of the ghetto who have permanent residence in the village, the local council denied the Roma in question permanent residence in the village. As a consequence, Roma living in Svinia must travel to the village in which their permanent residence is registered to access social benefits and to vote, among other things. Furthermore, the children of the affected Roma have not been able to register in Svinia either. In this case, the denial of access to residence registration due to the illegality of tenure led to the denial of access to other fundamental rights.

In addition, it has been found that many individuals, families and communities lacking security of tenure are, understandably, reluctant to invest in improving their homes for fear that such investments will only be destroyed or taken away from them if they are evicted. For similar reasons, long term planning is rarely undertaken. Lack of secure tenure can also reinforce social exclusion and poverty.

Conversely, the provision of secure tenure can have many positive implications, not the least of which is legal recognition of entire communities. Secure tenure affords people the opportunity to make improvements to their

homes with the knowledge that their efforts are not wasted. Security of tenure provides confidence in dwellers to develop and take pride in their communities and to make them their own. The knowledge that a community will not disappear because of the whims of government officials produces greater demands and expectations by community members for improved local services. It also allows dwellers the security and peace of mind that assists them in carrying on with daily activities such as employment, education and community involvement.

The legal recognition and protection of secure tenure is a significant step that the Slovak government can take toward the realisation of the right to housing for Roma. The Habitat Agenda (1996), reaffirms the role of national governments in promoting and protecting secure tenure when it states at paragraphs 40 (b) that governments should commit themselves to: *Providing legal security of tenure and equal access to land to all people, including women and those living in poverty; and undertaking legislative and administrative reforms to give women full and equal access to economic resources, including...ownership of land and other property, credit, natural resources and appropriate technologies.*

Availability of Services, Materials, Facilities and Infrastructure. An adequate house has access to potable drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, food storage, refuse disposal, site drainage and emergency services. When any of these facilities are not available, health, security, nutrition or comfort is threatened and the right to adequate housing is not fully realised. The great importance of the proximate availability of these services for Romani women is clear, considering the reality of many Romani women's daily lives. Romani women often bear the primary responsibility for the care of household, children and other family or community members.

- The Letanovsky mlyn Romani settlement in the village of Letanovce is accessible via a dirt road. Only one well provides water for the approximately 600 residents of the settlement. There is no provision of electricity in the settlement and no access to public services such as waste disposal and canalisation.
- One well provided water to the Romani community in the village of Svinia. There is no electricity in the settlement, nor canalisation and water drains do not function, meaning that the settlements floods during times of rain. Garbage is collected in large bins that are not emptied at regular intervals. The Romani residents burn wood for heating and cooking.

Affordability. The amount a person or family pays for their housing must not be so high that it threatens or compromises the attainment and satisfaction of other basic needs. Lack of affordable housing is an acute problem throughout the world (in both developed and developing countries) and a major reason why so many people live in informal settlements. When rental housing is unaffordable, tenants' security of tenure is threatened as they can often be legally evicted for non-payment of rent. According to the affordability principle, States parties should take steps to protect tenants from unreasonable rent levels and rent increases, to ensure the availability of

natural building materials for housing and to establish appropriate channels for obtaining housing financing. This provision must be interpreted so to enable Romani women, who are often economically marginalised, to afford adequate housing through appropriate credit and financing arrangements.

Mr L.B., a Romani resident of the Lunik IX Romani ghetto in Košice reported paying very high rental costs for, according to his contract, social accommodation. Mr B. stated that he pays a monthly rent of 3,500 Slovak crowns for a three room flat. Others reportedly pay about 5,000 Slovak crowns for a four room flat. The average rental cost in Košice is 3,300 Slovak crowns. During a conversation on the sale of flats in Lunik IX, Mr Ladislav Šaňa, the mayor of Lunik IX, stated to a project researcher on October 29, 2003, that it is impossible to sell the housing in Lunik IX because it holds the “status of social housing”. By charging rental fees equal to that of private rental accommodations, Slovak authorities place even “social housing” outside the financial capabilities of many Slovak Roma, thereby failing to meet its obligation to ensure affordability of housing to all.

Habitability. For housing to be considered adequate, it must be habitable. Inhabitants must be ensured adequate space and protection against the cold, damp, heat, rain, wind or other threats to health or structural hazards. Housing which lacks such protections is frequently associated with diseases and higher mortality rates. In this respect, Romani women must also be protected from domestic violence, a clear threat to their health.

- The nearly 600 Romani residents of the Letanovsky mlyn Romani settlement in the village of Letanovce live in makeshift huts constructed of scrap wood, mud and metal. The residents do not own the land on which their homes are built.
- Roma living in the Kostol'anská Romani neighbourhood in the village of Kecerovce live in makeshift huts constructed on land they do not own of mud and scrap materials which offer little protection from the elements. Many of the huts have only a dirt floor. There is no electricity, no source of water and no canalisation in the settlement. One Romani woman reported that four of her children had been taken into state custody because she didn't have a proper place to live with them.

Accessibility. Housing must be accessible to everyone. Disadvantaged groups such as the elderly, the physically and mentally disabled, HIV-positive individuals, victims of natural disasters, children and other groups should be ensured some degree of priority consideration in housing. Both housing law and policy must ensure their housing needs are met and it should be a central policy goal of governments to increase access to land by landless or impoverished segments of society. In many parts of the world, laws and policies do little to address the housing needs of the most disadvantaged but instead focus on already advantaged social groups. Additionally, in rental and housing markets, discrimination against disadvantaged groups is common

and poses a significant barrier to housing access. Romani women are a traditionally disadvantaged group vis-à-vis access to housing, due to societal and cultural discrimination and subordination. Romani women with disabilities or HIV/AIDS are even further marginalised. As such, the Slovak government must undertake specific measures to address the specific needs of Romani women.

- An increasing number of Slovak municipalities are creating segregated housing settlements for Roma only under the guise of housing for “non-rent payers” and “socially unadjustable persons”. In fact, numerous Romani residents of such government housing schemes are regular rent payers who are denied the right to move out of these ghetto-type areas. In the most well-known case, in November 2003, the ghetto known as Lunik IX in the eastern Slovak city Košice became an absolutely segregated settlement for Roma when municipal authorities moved the last twenty non-rent paying non-Roma out of the area. Adversely, many of the Romani residents of Lunik IX have regularly paid their rent but have been told that they would only be permitted to move out of the area after all non-Roma had first been moved. As of January 31, 2004, Slovak authorities had not facilitated the movement of a single Romani rent-payer out of the Lunik IX Romani ghetto. In practice, Slovak Roma do not have access to the same level of state-provided housing as non-Roma.
- In Letanovce, a Romani family was prevented from moving into the village, purchasing property and building a house, because all plots in the village are owned by the non-Roma and they refuse outright to sell to Roma. During field research in the town, when asked why there were not more Roma living in the town, one non-Romani resident stated, “Let the Gypsies stay in their settlement. We don’t want them in the village. It is more than enough that they come into the town to the post office, municipal office and to shops. They create enough mess and smell anyway. Let them be as far away as possible from us.” Refusal to sell houses or land to Roma was also reported in Spišske Tomasovce, Svinia and a number of other localities.
- In a number of municipalities, particularly in rural settlements – Roma reported arbitrary denial or obstruction of planning permission. For example, since 1998, one Romani man in the village of Telgárt, in the District of Brezno, has repeatedly been refused planning permission to build a house on land which he owns, despite repeated appeals to the local council, both alone and with the assistance of a national-level NGOs and several government offices.
- In the village of Bystre, in the district of Vranov nad Toplou, local Roma reported that local authorities were building new social housing units for the local community, but with the provision that these flats are not intended for local Roma.

Location. For housing to be adequate it must be situated so as to allow access to employment options, health care services, schools, childcare centres and other social facilities. It must not be located in polluted areas. When communities are evicted to forced eviction section from their homes they are often relocated to remote locations lacking facilities or in polluted areas, near garbage dumps or other sources of pollution. The location of housing is especially vital for Romani women to allow them the opportunity to fulfil other fundamental rights.

- In the most egregious example, since 1995, the city of Košice has been by policy progressively evicting Roma from the city centre and re-housing them in a housing estate called Lunik IX. At the same time, it has allocated housing in other housing estates to non-Romani residents of Lunik IX, such that they may move away. In November 2003, the last non-Romani individual living in Lunik IX moved out, leaving a pure -- and extremely substandard -- Romani ghetto. Local councils have created many more such settlements across the country since Lunik IX. Most recently, the local councils of Nitra and Stara Lubovna have announced plans to build apartment complexes for “rent non-payers” and “socially unadaptable persons” – the same terms used by local authorities in the creations of Lunik IX.
- In one famous example, the Patoracka Romani settlement, just outside Rudnany, is located on the grounds of a former mercury mine.
- The segregated Romani ghetto in the village of Svinia is located on an agricultural field. Today, local farmers regularly dump animal dung and dung water on the land adjacent to the Romani community, which contaminate water in the Romani community.

Culturally Adequate. Adequate housing should allow for the expression of cultural identity and the cultural diversity of the world's population. This means that cultural dimensions of housing such as the way housing is constructed, the building materials used and the policies supporting these should not be sacrificed in the name of development or modernisation. With respect to Romani women, they must be given the chance to partake in the planning of housing to ensure a reflection of their collective identity.

Issues related to the provision of/possession of residence permits

A large number of Roma in Slovakia are unable to access a range of basic services crucial to the realisation of fundamental economic and social rights because they lack a residence permit in the place of their factual residence. Although Slovak legal provisions on the establishment of local residence are unclear, in the main, in order to secure legal permanent residence in a given municipality, an individual must produce a valid identity document, as well as papers confirming the individual's right to use the flat or other habitable rooms, or the written approval of the flat's owner or flat's primary tenant to reside in a given flat. Due to the fact that many Roma live in informal

settlements wherein the latter condition cannot be met, many Roma either do not have a residence permit at all, or have a residence permit in their town of birth. As a result, large numbers of Roma have no access to basic public services, or only extremely limited access to such services.

A lack of local residence also precludes Roma from exercising fundamental political rights in a municipality, such as the right to vote and the right to stand in local elections. The failure to provide Roma with local residence permits therefore significantly hinders the ability of Roma to have any influence whatsoever on local policies.

Finally, in some instances, local officials have attempted to strike Roma from the municipal register. For example, on June 28, 2001, the local council of the village of Letanovce adopted Resolution 21/28.6.2001, "terminating the permanent residence of the citizens living in the Gypsy settlement Letanovce from August 1, 2001." Despite the intervention of the Slovak Government's Plenipotentiary for Roma Communities, as well as review by a parliamentary committee, the local council refused to strike down the act. A court subsequently annulled the act by the Letanovce local council, but as of October 2003, approximately 60 Roma in the Letanovce's Letanovsky mlyn Romani settlement lacked permanent residence there, despite the fact that many of them were born there. Similarly, in the Vilcurna settlement in Spišska Nová Ves, out of a total number of approximately 1000 local Roma, only 727 persons have legal residence in the village.

Freedom of movement issues/decisions by authorities to refuse to allow Roma to move into certain areas, or vigilante actions by locals to prevent Roma from moving into certain areas (where these actions are not stopped by authorities)

Roma in Slovakia frequently report being blocked by vigilante local action, sometimes carried out with the active or passive complicity of local authorities, when trying to rent or purchase property outside segregated settlements. In the village of Abrahamovce, Prešov district, for example, the *ERRC* spoke with members of a local Roma family in September 2003 who were planning to build their own family house on land which they had inherited from their parents. During discussions with the local mayor, he told them unofficially that he would do everything within his power to prevent the construction of the house because he did not want the number of Roma in the village to increase. In another case, in Letanovce, a Romani family was prevented from moving into the village, purchasing property and building a house, because all plots in the village are owned by the non-Roma and they refuse outright to sell to Roma. During field research in the town of Letanovce in September 2003, when asked why there were not more Roma living in the village, one non-Romani villager stated: "Let the Gypsies stay in their settlement. We don't want them in the village. It is more than enough that they come into the village to the post office, municipal office and to shops. They create enough mess and smell anyway. Let them be as far as possible from us." Refusal to sell houses or land to Roma has also been reported in Spišske Tomasovce, Svinia, and a number of other localities.

Some Common Myths about Housing Rights

Though it is now generally accepted that the right to housing exists under international, regional and domestic laws, there remain a number of misperceptions regarding the content and implications of this right. Many of these are similar to the misperceptions associated with economic, social and cultural rights, more generally. There are many false myths about housing rights, but the following five are perhaps the most common:

Myth: Courts cannot protect housing rights. This is one of the most common myths spread about the right to housing and other economic and social rights. The notion that housing rights are non-justiciable is usually based on a comparison with civil and political rights. Proponents of this myth believe, among other things, that unlike civil and political rights, economic, social and cultural rights, such as the right to housing, are too vague and too cost-intensive (requiring government action rather than inaction) to be litigated, and can only be implemented on the basis of policy, but not on law and justice.

Reality: Not only is the right to housing one of the most developed economic, social and cultural rights in terms of content, but a number of the constituent elements of the right to housing are adjudicated in courts of law, tribunals and other legal and quasi-legal forums on a daily basis. For example, in many countries Landlord-Tenant relations are regulated by legislation and enforced in courts or tribunals; discrimination with respect to accommodation is prohibited in national human rights legislation in countries across the world and land claims are commonly brought before adjudicators. Moreover, almost all countries have passed legislation on various aspects of housing, much of which can be brought before the courts. Concurrently, regional and international human rights bodies, such as the European Court of Human Rights, the UN Committee on Economic, Social and Cultural Rights (CESCR), the UN Committee on the Elimination of All Forms of Racial Discrimination (CERD) and the UN Committee Against Torture (CAT) have directly considered housing rights issues in their case law or jurisprudence. General Comment No. 4 adopted by the CESCR, identifies six specific areas within the right to adequate housing that are capable of judicial scrutiny: legal appeals aimed at preventing planned evictions through the issuance of injunctions; legal procedures seeking compensation following an illegal eviction; complaints against illegal actions carried out or supported by landlords in relation to rent levels, dwelling maintenance, and racial or other forms of discrimination; allegations of any form of discrimination in the allocation and availability of access to housing; complaints against landlords concerning unhealthy or inadequate housing conditions; and class action suits in situations involving significantly increased levels of homelessness.

Myth: Housing rights require the State to build housing - free of charge - for the entire population. Opponents of housing rights have often argued that recognising housing rights would require governments to build housing for the entire population - an entirely State-based, State-determined and State-driven approach to housing.

Reality: The right to adequate housing has never been interpreted under international law to mean that States must provide housing, free of charge, to all who request it. Under international law, once a State accepts the obligations attached to the right to housing, it agrees to endeavour, by all appropriate means possible, to ensure that everyone has access to housing resources adequate for health, well-being and security. Upon assuming legal obligations, *States are required to undertake a series of measures which indicate policy and legislative recognition of each of the constituent aspects of the right to housing, thus creating the necessary conditions so that all residents may enjoy the full entitlements of the right to housing within the shortest possible time-frame*. This is both reasonable and realistic. Although international law may not require States to provide housing for everyone who requests it, some countries have voluntarily taken on this responsibility. For example, homeless children in South Africa, homeless families in the United Kingdom, victims of natural disasters or others with acute housing needs in many countries do have rights to immediate housing relief. The CESCR has also provided some insight into whether States have to construct housing for all upon demand. The Committee has indicated that *the ICESCR requires States parties (that is, States which have ratified the ICESCR) to provide minimum subsistence rights for everyone regardless of the level of economic development of the country*. This means that States parties must ensure, at the very least, minimum essential levels of each of the rights in the ICESCR, including the right to housing. Thus, as a State party to the ICESCR, due to the high number of Romani individuals is deprived of basic shelter and housing, is failing to meet its obligations under the ICESCR. The Slovak government is required under to ICESCR to give due priority to those who are most vulnerable and disadvantaged and consequently least able to achieve the right to housing themselves, namely, Roma in Slovakia. In other words, State parties should provide housing or access to housing resources to those people who are homeless, inadequately housed or incapable of acquiring the bundle of entitlements that correspond with housing rights.

Myth: The State must fulfil all aspects of the right to housing immediately. Many States are fearful of the right to housing because they mistakenly believe that the right to housing requires them to immediately implement all housing rights obligations to comply with international law.

Reality: Of course, it would be ideal if States could fulfil all aspects of the right to housing immediately. International law has recognised the impracticality of this and has responded by interpreting this right to mean that States parties will have some legal obligations that must be undertaken immediately and others that are more long-term or progressive in nature. In other words, protecting and enforcing the right to housing will involve some immediate action and some future action, all of which will eventually lead to the full, society-wide, enjoyment of this right. The immediate action required by State parties to the ICESCR arises out of article 2(2) of the ICESCR which stipulates that States parties "[...] undertake to take steps [...] by all appropriate means, including particularly the adoption of legislative measures." In its General Comment No. 3, the CESCR interpreted this phrase to mean that State parties are obliged to immediately begin to adopt

measures towards the full enjoyment by everyone of the right to housing. While the full realisation of the right to adequate housing might be achieved progressively, steps toward the goal must be taken within a reasonably short time after the Covenant is ratified by the State. The Covenant also recognises that some aspects of the right to housing may not be capable of immediate realisation. In turn, according to the Covenant, States are obliged to undertake to achieve progressively the full realisation of the rights contained in the ICESCR. The use of the term "progressive realisation" is a recognition that full realisation of all economic, social and cultural rights, including the right to housing, will generally not be able to be achieved in a short period of time. This does not mean, however, that States can indefinitely defer efforts to ensure the enjoyment of the rights in the Covenant.

Myth: Housing rights are only necessary in developing countries. There is a tendency to view housing rights as an issue solely affecting developing countries where housing rights are often denied to massive portions of society.

Reality: Every nation in the world faces at least some housing rights challenges, including the countries making up the European Union, the United States, Canada and Australia. For example, in its 1998 review of Canada, the CESCR stated that they were "gravely concerned that such a wealthy country as Canada has allowed the problem of homelessness and inadequate housing to grow to such proportions that the mayors of Canada's ten largest cities have now declared homelessness a national disaster." While it may be true that the housing conditions in affluent countries are relatively better than in non-affluent countries, this is an inappropriate comparison. The proper comparison is intra-State. That is, how do the housing conditions of Roma and disadvantaged groups in Slovakia compare with those of more advantaged groups? Both developed and developing countries share a number of housing problems including rapidly growing homelessness, domestic violence, discrimination in the housing sector, forced evictions, harassment of tenants and an increased reliance on market mechanisms to fulfil housing needs without a corresponding alteration of State policy to provide access to accommodation for those unable to access private housing.

Myth: Squatters are criminals. Throughout the world squatters (those who live on property to which they do not have legal title) are often viewed and treated as criminals, social deviants and as being lazy. In many countries squatters are arrested, physically abused, beaten, and sometimes even killed. Rarely are squatters provided with what they really need: Security of tenure, housing and to be treated with dignity and respect.

Reality: Treating squatters like criminals means turning a blind eye to the economic and social circumstances that make squatting necessary. Without the buildings or lands they occupy, squatters would be homeless. While there are certainly exceptions, the overwhelming majority of Roma in Slovakia living in informal settlements (e.g., 'squatters') want nothing more than to live in a safe and secure home which they can afford, and where they would have security of tenure. Homeless Roma and those inadequately housed do not squat to break laws or get a free-ride, rather they are simply creating housing

solutions where the legal housing sector failed to provide housing. Squatting is an expression of desperation, but also of hope. If they had the means, most squatters would choose to live in adequate housing with secure tenure - just like everyone else.

II. UNDERSTANDING ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN GENERAL

Worksheet 3: Some Questions about ESC Rights

1. What are some of the challenges to the implementation of ESC rights?
2. What are the State's obligations with respect to ESC rights?
3. Explain the concept of progressive realisation with respect to ESC rights.
4. What is a government's obligation with respect to the non-discrimination clause in the International Covenant on Economic, Social and Cultural Rights?
5. Name some other standards on ESC rights.

A Guide to Key Provisions of the International Covenant on Economic, Social and Cultural Rights

Adapted from: Ravidran, D.J. (1998) Human Rights Praxis: A Resource Book for Study, Action and Reflection. Bangkok, Thailand: The Asian Forum for Human Rights and Development, and Comments by The United Nations Special Rapporteur on Economic, Social and Cultural Rights, H.E. Danilo Türk (1992).

See also, The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, Maastricht, January 22-26, 1997, and the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, UN Document E/CN.4/1987/17

The International Covenant on Economic, Social and Cultural Rights is the most important legal source of housing rights under international law. It outlines the following key rights, which are all intrinsically linked to each other:

- The Right to **Work** and to **Favourable Conditions of Work**;
- The Right to Form and Join **Trade Unions**;
- The Right to **Social Security**;
- The Right to **Family Life**;
- The Right to an **Adequate Standard of Living**;
- The Right to **Adequate Food and Clothing**;
- The Right to **Adequate Housing**;
- The Right to the Highest Attainable Level of **Health and Health Care**;
- The Right to **Education**;
- The Right to **Free and Compulsory Primary Education**;
- The Right to **Culture**; and
- The Right to **Water**.

In contrast to civil and political rights which have been the subject of decades of examination, discussion and elaboration, economic, social and cultural rights have been largely ignored by the human rights movement until recently. Consequently, our understanding of these rights is much more limited. In addition, while in the traditional human rights movement, human rights were seen as a means to curtail state action, economic, social and cultural rights in particular are being viewed increasingly as means for change and social transformation.

Article 2(1) of the ICESCR deals with the obligations of State Parties. According to the CESCR, Article 2 is of particular importance to a full understanding of the Covenant and must be seen as having a dynamic relationship with all of the other provisions of the Covenant. It describes the nature of the general legal obligations undertaken by State Parties to the Covenant. Article 2(1) of the Covenant states:

“Each State Party to the present Covenant **undertakes to take steps**, individually and through international assistance and co-operation, especially economic and technical, to the maximum of available resources, with a view to **achieving progressively** the full realisation of the rights recognised in the

present Covenant **by all the appropriate means**, including particularly the adoption of legal measures.”

The idea of progressive realisation contained in the ICESCR is very different from the wording of the International Covenant on Civil and Political Rights (ICCPR), which dictates immediate obligation. Consequently, ESC rights have been viewed by many as a statement of aspirations or goals rather than binding obligations like civil and political rights. Given that this school of thought prevailed for many years, it is important to be aware of the work of the CESCR, which is helping to provide an authoritative interpretation of the State’s obligations under the ICESCR through its General Comments. In particular the Committee has argued that many provisions of the ICESCR must be implemented immediately, particularly the anti-discrimination provisions contained in Article 2.

Meaning of ‘Undertakes to Take Steps’

The CESCR has clarified that, “while the full realisation of the relevant rights may be achieved progressively, *steps towards that goal must be taken within a reasonably short time after the Covenant’s entry into force* for the States concerned. Such steps should be *deliberate, concrete, and targeted* as clearly as possible toward meeting the obligations recognised in the Covenant.” This may entail the adoption of a national housing strategy, which, as stated in the Global Shelter Strategy, “defines the objectives for the development of shelter conditions, identifies the resources available to meet these goals and the most cost-effective way of using them and sets out the responsibilities and time-frame for the implementation of the necessary measures.” Such strategy should be devised via extensive and meaningful consultation and participation of affected groups; in the case of Slovakia, Roma. It should also be noted that the obligation “to take steps” includes both *policy development* and *effective implementation*. While the Slovak Government has adopted some national programmes and policies to remedy the current housing rights situation faced by Roma communities within the country, including the National Social Housing Programme, most experts agree that these policies have yet to be properly implemented and that their impact has been, at best, only minimal (please refer to Section V. for further information).

Meaning of ‘By all Appropriate Means, Including Particularly the Adoption of Legislative Measures’

The CESCR recognised that States must decide the appropriate means, and it may depend on the right that is being implemented. However, the Committee stated, ‘*State Party reports should indicate not only the measures that have been taken but also the basis on which they are considered the most appropriate under the circumstances.*’

A State Party cannot avoid its obligations by merely saying that its policies are aimed at economic development and that poverty or illiteracy will be eradicated eventually.

As for the term ‘*adoption of legislative measures,*’ the Committee stated that adopting legislation by no means exhausts the obligation of the State. The

mere existence of a law is not sufficient to prove that a State Party is carrying out its obligation under the Covenant. In addition to laws, the Committee has stressed the need for the “*provision of judicial remedies with respect to rights which may, in accordance with the national legal system, be considered justiciable.*”

Meaning of ‘Achieving Progressively’

It is normally assumed that due to the resources required for the realisation of economic, social and cultural rights, they are incapable of immediate implementation. However, the overall objective of the Covenant is to establish clear obligations for State Parties in respect of the full realisation of the rights in question. It thus imposes an obligation to move as quickly and effectively as possible towards that goal. The fact that the full realisation of most economic, social and cultural rights, including the right to housing, can only be achieved progressively does not alter the nature of the legal obligation of States. States cannot use the progressive realisation provision as a pretext for non-compliance. Nor can the State justify the deterioration or limitation of the rights recognised in the ICESCR on the basis of different social, religious or cultural, ethnic backgrounds.

The Committee has concluded that ‘*progressive realisation*’ includes not only the continuous improvement, where some steps must be taken immediately and others as soon as possible, but also the obligation to ensure that there are no regressive developments. The burden is on the State to demonstrate that it is making measurable progress towards the realisation of the rights outlined in the ICESCR.

Meaning of ‘To the Maximum of Its Available Resources’

The notion that economic resources are essential for the implementation of economic, social and cultural rights has been the major excuse for considering them secondary to civil and political rights. The Committee has acknowledged the importance of resources in fulfilling the rights but does not consider resource availability as an escape clause. For example, it stated, “*in cases where significant numbers of people live in poverty and hunger, it is for the State to show that a failure to provide for persons concerned was beyond its control.*” That being said, in such cases, the State should, as soon as possible, request international co-operation in accordance with the ICESCR and inform the CESCR thereof.

The Committee has developed the idea of ‘*minimum core obligations*’ to refute the argument that lack of resources hinders fulfilment of obligations. The Committee has observed that every State has a minimum core obligation to satisfy minimum essential levels of each of the rights in the Covenant.

The Committee has made it clear that “*even where the available resources are demonstrably inadequate, the obligation remains for a State Party to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances.*” In addition, the Committee stated, “*even in times of severe economic constraints [...] vulnerable members of the society can and indeed must be protected by the adoption of relatively low-cost targeted*

programmes.” Further, as recommended in the Global Shelter Strategy, States should abstain from certain practices and commit to facilitate “self-help” by affected groups.

Fact Sheet No. 21 on the right to adequate housing of the United Nations Office of the High Commissioner for Human Rights notes that States have obligations to respect, protect and fulfil housing rights. It is only the duty to fulfil which is subject, in part, to progressive realisation. Each obligation contains elements of obligation of conduct and obligation of result. The obligation of conduct means that States must take actions reasonably calculated to realise the enjoyment of a particular right. The obligation of result requires States to achieve specific targets to satisfy a detailed substantive standard. (See also Maastricht Guidelines on ESC Rights, Nos. 7 and 8)

"To Respect"

The duty to respect the right to adequate housing means that Governments should refrain from any action which prevents people from satisfying this right themselves when they are able to do so. Respecting this right will often only require abstention by the Government from certain practices and a commitment to facilitate the "self-help" initiatives of affected groups. In this context, States should desist from restricting the full enjoyment of the right to popular participation by the beneficiaries of housing, rights, and respect the fundamental right to organise and assemble.

In particular, the responsibility of respecting the right to adequate housing means that States must abstain from carrying out or otherwise advocating the forced or arbitrary eviction of persons and groups. States must respect people's rights to build their own dwellings and order their environments in a manner which most effectively suits their culture, skills, needs and wishes. Honouring the right to equality of treatment, the right to privacy of the home and other relevant rights also form part of the State's duty to respect housing rights.

In order to respect the right of Roma to adequate housing, the Slovak government must:

1. Respect the right to popular participation throughout the housing sphere, including the right of citizens to influence and decide upon any housing laws or policies;
2. Respect the rights to organise, assemble and associate, particularly with regard to tenants organisations, community-based organisations and housing co-operatives;
3. Provide legal protection from forced or threatened eviction or house demolitions;
4. Respect the right to equality of treatment, particularly in terms of the allocation of housing resources, access to housing finance and resident permits;
5. Respect the right to privacy, including the protection from arbitrary searches of residences;

6. Respect the right to be free from racial discrimination, particularly in the housing allocation process;
7. Be tolerant of and promote housing-related freedoms, including the right to self-help housing initiatives;
8. Ensure respect for cultural attributes of traditional housing construction methods, the protection of housing of historical significance; and
9. Refrain from coercive measures forcing another State to violate housing rights.

"To Protect"

To protect effectively the housing rights of a population, Governments must ensure that any possible violations of these rights by "third parties" such as landlords or property developers are prevented. Where such infringements do occur, the relevant public authorities should act to prevent any further deprivations and guarantee to affected persons access to legal remedies of redress for any infringement caused.

For example, in the summer of 2003, when police officers stood by and watched a property owner forcibly evict without notice the Romani residents of two buildings on Mlynárska Street in the city of Košice, Slovak authorities failed to protect the housing rights of the Romani group. However, when during subsequent ongoing legal proceedings related to the unlawful eviction, a local court ordered the property owner to allow the Romani group to return to their homes pending the court's verdict, it acted to prevent any further deprivation of the right to housing of the affected Roma.

In order to protect the rights of citizens from acts such as forced evictions, Governments should take immediate measures aimed at conferring legal security of tenure upon all persons and households in society who currently lack such protection. In addition, legislation and other effective measures, should protect residents from discrimination, harassment, and withdrawal of services or other threats.

Steps should be taken by States to ensure that housing-related costs for individuals, families and households are commensurate with income levels. A system of housing subsidies should be established for sectors of society unable to afford adequate housing, as well as for the protection of tenants against unreasonable or sporadic rent increases.

States should ensure the creation of judicial, quasi-judicial, administrative or political enforcement mechanisms capable of providing redress to alleged victims of any infringement of the right to adequate housing.

In order to protect and promote the housing rights of Roma, the Slovak government must:

1. Take immediate steps to ensure that violations of housing rights standards by the State and its agents are prevented from occurring;
2. Take immediate steps to ensure that violations of housing rights by third parties, including protection from abuse by landlords, are prevented;

3. Make available impartial legal remedies in cases of alleged violations of housing rights;
4. Provide comprehensive security of tenure throughout all housing sectors, applicable to all citizens;
5. Take active measures to protect all persons against racial or other forms of discrimination, harassment and the withdrawal of services;
6. Ensure that housing is affordable for all income groups in society. Housing costs should never be allowed to rise to levels preventing dwellers from accessing and satisfying other basic needs;
7. Regulate rent levels and provide housing subsidies to ensure compliance with the affordability principle;
8. Actively protect the overall habitability and physical safety of dwellers, with particular regard to protecting dwellers from cold, damp, heat, rain, wind or other threats to health, structural hazards and disease vectors;
9. Build housing near to employment options, schools, health care centres and open spaces. Conversely, housing should not be built in dangerous areas where threats to environmental health and hygiene exist;
10. Respond constructively to housing rights violations, wherever they occur, both domestically and in other countries;
11. Without delay, review all laws, policies, regulations or other directives having any bearing on the fulfilment of housing rights;
12. Recognise the right to adequate housing, both in legislation policy;
13. Target policies towards ensuring the full realisation of housing rights in the shortest possible time frame for all sectors of society;
14. Establish and apply benchmarks to monitor societal housing needs, including the use of appropriate indicators;
15. Develop and implement a national housing strategy;
16. Prioritise targeted strategies towards satisfying the housing needs of disadvantaged groups, including the elderly, children, the physically disabled, the terminally ill, HIV-positive individuals, persons with persistent medical problems, the mentally ill, victims of natural disasters and people living in disaster-prone areas; and
17. Ensure full access to housing resources by all ethnic, racial, national, minority or other social groups.

"To Fulfil"

The obligation of a State to *fulfil* the right to adequate housing is both positive and interventionary. It is in this category, in particular, that issues of public expenditure, government regulation of the economy and land market, the provision of public services and related infrastructure, the redistribution of income and other positive obligations emerge.

In order to fulfil the housing rights of Roma, the Government of Slovakia must:

1. Devote a reasonable proportion of public expenditure to housing, consistent with social housing requirements;
2. Establish housing subsidies for tenants and first-time home buyers, as well as the effective housing finance measures for low-income groups;
3. Ensure that public agencies construct, maintain and finance public housing;

4. Provide public services, including infrastructure, water, electricity, sanitation, heating, sewage, draining, roads, health care facilities and emergency services;
5. Actively support those persons, families and groups unable to satisfy their housing needs by individual efforts;
6. Promote natural and/or indigenous building materials for use in the housing process;
7. Industrialised countries should provide a proportion of their overseas developmental assistance towards assisting developing countries in satisfying housing rights obligations; and
8. Provide adequate housing accommodation for all refugees and asylum seekers within a State's borders.

The CESCR has asserted that identifiable governmental strategies aimed at securing the right of all persons to live in peace and dignity should be developed. Access to land as an entitlement should be included in such strategies. The Committee has stated further that many of the measures required to satisfy the right to housing will involve resource allocations and that, in some cases, public funds allocated to housing might most usefully be spent on direct construction of new housing. According to the United Nations Economic Commission for Europe "Housing has not been considered a political priority in Slovakia during the transition [to a market based economy]." Successive Governments have failed to implement a systematic and comprehensive housing policy reform to boost housing construction and make housing markets operate efficiently. A comprehensive and efficient national housing policy needs to perceive housing investment as an engine for economic growth and social development.

Generally, on the issue of housing finance, States must establish forms and levels of expenditure which adequately reflect society's housing needs, and which are consistent with the obligations arising from the Covenant and other legal sources.

As proclaimed in the Limburg Principles on the Implementation of the Covenant on Economic, Social and Cultural Rights, and reiterated subsequently by the Committee, due priority shall be given, in the use of all available resources, to the realisation of rights recognised in the Covenant, mindful of the need to assure to everyone the satisfaction of subsistence requirements, as well as the provision of essential services.

Obligations of Non-State Actors

Traditional views of human rights law distinguish between public and private actors. This once widely accepted dichotomy, however, has become blurred

such that private actors (often in conjunction with the State) may now be deemed liable for violations of economic, social and cultural rights, consequently, human rights law has irrevocably entered the private domain.

The potential impact of actions by third parties to the overall satisfaction of economic, social and cultural rights is substantial, and perhaps even more so than with regard to civil and political rights. Employers, corporations, landlords, teachers, doctors and any other citizen capable of violating an individual's rights due to neglect or encouragement by the State are increasingly being held accountable as notions of State responsibility expand beyond traditional confines.

Examples of Private Individuals and Bodies not Respecting Housing Rights

- Landlords evicting tenants from their homes without a good reason and a court order
- Banks refusing to extend housing finance to people who live in low-income areas because of their race or social status
- Industries polluting the water supply of communities

Areas for Action towards the Full and Progressive Realisation of Housing Rights

UN-HABITAT and OHCHR, Nairobi and Geneva, March 2003

Action Areas	Respect	Protect	Fulfil
Legal framework and monitoring	<ul style="list-style-type: none"> ▪ International and national norms, standards and guidelines ▪ Need for reporting on violations and progress in realisation of housing rights ▪ Measures against retrogressively 	<ul style="list-style-type: none"> ▪ Benchmarks of progressive realisation and compliance of domestic measures with international level ▪ Mechanisms for monitoring and evaluation at the local, national and global levels 	<ul style="list-style-type: none"> ▪ Legal reforms ▪ Comprehensive policies incorporating requirements of a rights based approach ▪ Prevention of violations of housing rights ▪ Facilitation of restitution and compensation measures in cases of violations
Tenurial arrangements	<ul style="list-style-type: none"> ▪ Need for residential stability 	<ul style="list-style-type: none"> ▪ Security of tenure ▪ Measures to eliminate forced 	<ul style="list-style-type: none"> ▪ Improvement of cadastral systems ▪ Improvement of land and property

		<p>evictions</p> <ul style="list-style-type: none"> ▪ Tenant / landlord relations organised by law ▪ Equal rights of all to inheritance, ownership and control of land and property 	<p>registration</p> <ul style="list-style-type: none"> ▪ Appropriate management of housing stocks
Homelessness	<ul style="list-style-type: none"> ▪ Rights and needs of homeless people 	<ul style="list-style-type: none"> ▪ Specific measures and programmes for homeless people 	<ul style="list-style-type: none"> ▪ Eradication of homelessness
Popular participation and involvement of stakeholders	<ul style="list-style-type: none"> ▪ Need for information exchange and advocacy ▪ Expression of needs and preferences ▪ Need for co-operation and co-ordination between stakeholders 	<ul style="list-style-type: none"> ▪ Access to information on all aspects of housing ▪ Roles and responsibilities of all stakeholders and effective co-operation 	<ul style="list-style-type: none"> ▪ Participatory approaches in development and management of housing ▪ Formulation and implementation of effective enabling policies and strategies
Social integration	<ul style="list-style-type: none"> ▪ Measures against discrimination ▪ Specific needs of women, people living in poverty, disadvantaged and vulnerable groups 	<ul style="list-style-type: none"> ▪ Affirmative action targeting women, people living in poverty, disadvantaged and vulnerable groups ▪ Measures integrating all social groups in neighbourhoods and cities 	<ul style="list-style-type: none"> ▪ Provision of housing to people with special needs ▪ Inclusive communities and cities
Sustainable housing development	<ul style="list-style-type: none"> ▪ Diversity of housing needs 	<ul style="list-style-type: none"> ▪ Adaptability to diverse needs and conditions 	<ul style="list-style-type: none"> ▪ Contributions towards an adequate standard of living for all

	<ul style="list-style-type: none"> ▪ Privacy ▪ Need for improved access to housing resources (such as land, finance, building materials and services) 	<ul style="list-style-type: none"> ▪ Cultural adequacy 	<ul style="list-style-type: none"> ▪ Effective and efficient housing markets ▪ Adequate housing supply, including rental options
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III. HOUSING RIGHTS UNDER INTERNATIONAL and EUROPEAN LAW

International Legal Resources on Housing Rights

The legal resources listed below — declarations, covenants and conventions — together form the body of international law recognising housing rights.

Defending Roma Housing Rights in Slovakia

Although the legal nature of the various standards differ (just as the legal nature of a Constitution may differ from that of a municipal guideline at the national level), they are all relevant sources to refer to in support of housing rights for everyone, everywhere.

In legal terms, the most powerful documents are called conventions, covenants or charters. They are legally binding treaties. Declarations and recommendations are also of vital importance, but carry less legal weight than conventions, covenants and charters. Arguments supporting housing rights, therefore, are much stronger if a given country has ratified or acceded to a given treaty. When Slovakia succeeded to the treaties listed below, it voluntarily acquired a legal obligation to fulfill the particular housing rights provisions contained in each treaty.

The Universal Declaration of Human Rights (UDHR)

The Universal Declaration of Human Rights is the first major international agreement on human rights. It is considered to have been the inspiration to all subsequent human rights treaties. It is also the first human rights standard to recognise housing rights. Adopted and proclaimed by the General Assembly on 10 December 1948, Article 25 of the UDHR enshrines a specific right for everyone to adequate housing:

Everyone has the right to a standard living adequate for the health and well-being of himself and of his family, including food, clothing, **housing** and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.[Article 25(1)].

International Covenant on Economic, Social and Cultural Rights (ICESCR)

At the international level, the most significant articulation of the right to housing is found in the ICESCR. Slovakia succeeded to the ICESCR on May 28, 1993, and is now legally bound to the obligations therein. The right to adequate housing is found in article 11(1). This is the most legally significant universal codification provision recognising this right and has been subject to the greatest analysis, application and interpretation of all international legal sources of housing rights. Although the Covenant recognises the right to housing as a part of the larger right to an adequate standard of living, under international human rights law the right to adequate housing is understood as an independent or freestanding right.

Article 11(1) states, *“The State parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and for 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.”*

International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)

Slovakia succeeded to the ICERD on May 28, 1993, and is now legally bound to its obligations therein. The UN Committee on the Elimination of All Forms of Racial Discrimination (CERD) monitors compliance with the Convention.

Article 3 states, “*States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.*”

Article 5 states, “*In compliance with the fundamental obligations laid down in article 2 of this Convention, State Parties undertake to prohibit and eliminate racial discrimination in all of its forms and to guarantee the right of 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) in particular [...] (iii) **the right to housing.***”

Romani cases before the CERD: Koptova v. Slovakia

In 1981, seven Romani families left their villages of Rovne and Zbudské Dlhe to work and live on an agricultural cooperative located in the Krasný Brod municipality. They obtained permanent residency in the Nagov and Rokytovce municipalities (which were at that time part of the Krasný Brod municipality). At the end of 1989, the cooperative ceased operating and the Romani families lost their jobs and their housing at the cooperative.

For the families, a long period of homelessness and anti-Romani racism followed. Over the next 16 years, the families moved from village to village, seeking a permanent and secure residence. They attempted to avail themselves of the housing provided by local authorities, but on more than one occasion, anti-Romani hostility on the part of local officials and non-Romani residents caused them to flee. They tried to build temporary dwellings, but local non-Roma tore them down.

On June 18, 1997, the Municipal Council of Rokytovce enacted Resolution No. 21, which expressly forbade the Romani families from settling in the village and threatened them with expulsion should they attempt to settle there. Soon thereafter, on July 16, 1997, the Municipality of Nagov adopted Resolution No. 22, which forbade Romani citizens to enter the village or to settle in shelters in the village district. The Resolution explicitly provided that its effect would be of permanent duration.

Anna Koptova, a Slovak citizen of Romani ethnicity and director of the Legal Defence Bureau for Ethnic Minorities of the Good Romany Fairy Kesaj Foundation in Košice, brought a complaint before the CERD, represented by the ERRC. She alleged that as a person of Romani origin, she was a victim of violations of the ICERD, because Resolutions No. 21 and 22 prohibited her

from entering the Municipalities of Rokytovce and Nagov on the basis of her ethnicity. In April 1999, the Resolutions were rescinded.

In *Koptova v. Slovakia*, Communication No. 13/1998 (CERD/57/D/13/1998), the CERD found a violation of Article 5(d)(l) of the ICERD, because the “wording” and the “context in which [the Resolutions] were adopted” indicated that any Roma would have been prohibited from settling in the villages on the basis of their ethnicity. The CERD recommended that Slovakia “take the necessary measures to ensure that practices restricting the freedom of movement and residence of Romas under its jurisdiction are fully and promptly eliminated.”

International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

On June 27, 1993, Slovakia succeeded to the CEDAW, legally binding itself to the standards therein. The UN Committee on the Elimination of All Forms of Discrimination Against Women monitors State party compliance with the Convention.

Article 14 states, “[...] 2. *State Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right [...] (h) to enjoy adequate living conditions, particularly in relation to **housing**, sanitation, electricity and water supply, transport and communications.*”

International Convention on the Rights of the Child (CRC)

Slovakia succeeded to the CRC on January 1, 1993, thereby legally binding itself to the obligations elaborated therein. The Committee on the Rights of the Child monitors State party compliance with the Convention.

Article 27 states, “[...] 3. *State Parties in accordance with national conditions and within their means shall take appropriate measure to assist parents and others responsible for the child to implement this right and shall in the case of need provide material assistance and support programmes, particularly with regards to nutrition, clothing and **housing**.*”

International Convention Relating to the Status of Refugees (1951), Slovakia succeeded to this Convention on February 4, 1993, and is now legally bound to the obligations therein.

Article 21 states, “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 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.”

Using the International Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Uphold Housing Rights

The Convention Against Torture, to which Slovakia succeeded on May 28, 1993, as well as other instruments prohibiting torture and other cruel, inhuman or degrading treatment or punishment, should not be overlooked as a tool to prevent or remedy the practice of forced evictions. Forced evictions, as the UN Human Rights Commission affirmed in 1993, violate a range of human rights. As shelter is so integral to a safe, healthy and dignified life, forced eviction not only directly violates the right to adequate housing and the right to be free from arbitrary or unlawful interference with the home, but also jeopardises a person's right to life, their right to security of the person, their right to humane treatment, and their right to the highest attainable standard of health. As such, deliberate acts of forced eviction clearly constitute cruel or inhuman treatment, and under certain circumstances may amount to torture itself under international human rights law.

Under the individual complaint procedure, the Committee against Torture receives complaints, or communications, from individuals or on behalf of individuals who claim to be victims of a violation by a State Party of the provisions of the Convention Against Torture. In a monumental development, the CAT recently recognised forced eviction as a violation of the Convention. The case is of particular importance because the victims in the case at hand were Romani.

On the basis of an application submitted jointly by the ERRC, the Belgrade-based NGO Humanitarian Law Center (HLC) and attorney Dragan Prelević, the CAT found forced eviction to be in violation of the Convention Against Torture, and by doing so not only provided a remedy to the victims of forced eviction but also provided human rights advocates with beneficial jurisprudence. On December 2, 2002, the CAT held that the forced eviction and destruction of a Romani community in Serbia and Montenegro violated the Convention, even though public officials did not perpetrate the eviction. The case, *Hijrizi v. Yugoslavia*, involved the forced eviction and destruction of the Bozova Glavica Romani settlement in the city of Danilovgrad by private residents who lived nearby. Earlier, the perpetrators threatened to "exterminate" the community and "burn down" their houses. The Danilovgrad Police Department reacted by telling the Romani community that they should evacuate the settlement immediately as they, the police, would be unable to protect them. Most of the Romani residents fled their homes, leaving a few behind to protect their housing and other possessions. During the afternoon of April 15, 1995, the non-Romani residents entered Bozova Glavica shouting slogans such as "we shall evict them" and "we shall burn down the settlement". The crowd soon began to break windows and set fire to the housing, resulting in the entire settlement being levelled and all properties belonging to its Romani residents completely destroyed. Several days later the debris of Bozova Glavica was completely cleared away by municipal construction equipment, leaving no trace of the community.

Article 16 of the Convention Against Torture states, *“Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in Article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”*

The CAT found that the Police Department did not take any appropriate steps to protect the residents of Bozova Glavica, and that the burning and destruction of settlement constituted acts of cruel, inhuman or degrading treatment or punishment within the meaning of Article 16. Consequently, the Committee held that the Government of Serbia and Montenegro had violated Article 16 of the Convention by not protecting the rights of the residents of Bozova Glavica. For the first time, and although the right to compensation is not expressly provided in the Convention for victims of acts of ill-treatment other than torture, the Committee concluded that the State Party should compensate the victims of this violation. As a direct result of the Committee’s finding, the Montenegrin Government agreed on June 19, 2003, to pay 985,000 Euro in compensation to seventy-four Romani victims of the Danilovgrad tragedy.

European Legal Sources on Housing Rights

Several European organisations also possess human rights law-making capacities.

Council of Europe

European Convention for the Protection of Human Rights and Fundamental Freedoms

Slovakia ratified the Convention on March 18, 1992, thereby legally binding itself to the obligations elaborated therein. On the same day, Slovakia ratified Protocol Nos.1 and 4 to the Convention. Individual and group complaints alleging violations of the European Convention can be submitted to the European Court of Human Rights (ECHR).

Article 8(1) states, *“Everyone has the right to respect for his private and family life, his home and his correspondence.”*

Article 1(1) of Protocol No. 1 states, *“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.”*

Article 1(2) of Protocol No. 1 states, *“The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”*

Article 2(1) of Protocol No. 4 states, *“Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and **freedom to choose his residence.**”*

Romani cases before the ECHR: Chapman v. the United Kingdom

In *Chapman*, the applicant, a Gypsy/Traveller from the UK, wanted to station a mobile home on property that she purchased, in direct conflict with the area’s designation as Metropolitan Green Belt. Though the ECHR found there is no general obligation for a government to provide housing under Article 8, the Court also stated that, “[n]onetheless, although the fact of being a member of a minority with a traditional lifestyle different from that of the majority of a society does not confer an immunity from general laws intended to safeguard assets common to the whole society such as the environment, it may have an incidence on the manner in which such laws are to be implemented. [...] **The vulnerable position of gypsies as a minority means that some special consideration should be given to their needs and their different lifestyle**

both in the relevant regulatory planning framework and in arriving at the decisions in particular cases. **To this extent there is thus a positive obligation imposed on the Contracting States by virtue of Article 8 to facilitate the gypsy way of life.**” In *Chapman*, the positive obligation on the United Kingdom was not sufficient to overcome the environmental land restrictions where the applicant wanted to live. In upholding the land restriction, the Court weighed the existence of alternative locations for an individual that wanted to live in a caravan. However, the Court did state, “that if no alternative accommodation is available, the interference is more serious than where such accommodation is available. The more suitable the alternative accommodation is, the less serious is the interference constituted by moving the applicant from his or her existing accommodation.” Therefore, the Court suggested that minorities living in illegal accommodations may be permitted to stay if the government has not provided alternative accommodations for them. *Chapman* implies that under Article 8, the Government may have an obligation to provide alternative accommodations to minorities who desire to maintain their traditional lifestyle.

European Social Charter (ESC)

The European Social Charter was adopted in 1961 and then revised and amended in 1996 to include article 31 on housing rights. The European Committee of Social Rights monitors state compliance with this Charter. Slovakia ratified the ESC on June 22, 1998, and signed the Revised ESC on November 18, 1999. Housing rights provisions are also found in articles 16 and 19(4) of the Charter and within article 4 of the Additional Protocol to the Charter.

Article 31 states, “*With a view to ensuring the effective exercise of **the right to housing**, the Parties undertake to take measures designed:* 1. *to promote **access to housing** of an adequate standard;* 2. *to **prevent and reduce homelessness** with a view to its gradual elimination;* 3. *to **make the price of housing accessible** to those without adequate resources.”*

Article 16 states, “*With a view to ensuring the necessary conditions for the full development of the family which is the fundamental unit of society, the Contracting Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, **provision of family housing**, benefits for the newly married, and other appropriate means.”*

Article 19 states, “*With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Contracting Party, the Contracting States undertake [...] (4) to secure for such workers lawfully within their territories, insofar as such matters are regulated by law or regulations or are subject to the control of administrative authorities, treatment not less*

*favourable than that of their own nationals in respect of the following matters [...] (c) **accommodation.***”

Article 23 states, “*With a view to ensuring the effective exercise of the right of elderly persons to social protection, the Parties undertake to adopt or encourage, either directly or in co-operation with public or private organisations, appropriate measures designed in particular: to enable elderly persons to choose their life-style freely and to lead independent lives in their familiar surroundings for as long as they wish and are able, by means of: (a) **provision of housing suited to their needs and their state of health or of adequate support for adapting their housing.***”

Article 30 states, “*With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, the Parties undertake: a. to take measures within the framework of an overall and co-ordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, **housing**, training, education, culture and social and medical assistance.*”

Article 4 of the Additional Protocol states, “*With a view to ensuring the effective exercise of the right of elderly persons to social protection, the States parties undertake to adopt or encourage, either directly or in cooperation with public private organizations, appropriate measures designed in particular to enable elderly persons to choose their life-style freely and to lead independent lives in their familiar surroundings for as long as they wish and are able, by means of: **provision of housing suited to their needs and their states of health or of adequate support for adapting their housing [and] to guarantee elderly persons living in institutions appropriate support, while respecting their privacy, and participation in decisions concerning living conditions in the institution.*** “

Romani cases before the ESC: European Roma Rights Center v. Greece

On April 4, 2003, the ERRC filed a collective complaint against Greece with the European Committee of Social Rights. The collective complaint procedure allows international NGOs which have consultative status with the Council of Europe and are listed as having standing before the ESC mechanism to submit collective complaints to the European Committee of Social Rights against countries which have accepted this provision.

In its complaint, the ERRC alleged that the Greek government had conducted discriminatory housing policies against the Romani population on its territory through the frequent enforcement of a 1983 Ministerial Decree, which, in effect, creates and/or reinforces Romani ghettos and encourages forced evictions. The complaint alleged that the result of the policy is widespread residential segregation of Roma, as well as the prevalent practices of forced eviction and relocation to Roma to segregated areas. As reported in the complaint, Roma living in segregated areas frequently lack basic security of

tenure and live in substandard conditions, with inadequate infrastructure and limited access to public services. The ERRC alleged that by pursuing a policy of racial segregation in the field of housing and failing to secure adequate living standards for a large number of Roma in Greece, the Greek government had failed to abide by its obligations under the ESC with respect to Roma.

On June 16, 2003, the European Committee of Social Rights declared the ERRC's complaint admissible. The case was currently pending before the Committee as of January 31, 2004.

European Union

EU Council Directive 2000/43/EC “implementing the principle of equal treatment between persons irrespective of racial or ethnic origin”

Article 3 states, “*Within the limits of the powers conferred upon the Community, this Directive shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to: [...] (e) social protection, including social security and healthcare; [...] (f) social advantages; [...] (h) access to and supply of goods and services which are available to the public, including **housing**.*”

The Directive requires Member States (including those entering the European Union in 2004) to adopt comprehensive anti-discrimination law, and provides a number of specifications about the specifics of such a law, aimed at ensuring that individuals have access to justice when they suffer the extreme harm of racial discrimination. As of the end of January 2004, Slovak lawmakers had not yet managed to adopt the required law, although a bill had twice gone before Slovak parliament.

Community Charter of Fundamental Social Rights (1989)

Article 29 states, “*All disabled persons, whatever be the origin and nature of their disablement must be entitled to additional concrete measures aiming at improving their social and professional integration. These measures must concern, in particular, according to the capacities of the beneficiaries, vocational training, ergonomics, accessibility, mobility, means of transport and **housing**.*”

IV. DISCRIMINATION AND HOUSING RIGHTS

The high level of discrimination against Roma in Slovakia directly impacts the ability of Roma to access the right to adequate housing. The following is but one example of the way in which racist attitudes and behaviours by non-Roma are manifested:

On March 20, 2002, the Councillors of the municipality of Dobšina, Slovakia, adopted a resolution in which they approved a plan to construct low cost houses for the Roma inhabitants of the town. About 1,800 Roma live in Dobšina in appalling conditions. Most of their houses are thatched huts or houses made of cardboard, with no potable drinking water, toilets or drainage and sewage systems. On hearing about the Councillors' resolution, some of the inhabitants of Dobšina and surrounding villages set up a five-member petition committee, and designed a petition which read "I do not agree with the building of low cost houses for people of Gypsy origin on the territory of Dobšina, as it will lead to an influx of inadaptable citizens of Gypsy origin from the surrounding villages, even from other districts and regions". More than 2,700 inhabitants of Dobšina signed the petition. The Councillors considered the petition and voted, unanimously, against building houses for Roma, cancelling the earlier approved resolution. The ERRC's Slovak partner organisation, the *League of Human Rights Activists*, wrote to the District Prosecutor on behalf of 17 Roma from Dobšina to request that the Prosecutor investigate and prosecute the authors of the discriminatory petition, and overturn the decision of the Dobšina town Councillors to no longer build houses for Roma in Dobšina. The District Prosecutor turned down the request to investigate the issue on the grounds that he had no jurisdiction over the matter. A submission to the Slovak Constitutional Court was turned down on the grounds that the applicants had provided no evidence that any fundamental right had been violated by the petition or by the Councillors' second resolution.

The ERRC (with assistance from local activist Jozef Červenak) and the *League of Human Rights Activists* submitted a communication to the CERD, asserting that a number of rights secured to them under the Convention have been violated. The case was pending with the CERD as of January 31, 2004.

The right of Roma to be free of such discriminatory actions and attitudes is set out in many international laws and documents.

The Rights to Non-Discrimination and Equality

Article 2(2) and **Article 3** of the ICESCR deal with non-discrimination with respect to the enjoyment of the rights set out in the Covenant. Article 2(2) is

similar to other instruments in stating that the rights should be enjoyed without discrimination on the grounds of “*race, colour, sex, language, religion, political, or other opinion, national, social origin, property, birth, or other status.*”

Article 3 is more specific. It provides for the “*equal right of men and women to enjoy the rights [...] set forth in the Covenant.*”

The concept of ‘*progressive realisation*’ does not limit the non-discrimination clause or the obligation to ensure equal rights of men and women. A State is obliged to ensure the non-discrimination and equality clause immediately rather than progressively.

The obligation to ensure equal rights of men and women includes affirmative action to eliminate conditions that contribute to discrimination and inequality. States must also give priority to members of the most vulnerable and disadvantaged groups, including Roma in Slovakia, and consequently facilitate the achievement of these rights by members of said groups for themselves.

Addition Standards on the Housing Rights of Roma

UN Committee on the Elimination of All Forms of Racial Discrimination (CERD)

In its General Recommendation No. 27 on Discrimination against Roma, the CERD recommended,

“States parties to the Convention, taking into account their specific situations, adopt for the benefit of members of the Roma communities, inter alia, all or part of the following measures, as appropriate. [...]

30. To develop and implement policies and projects aimed at avoiding segregation of Roma communities in housing; to involve Roma communities and associations as partners together with other persons in housing project construction, rehabilitation and maintenance.

31. To act firmly against any discriminatory practices affecting Roma, mainly by local authorities and private owners, with regard to taking up residence and access to housing; to act firmly against local measures denying residence to and unlawful expulsion of Roma, and to refrain from placing Roma in camps outside populated areas that are isolated and without access to health care and other facilities.

32. To take the necessary measures, as appropriate, for offering Roma nomadic groups or Travellers camping places for their caravans, with all necessary facilities.”

Regional Organisations have also issued their own recommendations regarding the housing rights of the Roma.

Summary of Recommendations from the Council of Europe¹

“The Assembly therefore recommends that the Committee of Ministers initiate, where appropriate by proposals to governments or the relevant local and regional authorities of member states, the following measures: ...

Further programmes should be set up in the member states to improve the housing situation, education and labour possibilities of those Gypsies who are living in less favourable circumstances; the Gypsies should participate in the preparation of these programmes and in their implementation; ...

Co-operation should be pursued with the European Community on subjects relating to Gypsies, such as education, combating poverty, safeguarding the European cultural heritage, recognition of minorities and promotion of equal rights.”

Summary of Recommendations from the European Commission against Racism and Intolerance (ECRI)²

“The European Commission against Racism and Intolerance [...] recommends the following to Governments of member States: [...]

[T]o ensure that discrimination as such, as well as discriminatory practices, are combated through adequate legislation and to introduce into civil law specific provisions to this end, particularly in the fields of employment, housing and education; [...]

[T]o ensure that the questions relating to “travelling” within a country, in particular regulations concerning residence and town planning, are solved in a way which does not hinder the way of life of the persons concerned;

[T]o develop institutional arrangements to promote an active role and participation of Roma/Gypsy communities in the decision-making process, through national, regional and local consultative mechanisms, with priority placed on the idea of partnership on an equal footing; [...]

[T]o pay particular attention to the situation of Roma/Gypsy women, who are often the subject of double discrimination, as women and as Roma/Gypsies.”

Summary of Recommendations from the OSCE³

¹ Council of Europe Recommendation on Gypsies in Europe 1203 (1993),.

² European Commission against Racism and Intolerance General Policy Recommendation No. 3 Combating Racism and Intolerance Against Roma/Gypsies (1998).

“The housing and health concerns of many Romani communities in OSCE participating States merit concerted attention and commitment of resources. The following are some measures that could be usefully considered.

1. Governments should show greater readiness to assume the risk of guaranteeing loans that may be available from international organizations and financial institutions for housing projects.
2. Foreign donors should consider funding feasibility studies on specific housing projects, which may in turn encourage local and national authorities to apply to these same donors for loans to implement larger housing projects.
3. OSCE participating States should review their regulatory systems with a view toward eliminating requirements that serve to block housing programs from moving forward even when sufficient funding may be available.
4. Romani individuals should be involved in the design of housing policies and meaningfully engaged in the construction, rehabilitation and/or maintenance of public housing projects meant to benefit them.
5. While respecting the free choice of particular Romani communities to live with other Roma, governments should ensure that housing policies do not foster segregation. One approach that may be productive is to provide financial incentives for housing projects whose intended beneficiaries include a mix of Roma and non-Roma.
6. Governments must ensure that Roma are not victims of discrimination in respect of housing. Where such legislation does not yet exist, OSCE participating States should enact laws that prohibit discrimination in housing and provide effective remedies for violations.
7. In view of the extreme insecurity many Roma now experience in respect of housing, governments should also endeavor to regularize the legal status of Roma who now live in circumstances of unsettled legality.
8. Governments should take immediate steps to address the high incidence of disease and malnutrition among Romani communities.
9. Governments should take steps to ensure equal access of Roma to public health care.
10. Governments should give special attention to the particular situation and needs of women in taking measures to ensure, *inter alia*, adequate housing and access to health care.

³ High Commissioner on National Minorities (2000), “Report on the situation of Roma and Sinti in the OSCE Area,” Organization for Security and Co-operation in Europe, page 163.

V. SLOVAK LAW AND POLICY RELATING TO HOUSING

Housing Rights within the Context of Slovak Law

Article 11 of the Constitution of the Slovak Republic stipulates, “**International treaties on human rights and basic liberties that were ratified by the Slovak Republic and promulgated in a manner determined by law take precedence over its own laws, provided that they secure a greater extent of constitutional rights and liberties.**”

Another key provision of the Slovak Constitution includes part five on economic and social rights, which states, at Article 39(2), “Everyone who is in material need is entitled to assistance necessary to ensure basic living conditions.” Part two of the Constitution, on basic rights and freedoms, guarantees, at Article 16, the inviolability of the person and its privacy and outlaws torture and other forms of cruel, inhuman or degrading treatment or punishment. Article 19 sets out the right to human dignity as well as the right to protection against unwanted interference in one’s private and family life. Article 20 bestows on all persons the right to own property, while Article 21 declares, “A person’s home is inviolable. It must not be entered without the resident’s consent.”

The first part of Chapter two, states, at Article 12:

“(1) People are free and equal in dignity and their rights. Basic rights and liberties are inviolable, inalienable, secured by law, and unchallengeable.

(2) Basic rights and liberties on the territory of the Slovak Republic are guaranteed to everyone regardless of sex, race, color of skin, language, creed and religion, political or other beliefs, national or social origin, affiliation to a nation or ethnic group, property, descent, or another status. No one must be harmed, preferred, or discriminated against on these grounds.

(3) Everyone has the right to freely decide on his [or her] nationality. Any influence on this decision and any form of pressure aimed at assimilation are forbidden.

(4) No one must be restricted in his rights because he [or she] upholds his basic rights and liberties.”

Article 12 is of particular importance to Roma in Slovakia, and specifically with respect to access to adequate housing, as it guarantees equality amongst all people before the law.

Registration of Residence

Act 253/1998 on Registration of the Stay/Residence of the Citizens of the Slovak Republic and on Registration of Inhabitants sets out rights and duties

of citizens and the government in registering stay or residence. Article 2 of the law sets out that persons should register, or rather announce, the start and end of their residence in a given locality. According to Article 3 sets out the information that citizens must provide at the time of registration including, at paragraph 3, an Identification Card or other document proving identity and written confirmation of the right to use the housing in the form of ownership papers, a lease contract or other forms of permission.

Slovak Roma face great problems with regard to registration. First, many Roma live in informal housing which is not, and many times can not, be registered in accordance with Slovak law and, as such, can not register themselves as residents of such housing. Therefore, many Roma are registered as residents of places in which they do not live and must therefore travel, at times great, distances to collect benefits which are tied to residence. Second, many local governments in Slovakia treat Roma announcing their residence as applicants and take it upon themselves to “decide” whether to accept such applications, in most cases issuing negative decisions. Nowhere does Slovak law authorise local governments to make any decision related to permanent residence. It merely states that they must register those persons who meet the requirements of Article 3 upon announcement of residence on their territory.

Allocation of Social Housing

The allocation of social housing, where it exists, in Slovakia, is very problematic in that, according to Act 369/1990 on Municipalities, local councils can establish local commissions to deal with social issues, including housing, but are not obliged to do so. Not every municipality in Slovakia has such commissions. Procedures related to the allocation of social housing therefore vary from municipality to municipality. The regulation of social housing at the local level, with no real guidelines established at a national level has created a situation in Slovakia whereby procedures are wide open to the possibility of discrimination on the basis of race/ethnicity and corruption to the detriment of Roma.

Adverse Possession

The issue of adverse possession falls within the competence of the Slovak Civil Code, Law 40/1964. According to Article 134(1), the holder of real property becomes the factual owner after a period of ten years if s/he held a good faith belief that s/he was the owner of the property.

Tenant's Rights and Evictions

Similarly, legislation pertaining to the rental of property, landlord-tenant relations and evictions are within the competence of the Slovak Civil Code. According to the Civil Code, a lessor may terminate a lease contract for reasons set out in law, including: repossession of the flat for personal use (including by family members); the lessee stopped executing work for the lessor; gross violation of the leased flat or house rules despite written warnings; gross violation of duties, in particular non-payment of rent or reimbursement for performance provided with use of the flat for more than three months, or by allowing another person to use the flat without the written

permission of the lessor; if, in the public interest, it is necessary to treat the flat or house in a way that makes its use impossible, or if the flat or house requires repairs due to whose execution the flat or house can not be used for at least six months; if the case is a flat of special purpose or a flat in a house of special purpose and the lessee is not a handicapped person; if the lessee uses without lessor's content for the purposes other than housing.

Before changes to the Civil Code in 2003, according to Article 676(2), the landlord was obligated to file a petition for eviction within 30 days of a lease's expiration. If the landlord failed to take such action within thirty days of expiration, the tenant could presume that the lease agreement had been renewed under the same terms as originally agreed. However, the law was amended in 2003 to state that Article 676(2) does not apply in the cases of leases of flats, significantly deteriorating the legal protection for lessees.

Article 710(4) states that if written termination of the lease contract was given because the lessee had not paid rental fees associated with the use of the flat, but the lessee is able to prove that s/he was in the material need due to objective reasons at the moment of termination's delivery, the period is extended for an additional six months. However, the new Act 599/2003 on Material Need does not include a distinction between "subjective" and "objective" need. Therefore, no one can apply for the lease extension on the basis of material need because this criterion no longer exists.

Further, Article 711 of the amended Civil Code contains no obligation for a lessor to obtain permission of a court before terminating a lease agreement, significantly eroding the rights of tenants. Omitting the court's consent has very serious impacts. First of all, it shifts the burden of proof to the lessee. In the past, the lessor had to offer evidence that there was a valid reason for termination of the lease. Now, the lessee must bring a claim to court, within three months, and provide evidence that none of the conditions for termination were met. Secondly, the new regulation will have an especially negative impact on people with limited awareness of and capability for exercising their legal rights, including some Roma.

Article 712 enumerates in detail what type of housing compensations (if any) should be provided in cases of written termination of a lease contract. Paragraph A sets out that if a lease is terminated due to the reasons according Article 711(1d) (non-payment of rent or allowing unauthorised persons to stay in the flat) and the lessee who proves that he is in material need due to objective reasons, the lessee has the right only to compensatory accommodation. In other cases of lease termination under Article 711(1d), the lessee has no right to housing compensation; if it is case of particular attention, the lessee has the right for shelter. As with extension of a lease under Article 710(4), the new Act on Material Need renders it impossible for persons being evicted for these reasons to claim any form of housing compensation. Paragraph C stipulates that a lessee/co-lessees is/are not required to move out of a flat until offered (one) adequate housing compensation. A contract for the housing offered in compensation must be signed within 30 days or the lessee loses the right to said housing.

The practical implications of the law is that forced evictions can be carried out to a large extent with impunity, offering little to no protection for victims of forced eviction under Slovak national law. Indeed, these legal provisions are wholly at odds with Slovakia's obligations under international human rights law, and in particular the ICESCR. As General Comment No. 7 on Forced Evictions clearly states "[...] legislation should include measures which (a) provide the greatest possible security of tenure to occupiers of houses and land, (b) conform to the Covenant and (c) are designed to control strictly the circumstances under which evictions may be carried out." Clearly, Slovakia's Civil Code does not comply with these international obligations by eroding the rights of tenants and making them vulnerable to the whims and prejudices of landlords.

In order to secure the housing rights of tenants in Slovakia, both non-judicial and judicial strategies may be useful. International advocacy, for example, will help serve to place pressure on the Government of Slovakia to bring its national legislation in line with its international human rights obligations. Legal and political advocacy, on the other hand, could attempt to harmonise the Civil Code with the spirit and letter of the Constitution by drawing upon the positive provisions already found within the Slovak Constitution, including the recognition of equality before the law and the inviolability of the home.

Social Aid as a Deterrent to Adequate Housing

Act 599/2003 on Material Need, which entered into force on January 1, 2004, replaced the former Act 300/1999 on Housing Contribution. Several provisions of the law negatively impact Roma in Slovakia. First, social welfare benefits are paid per person in a family to a maximum of four children. Families with more than four children receive no additional money to cover the extra costs associated with extra mouths to feed and heads to provide shelter for. Additionally, a certain portion of one's monthly benefit is allocated specifically for housing. This part of the monthly contribution is only available to persons who can prove valid ownership or lease for a flat and regular payments. Thus, Roma living in informal settlements who cannot prove valid ownership or lease agreements are ineligible for the housing contribution.

Anti-Discrimination Legislation

To date, the Slovak Republic has not adopted an Anti-Discrimination Act, although a draft of such an Act (officially titled "Act on the Implementation of the Rule of Equal Treatment") was being considered by the Government as of January 2004. Under European Union rules, Slovakia must adopt comprehensive anti-discrimination legislation by the date of Slovakia's accession to the European Union, and its anti-discrimination laws must cover the field of housing (as well as a number of other areas). If Slovakia does not adopt comprehensive anti-discrimination legislation, under existing precedent, EU rules will be directly applicable in Slovakia.

Slovakia's National Social Housing Programme

In April 2001, the Government of Slovakia approved a programme to support the construction of low-income social housing and to improve the infrastructure (public utilities) in Romani settlements. However, to date the Programme has yet to be effectively implemented. According to the Open Society Institute: "Despite considerable funding allocated to district and municipal offices through tax incentives, little improvement in [Roma] settlement conditions can be observed. According to some observers, the key factor is political will: where local authorities have the will to make improvements, progress has been achieved; however, in many places mayors hesitate to make improvements out of the fear that if conditions improve in a given settlement, more Roma will come to settle there."

VI. VIOLATIONS OF HOUSING RIGHTS

Worksheet 4: Violations of Housing Rights

Do the following constitute acts of omission or acts of commission?

1. Actively denying of ESC rights to particular individuals or groups, whether through legislated or enforced discrimination
2. Failing to monitor the realisation of economic, social and cultural rights, including the development and application of criteria and indicators for assessing compliance
3. Failing to enforce legislation or put into effect policies designed to implement provisions of the ICESCR
4. Actively supporting measures adopted by third parties which are inconsistent with ESC rights
5. Failing to regulate activities of individuals or groups so as to prevent them from violating economic, social and cultural rights
6. Adopting any deliberately retrogressive measure that reduces the extent to which any ESC right is guaranteed
7. Failing to utilise the maximum of available resources towards the full realisation of the Covenant
8. Reducing specific public expenditure without adequate measures to ensure minimum subsistence rights for everyone, which results in the non-enjoyment of ESC rights.
9. Failing to meet a generally accepted international minimum standard of achievement, which is within the State's powers and ability to meet.
10. Failing to take into account the State's international legal obligations in the field of ESC rights when entering into bilateral or multilateral agreements with other States, international organisations or multinational corporations.

Violations of ESC Rights in General

Several important concepts should be understood before determining if a violation of economic, social and cultural rights has taken place.

- Acts of Commission and Omission
- Deliberately Retrogressive Measure
- The Decency Threshold
- Minimum Core Entitlements

Acts of Commission and Omission: Human rights violations in the traditional approach to civil and political rights are often seen as particular actions undertaken by the state against a person or a group of people (i.e., acts of commission). When considering violations of economic, social and cultural rights, however, it is important to remember that violations can also result from a State's failure to take appropriate action as required by law (i.e., acts of omission).

The two key documents that outline acts of commission and omission by States that can result in violations of ESC rights are "The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights" and "The Maastricht Guidelines" (both documents are available in the Appendix). Though not legally binding *per se*, the international community has repeatedly "emphasised the importance" of both documents.

Deliberately Retrogressive Measures are policies or legislative procedures undertaken by the State, which undermine its obligations to respect, protect and fulfil economic, social and cultural rights.

The Decency Threshold is a normative framework developed by the Committee that monitors the European Social Charter. It offers a practical example of how ESC rights can be implemented. It has been used creatively to apply the generally vague legal notions contained in the Charter, giving them increasing specificity so that state practice can be monitored. The rights to work and a decent standard of living contained in the European Social Charter are difficult to define. The Committee decided that in monitoring these rights, there was a need to recognise the disparities that exist within Europe. For example, there are some countries where the average wage is \$25,000 a year. In others, the average is only \$5,000. The challenge in this context is to find a way to apply the same legal norm. Under the European Social Charter, any person earning less than 67% of the average wage in the country falls under the decency threshold and, therefore, their rights are being violated.

The Concept of Minimum Core Obligations was developed by the UN Committee on Economic, Social and Cultural Rights. It is used to establish a baseline. If a State fails to achieve this baseline, a violation of rights is said to have taken place.

The Committee developed this concept mainly to refute the argument that a lack of resources hinders fulfilment of obligations. The Committee has stated that every State Party has a minimum core obligation to satisfy minimum essential levels of each right of the Covenant. The Committee has clarified that a State Party 'in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is *prima facie*, failing to discharge its obligations under the Covenant.'

Inability to comply

In determining which actions or omissions amount to a violation of an economic, social or cultural right, it is important to distinguish the inability from the unwillingness of a State to comply with its treaty obligations. A State claiming that it is unable to carry out its obligation for reasons beyond its control has the burden of proving that this is the case. A temporary closure of an educational institution due to an earthquake, for instance, would be a circumstance beyond the control of the State, while the elimination of a social security scheme without an adequate replacement programme could be an example of unwillingness by the State to fulfil its obligations. (Maastricht Guideline 13)

Criminal sanctions: Victims of violations of economic, social and cultural rights should not face criminal sanctions purely because of their status as victims, for example, through laws criminalising persons for being homeless. Nor should anyone be penalised for claiming their economic, social and cultural rights. (Maastricht Guideline 21)

Individuals and groups: As is the case with civil and political rights, both individuals and groups can be victims of violations of economic, social and cultural rights. Certain groups suffer disproportionate harm in this respect. (Maastricht Guideline 20)

Tips for Arguing that ESC Rights Have Been Violated

- Is the violation an act of omission or an act of commission?
- Use of the term 'violation' rather than terms such as 'failure to give effect to obligations.' This will raise the stature of the act or omission.
- Use the term 'violation' cautiously. Not every undesirable action or situation should be called a violation of economic, social and cultural rights. When the term violation is used, it must really be a violation on the basis of law. The term should be used in such a way that it strengthens economic, social, and cultural rights rather than undermining them.
- The principles of indivisibility and interdependence, human dignity, equality, non-discrimination and any other notion of integrated personhood should guide and form the basis of any conception of legal process linked to violations.

- Although almost all components of economic, social and cultural rights are justiciable, violations may occur whether or not they are subject to judicial scrutiny.
- Examine violations of economic, social and cultural rights on a case-by-case basis unless the act or omission concerned is already universally recognised as a clear violation of human rights.
- All violations of human rights have to be considered serious with regard to the rule of law. It is important to always link economic, social and cultural rights to the rule of law. Any failure by States to comply with an international legal obligation must be examined in terms of whether the State in question is unable to implement the obligation or is simply unwilling to do so. There must be a clear distinction between ability and inability.
- Few States will ever officially admit that they are currently violating any economic, social and cultural rights. It is up to its citizens to prove that any rights are being violated.

Acts Constituting Violations of the Right to Adequate Housing

The first UN Special Rapporteur on Housing Rights, Justice Rajindar Sachar of India, listed about 30 acts of commission and omission that are seen as constituting violations of the right to adequate housing.

Acts of commission that constitute violations include:

- Carrying out, sponsoring, tolerating or supporting the practice of forced evictions
- Demolishing or destroying homes or dwellings as a punitive measure
- Actively denying basic services such as water, heating or electricity, to sectors of society despite a proven ability to provide these
- Acts of racial and other forms of discrimination in the housing sphere
- Adoption of legislation or policies clearly inconsistent with housing rights obligations, particularly when these result in homelessness, greater levels of inadequate housing, the inability of persons to pay for housing and so forth
- Repealing legislation consistent with and in support of housing rights, unless obviously outdated or replaced with equally or more consistent laws
- Unreasonable reductions of public expenditure on housing and other related areas, in the absence of adequate compensatory measures
- Overtly prioritising the housing interests of high-income groups when significant portions of society live without their housing rights having been achieved
- Constructing or allowing the building of housing upon unsafe or polluted sites threatening the lives and health of future occupant

- Harassing, intimidating, or preventing NGOs, community-based organisations, grassroots movements and groups concerned with housing rights from operating freely.

Acts of omission (i.e., failure to act) that constitute a violation include:

- Failing to take “appropriate steps” as required under the Covenant on Economic, Social, and Cultural Rights
- Failing to reform or repeal legislation inconsistent with the Covenant
- Failing to enforce legislation inherent in the fulfilment and recognition of housing rights
- Failing to intervene in the housing market, especially concerning rent levels, rent control, rent subsidies, issues of security of tenure and prevention of undue speculation
- Failing to incorporate and implement accepted international minimum standards of achievement concerning housing rights
- Failing to provide the infrastructure and basic services (water, electricity, drainage, sewage, etc.)
- Failing to prohibit or prevent individual or civil actions amounting to housing rights violations by any person capable of committing such acts
- Failing to utilise all available resources for the fulfilment of these rights
- Failing to integrate and fully consider the implications for housing rights when developing macro-economic policies impacting upon housing-related social spheres; and failing to submit reports as required under Articles 16 and 17 of the ICESCR, as well as under other treaties; or
- Failing to submit reports required under Articles 16 and 17 of the Covenant on Economic, Social and Cultural Rights as well as other treaties.

Housing Rights Remedies, Compensation and Restitution

What can be done about housing rights violations? What remedies are available? This issue is addressed in the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights state in Guidelines 22-25 &27:

Access to remedies

Any person or group who is a victim of a violation of an economic, social or cultural right should have access to effective judicial or other appropriate remedies at both national and international levels. (Guideline 22)

Adequate reparation

All victims of violations of economic, social and cultural rights are entitled to adequate reparation, which may take the form of restitution, compensation, rehabilitation and satisfaction or guarantees of non-repetition. (Guideline 23)

No official sanctioning of violations

National judicial and other organs must ensure that any pronouncements they may make do not result in the official sanctioning of a violation of an international obligation of the State concerned. At a minimum, national

judiciaries should consider the relevant provisions of international and regional human rights law as an interpretative aide in formulating any decisions relating to violations of economic, social and cultural rights. (Guideline 24)

National institutions

Promotional and monitoring bodies such as national ombudsman institutions and human rights commissions should address violations of economic, social and cultural rights as vigorously as they address violations of civil and political rights. (Guideline 25)

Impunity

States should develop effective measures to preclude the possibility of impunity of any violation of economic, social and cultural rights and to ensure that no person who may be responsible for violations of such rights has immunity from liability for their actions. (Guideline 27)

VII. FORCED EVICTIONS

Worksheet 5: Can Forced Evictions be Justified?

Scenario one: The Olympic Games

The International Olympic Committee agreed that the Olympic Games will be held in Greece in 2004. According to ERRC research, conducted in partnership with the Athens-based *Greek Helsinki Monitor*, the Marousi Romani tent community, in existence for more than fifty years, is strategically located next to the existing Olympic Stadium. Government officials and unknown persons have visited the Marousi Romani community on several occasions, telling the residents that they must leave the area as the land is needed for the construction of infrastructure for the Games. **What do you think? If the threatened evictions actually took place, would the government be justified in evicting people from this informal settlement to enable them to build the Olympic stadium and village? Under what circumstances would you accept the occurrence of such an eviction?**

Scenario two: The private landlord

The mostly Romani tenants of the two buildings at 17 and 18 Mlynárska Street in Košice had resided in the buildings since 1986, under contract with various owners. The landlords placed pressure on the tenants to move out through such measures as threats, barring the entrance to the buildings and arbitrarily raising associated fees. In July 2003, private landlords forcibly evicted with dogs approximately forty Romani families and five non-Romani families, in the presence of the *ERRC*. Many of the evicted Roma moved in with family or acquaintances because alternative accommodation provided by the landlord in the building known as Kosmalt was not fit for human habitation. Police who were called to the scene of the eviction stood by as the mostly Romani inhabitants were barred from their homes. **What do you think? Was the private landlord justified in evicting people from the buildings? Under what circumstances would you accept the occurrence of such an eviction? What do you think about the actions of the police?**

Scenario three: The inner city clean up

The city of Brezno has devised the “Hlavina” project in which low standard housing will be constructed for “non-rent payers, socially unadaptable persons and Roma”. The housing project will move Roma out of the city centre to a segregated housing complex on the periphery of the city. The Slovak weekly newspaper *Horehronie* quoted Brezno’s mayor, Mr Jaroslav Demian, as having stated, “It is in running Hlavina that we wish to guarantee, that a visitor (to the city centre) will not come across dilapidated houses, flat and shacks [...]” City authorities want to get rid of the Romani residents and renovate the buildings to make the centre of town more attractive again. **What do you think? Will the government be justified in evicting people from these buildings to enable them to “renew” the central tourist/business district? Under what circumstances would you accept the occurrence of such an eviction?**

Scenario four: The rubbish dump

In your town rubbish is deposited on a huge dumpsite at the edge of the city. About 250 families have built shacks on the dumpsite, and the people make their living by sorting through the rubbish to find things that can be sold or re-used. The city authorities are worried about this situation – rubbish dumps are very unhealthy places to live, and certainly do not provide safe environments for children to grow up in. They want to evict the families from their homes on the rubbish dump. **What do you think? Will the government be justified in evicting the families from the rubbish dump? Under what circumstances would you accept the occurrence of such an eviction?**

Understanding Forced Eviction as a Violation of Housing Rights

Roma are frequently subjected to forced evictions throughout Europe. Forced evictions are often accompanied by severe violence, with victims often detained, arrested, beaten, tortured, and in some cases, even killed. The CESCR considers that instances of forced evictions are clearly incompatible with the requirements of the ICESCR and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law.

There are eight key differences between the practice of forced eviction and other types of forced removal or flight of people from their homes (such as internal displacement, population transfer, mass exodus, refugee movements and ethnic cleansing). As a result of these differences, forced eviction is regarded as a distinct practice under international law, which creates particular legal obligations for States and particular rights for people threatened with forced eviction:

1. Forced evictions always raise issues of human rights (other forms of displacement might not invariably involve human rights concerns);
2. Forced evictions are generally planned, foreseen or publicly announced (other types of coerced movement may occur spontaneously and not necessarily be part of a State policy or legal regime);
3. Forced evictions often involve the conscious use of physical force (other kinds of displacement do not always involve physical force);
4. Forced evictions raise issues of State responsibility (determining liability for a forced eviction will often be much easier than doing the same for other manifestations of displacement);
5. Forced evictions affect both individuals and groups (most other forms of displacement are only mass in character);
6. Forced evictions are generally regulated or legitimised by national or local law (other types of displacement may be more random or simply not addressed legally);
7. Forced evictions are often carried out for specific stated reasons (rarely are evictions carried out which do not involve a rationalisation of the process by those sponsoring the evictions in question); and
8. Not all evictions are forced eviction, and evictions can sometimes be consistent with human rights (most other forms of displacement cannot be justified on human rights grounds, whereas evictions may

be justified for reasons of public order, the safety and security of the dwellers and threats to public health).

A range of human rights bodies have adopted international standards specifically addressing forced evictions by in recent years, and forced evictions are addressed within all national legal jurisdictions. Most notable among these is General Comment 7, adopted by the CESCR in 1997. General Comment 7 affirms that forced eviction violates the ICESCR and defines the practice in terms of concrete elements that lend themselves to judicial enforcement.

Main Causes of Forced Evictions

Forced evictions are carried out in a variety of circumstances and for various reasons such as: development and infrastructure projects (e.g. construction of dams and other energy projects); prestigious international events (e.g. Olympics); urban redevelopment or city beautification projects; conflict over land rights; the removal or reduction of housing subsidies for low income groups; forced population transfers and forced relocations in the context of armed conflict; separation of ethnic or racial groups; refugee movements; and reclaiming public land.

Many cases of forced evictions of Roma have been documented that present a picture of harassment, violence, lack of reasonable compensation and households torn from their means of livelihood. The justification used by governments to legitimise their acts of forced eviction can never excuse the violations of others civil and political rights.

Development projects or urban development policies are important, but it is also important that communities and individuals have a right to be protected against "arbitrary or unlawful interference" with their homes. The CESCR stated, at Paragraph 17 of its General Comment No. 7, that no matter the cause, "evictions should not result in rendering individuals homeless or vulnerable to the violation of other human rights."

Women and forced evictions: Romani women suffer enormously when forced evictions take place. Forced evictions often take place in the middle of the day, when it is more likely that Romani men will be away. Women and children are confronted, perceived as being weaker targets. Often, resistance on the part of women is met with violence, and women may be targeted with beating, rape, torture and even death. The indirect effects of forced eviction are also particularly severe for Romani women. The constant threat of eviction often increases strain on an already unstable living situation, perhaps contributing to situations of domestic violence. After an eviction, it is Romani women who bear a disproportionate responsibility for rebuilding households and taking care of family and community relationships. Romani women

rendered homeless by forced eviction are also especially vulnerable to physical, sexual and psychological violence.

Government Obligations to Prevent Forced Evictions

ICESCR obliges Slovakia to use "all appropriate means" to promote and protect the right to housing and to protect against forced evictions. This can be achieved in a number of ways, for example via:

Review Legislation

States can review legislation to ensure that it conforms with international standards. According to the CESCR, such legislation should include measures which:

1. guarantee security of tenure to occupiers of houses and land;
2. conform to the ICESCR;
3. are designed to control the circumstances under which evictions may be carried out; and
4. ensure that legislative and other measures are adequate to prevent, and if appropriate, punish forced evictions carried out without appropriate safeguards, by private persons or bodies.

Procedural Protections

Procedural protections are required in those exceptional cases where there is no alternative to eviction. Procedural protection should include:

- an opportunity for genuine consultation with those affected;
- adequate and reasonable notice for all affected persons prior to the date of the eviction;
- information on the proposed eviction should be made available in a reasonable time to those affected;
- government officials or their representatives should be present during an eviction and persons carrying out the eviction should be properly identified;
- evictions should not take place in particularly bad weather or at night;
- legal remedies should be available; and
- legal aid should be available to those in need of it to seek redress from the courts.

Prevent Homelessness

States are obliged to ensure that no individual or family is rendered homeless as a result of the eviction. In turn, where those affected are unable to provide for themselves, the State party must take all appropriate measures to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.

Legal Sources on Forced Evictions

There are a number of international legal standards that oblige States to prevent forced evictions or to ameliorate the consequences of past evictions. Additionally, there are numerous statements of principle, often adopted by the consensus of the international community. These statements not only condemn the practice of forced eviction generally, but also are intended to either prevent specific planned evictions, condemn specific past evictions or both.

Over the years several United Nations bodies, including the UN Commission on Human Rights, have developed consistent standards unequivocally stating that forced evictions constitute grave violations of human rights, especially the right to adequate housing. Indeed, bodies such as the CESCR have increasingly developed the practice of declaring certain countries to have violated the rights of their residents because of forced evictions. Reliance on international standards and mechanisms has even resulted in preventing planned evictions.

General Comments No. 4 and 7 of the CESCR contained some of the more prominent international standards and statements of principle addressing the practice of forced eviction.

General Comment No. 7 on the Right to Adequate Housing: Forced Evictions is the leading legal interpretation of the right to be protected against forced eviction. This general comment represents the most far-reaching decision yet under international law on forced evictions and human rights, detailing what governments, landlords and institutions must do to prevent forced evictions. It states:

- Forced evictions are incompatible with the requirements of the Covenant.
- A forced eviction is “the permanent or temporary removal against their will of individuals, families, and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection. The prohibition on forced evictions does not, however, apply to evictions carried out by force in accordance with the law and in conformity with the provisions of the International Human Rights Covenants.”
- Forced evictions frequently violate other human rights such as the right to life, the right to security of the person, the right to non-interference with privacy, family and home and the right to the peaceful enjoyment of possessions
- Before carrying out any evictions States parties must ensure that all feasible alternatives are explored in consultation with the affected persons, with a view to avoiding, or at least minimising, the need to use force.
- Legal remedies or procedures should be provided to those who are affected by eviction orders.
- States Parties also have to ensure that all the individuals concerned have a right to adequate compensation for any property which is affected.

(see also Article 2.3 of the International Covenant on Civil and Political Rights)

- In cases where eviction is considered to be justified, it should be carried out in strict compliance with the relevant provisions of international human rights law and in accordance with general principles of reasonableness and proportionality.
- The following procedural protections which should be applied in relation to forced evictions
 - (a) an opportunity for genuine consultation with those affected
 - (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction
 - (c) information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected
 - (d) especially where groups of people are involved, government officials or their representatives to be present during an eviction
 - (e) all persons carrying out the eviction to be properly identified
 - (f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise
 - (g) provision of legal remedies
 - (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.
- Evictions should not result in individuals becoming homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State Party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.

General Comment No. 4 on the Right to Adequate Housing made clear that forced evictions are a violation of human rights. The Committee considers, at paragraph 18, that "instances of forced evictions are *prima facie* incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law."

Strategies to Prevent Forced Evictions

Governments, NGOs and housing rights activists can play an important role in preventing forced evictions before they occur. The following are some examples of possible activities:

- Governments could enact and enforce legislation guaranteeing universal security of tenure. This would constitute the single most effective action governments could undertake to curtail the practice of forced eviction. Security of tenure - the legal right to protection from arbitrary or forced

eviction from the home or land - plays a significant role in discouraging the evictions.

- Community-based and NGOs often undertake a number of activities to prevent forced eviction such as: the development of alternative plans in instances where evictions are planned; the establishment of housing rights campaigns or movements; and publicising and exposing planned evictions. These responses to threats of forced eviction have been successful in a number of circumstances, resulting in the prevention of the eviction as well as encouraging positive legislative aimed at reducing the prevalence or scale of evictions.
- Land sharing can provide an alternative to forced eviction. This involves the redistribution of the land in question into parts, some of which are reserved for housing the people who live on the site, others of which are reserved for the landowner to develop. This has been used as a strategy to prevent forced eviction in India, Sri Lanka, and Thailand.
- Invoking international and European legal remedies provides another avenue for eviction prevention. For example, human rights complaint mechanisms at the United Nations or at the regional level can be utilised. The CESCR, while lacking a formal petition procedure, has agreed to receive written submissions from NGOs and hear oral information from them in the context of its consideration of reports of States parties on the implementation of particular articles of the Covenant, such as the right to housing. While some of these mechanisms are only quasi-legal and more political in nature, if used in conjunction with strategies on the domestic front, they can contribute to the prevention of forced evictions.

How to Use International Procedures to Prevent Forced Evictions

If you or someone you know is faced with forced eviction, it is most often best to first contact for assistance a local lawyer or housing rights organisation in your city or near to where you live. It is also helpful to be aware of potential international and regional mechanisms that you may be able to invoke to prevent forced evictions.

Simply invoking these procedures or contacting the relevant institutions concerned will rarely be enough to halt planned evictions from taking place. Local activities, such as organising the affected communities to work together, are often far more powerful determinants in anti-eviction struggles. If you do choose to use any of the procedures that follow, make sure you are familiar with the various rules governing these. Each institution and procedure has certain rules and limitations, and it is vital that you understand these before going ahead with further action.

Examples: International Organisations which will receive submissions

*(those marked with a * will receive submissions from individuals)*

- UN Committee on the Elimination of All Forms of Discrimination Against Women
- UN Human Rights Committee*
- UN Committee on the Elimination of Racial Discrimination*
- UN Committee on Economic, Social and Cultural Rights
- UN Human Rights Committee
- UN Committee on the Elimination of Racial Discrimination
- UN Committee on the Rights of the Child
- UN Committee Against Torture
- European Court on Human Rights *
- European Committee of Experts
- International Court of Justice (ICJ)
- International Criminal Tribunal for the former Yugoslavia
- World Bank Inspection Panel*

SECTION 2: ACCESSING THE RIGHT TO ADEQUATE HOUSING – STRATEGIES TO PROMOTE HOUSING RIGHTS

VIII. NON-JUDICIAL STRATEGIES TO PROMOTE HUMAN RIGHTS

Making a Positive Difference: The Role of NGOs and Activists

- NGOs and activists can mobilise and collaborate with communities and other organisations;
- NGOs and activists can educate the population about their housing rights;
- NGOs and activists can respond to individual and community complaints about violations;
- NGOs and activists can monitor and report on the government's compliance with or its violations of international obligations;
- NGOs and activists can apply international housing rights standards to the domestic system;
- NGOs and activists can develop indicators on housing rights;
- NGOs and activists can advocate for the right of Roma to adequate housing both domestically and internationally.

Worksheet 6: Potential Objectives of Monitoring

In the chart below are examples of purposes of monitoring. Complete the table in relation to your organisation.

- For which of the purposes listed do you or your organisation conduct monitoring activities? Indicate your answer by placing a check beside the relevant purposes.
- For what types of housing rights issues does your organisation conduct monitoring activities?
- Provide some examples of monitoring activities that your organisation might undertake.

Purposes	Types of Housing Rights Issues	Monitoring Activities
<input type="checkbox"/> Providing immediate assistance <input type="checkbox"/> Education and mobilisation <input type="checkbox"/> Monitoring to assess progressive realisation <input type="checkbox"/> Litigation <input type="checkbox"/> Undertaking legislative advocacy and policy formulation <input type="checkbox"/> Making submissions to intergovernmental agencies		<i>e.g.</i> , gathering first hand information from victims

Monitoring Housing Rights

Monitoring is the “process of systematically tracking activities of and actions by institutions, organisations or governmental bodies.” The main purpose of monitoring human (and housing) rights is to determine the truth about the compliance of a government with its human rights obligations. Monitoring involves the collection of information (fact-finding) and documentation of findings for the purpose of bringing about social change. Very often, monitoring alerts you to rights abuse.

While monitoring needs to be undertaken by governments themselves, it is of vital importance that human rights organisations and activists engage in monitoring as well. As Guideline 32 of the Maastricht Guidelines states, “**Documenting and monitoring violations of economic, social and cultural rights should be carried out by all relevant actors**, including NGOs, national governments and international organisations. It is indispensable that the relevant international organisations provide the support necessary for the implementation of international instruments in this field.[...]”

As an activist monitoring violations of the housing rights Roma in Slovakia, you must first identify, realistically, the objectives of your monitoring activities. What do you intend to do with the documentation you gather? This will, in part, determine the types of information you gather.

Before conducting fact-finding missions, human rights monitors must make a preliminary assessment of the situation. A first step in this preparation is the analysis of relevant domestic and international legal standards that govern the particular abuse/s being monitored. This will help you determine the types of facts needed to prove abuse. It also illustrates a State’s compliance with international legal standards and allows you to identify which domestic laws are the source of rights violations.

With this knowledge in hand, human rights monitors must begin to systematically and consistently collect information that may be related to the rights violation being monitored. Sources of information can include:

- Newspapers, magazines and other forms of print media;
- Radio broadcasts;
- Internet websites;
- Testimony from victims and witnesses of human rights abuse, as well as of alleged perpetrators;
- Reports from human rights organisations and activists or other organisations;
- Official reports, including police reports, forensic reports, medical certificates, etc.; and
- Court records.

Information to look for while monitoring includes:

- Demographic data, such as the size and age of the affected group, particularly compared to the rest of society, race or ethnicity of the affected

group, legal status (i.e. property owner, legal tenant, illegal occupant, permanent resident);

- Social indicators, such as access to state-provided housing, ability to rent/purchase property, housing conditions, location in relation to public services, employment, schools, etc., level and type of interaction with the local non-Romani community;
- Economic data, including number of Roma living in state-provide housing in a given area, level of unemployment, etc.;
- Information on the local political situation; and
- Reports of allegations of rights abuse.

An important monitoring function is to build a network of contacts working in the field of housing in Slovakia and abroad who you can possibly look to for information and support.

The results of your monitoring should answer the following:

WHO did What to WHOM? WHEN, WHERE, HOW and WHY?

Worksheet 7: Developing a Plan for Progressive Realisation of a State's Housing Rights Obligation

- Select **ONE** of the State's obligations with regard to the progressive realisation of housing rights in your country.
- Use the framework provided below to outline a plan for monitoring the State obligation you selected. Consider how this plan would address gender issues related to housing rights.
- Apply the steps from the perspective of an NGO.
- Write your plan for monitoring progressive realisation of this obligation below.

STATE OBLIGATION: _____

1. SET BENCHMARKS

- Explain the process you would follow to set benchmarks for monitoring in this case.
- Decide how to obtain the necessary information.
- Decide who should be involved in this process of information gathering and explain why.
- Ensure that gender issues are considered.

2. DEVELOP INDICATORS

- Describe indicators that could be used to monitor progressive realisation.
- Decide who should be involved in developing the indicators. Explain why.
- Ensure that gender issues are considered.

3. COLLECT DATA

- Identify some of the important steps in the data collection process.
- Decide who should be involved and why.

4. FORMULATE POLICY OBJECTIVES

- How can NGOs use monitoring to promote legislative and policy change?
- Who should be involved and why?

5. STRATEGY EVALUATION

- Evaluate what challenges you might face in putting your plan into practice.

Monitoring Progressive Realisation of Housing Rights Through the Use of Benchmarks and Indicators

Adapted from: Diokno, Maria I. Socorro, "Monitoring the Progressive Realisation of Housing Rights." Focus Asia-Pacific, Newsletter of the Asia-Pacific Human Rights Center, Vol. 16, June 1999.

Benchmarks

State Parties themselves, as well as the Committee, need to effectively evaluate the extent to which progress has been made towards the realisation of the obligations contained in the Covenant. For this purpose, it is useful to identify specific benchmarks or goals against which their performance in a given area can be assessed. Thus, for example, it is generally agreed that it is important to set specific goals with respect to the reduction of infant mortality, the extent of vaccination of children, the intake of calories per person, the number of persons per health-care provider, etc.

In many of areas, global benchmarks are of limited use, whereas national or other more specific benchmarks can provide an extremely valuable indication of progress. It is important, therefore, to find out what specific benchmarks have been established by the State, and to determine whether the State meets the benchmarks it has set itself.

To determine the progressive realisation of housing rights through benchmarks, one may need to answer the following questions:

- Has the State set benchmarks or targets towards the realisation of housing rights? If so, what benchmarks or targets has the State set? Are the benchmarks set by the State appropriate?
- If the State has not established benchmarks, why has it failed to do so? What can be done to pressure the State into establishing these benchmarks?
- Has the State actually met the benchmarks or targets or goals it has established?
- If the State has established benchmarks but has failed to meet them, why has the State been unable to meet its benchmarks? What can be done to pressure the State into meeting its benchmarks?

Indicators

The enjoyment and guarantee of housing rights, and the level of compliance by government of its obligations, must be periodically monitored to assess progress in the realisation of the right. The assessment often takes the form of qualitative and quantitative measurements, called indicators. Indicators are statistical (numerical) data which 'indicate' the prevailing circumstance at a given place at a given point in time.

But an indicator is not simply a statistical series. It also involves a set of assumptions which requires careful examination and testing before use. Despite their limitations (i.e., they do not always reflect the human condition in a meaningful way) indicators are valuable tools that have the potential to adequately and accurately measure not only the existence of housing rights - or any derogation there from - but also any advances that may develop.

It is essential to use indicators which are compatible with the legal duties of States under existing domestic and international human rights law.

Examples of indicators relating to the right to housing

- **Information on housing tenure**, e.g., types of housing tenure, number of persons in different types of housing tenure broken down by gender, age, social class, race, ethnicity and geographic location, etc
- **Information on the housing population**, broken down by age, gender, race, social class, ethnicity, and geographic location, e.g., number of homeless persons, number of persons currently inadequately housed, number of persons on waiting lists for obtaining accommodations, number of persons currently classified as living in “illegal” settlements or housing, number of persons evicted, and so on.
- **Data on housing affordability**, e.g., number of persons whose housing expenses are above any state-set limit of affordability, based upon the ability to pay or as a ratio of income, broken down by age, gender, race, social class, ethnicity and geographic location, cost of housing materials, rent levels, etc
- **Information on the extent of access to natural resources** broken down by geographic location, e.g., proportion of households with access to safe and clean potable water, types of access to such water, proportion of households with access to sanitation facilities, proportion of households with access to energy sources, etc.
- **Gender indicators** should involve more than just gender disaggregated statistics. Issues such as allocation of household resources for example should be considered. Possible indicators could include: who predominantly controls household resources, who makes decisions within the household, who is entitled to resources upon separation, divorce, or death of a spouse.

Worksheet 8: Conducting a Fact-Finding Mission

a) Define a **Precise Focus**.

- What is the scope of your investigation?

b) Establish **Clear Criteria**.

- What criteria will you use for determining the reliability of the information you gather?

c) Identify the **Sources of Information**.

- Who is/are the victim(s)?

- Who is the alleged violator?

- Who are the witnesses?

- those who saw the event

- those who would know the background

- Who can help identify additional sources?

d) Identify **Written and Documentary Evidence**.

- What documentary evidence is available that can help your investigation?

- Is the information reliable?

e) Conduct **On-site Inspection**.

- What should be done **Before** visiting the site?

- What should be done **During** the on-site visit?

- What should be done **After** the visit?

- Who can assist with the investigation? _____

f) Determine the **Level of Proof Required.**

- What level of proof is sufficient to arrive at reasonably founded conclusions? _____
- What factors impact on the establishment of the level of proof? _____

g) **Corroboration.**

- How will you crosscheck the information you have gathered? _____

h) **Human Rights Standards**

- What human rights standards would you apply in this case? _____

Some additional questions to consider:

1. Once you have completed your investigation and prepared your report, where should you send it?

2. What additional action should you undertake to ensure that housing rights are realised?

Collecting and Documenting Information

Adapted From: Ravindran, D.J., Guzman, M.; Ignacio, B. (Ed.). (1994). Handbook on Fact-Finding and Documentation of Human Rights Violations, Bangkok: Asian Forum for Human Rights and Development (Forum Asia).

Buhl, Dana. (1997). Ripple in Still Water: Reflections by Activists on Local and National Level Work on Economic, Social and Cultural Rights. Washington, D.C.: International Human Rights Internship Programme, pp. 41-47.

Information is collected by human rights organisations and activists to determine the truth as accurately and completely as possible concerning alleged human rights violations for the purposes of monitoring human rights practices of governments. In some cases, information is also collected on alleged human rights violations committed by armed opposition groups and private citizens. Human rights organisations and activists collect first-hand information to verify the facts for themselves and to make credible reports on alleged violations of human rights.

Documentation is the process of systematically recording and organising the information for easy retrieval and dissemination. The word documentation is normally understood as a collection of existing documents. However, human rights organisations and activists also use it to mean recording facts including collection of documents and establishing a system for easy retrieval and dissemination.

Once a violation has been identified, the next step is to conduct an investigation in order to collect and document the “evidence.” This is done by carrying out fact-finding activities and carefully recording the findings.

Guiding Principles for Human Rights Fact-Finders

- **Impartiality and Accuracy**
Fact-finding must be thorough, accurate and impartial. Ensure the credibility of information collected and disseminated by seeking direct and other evidence. Direct evidence includes victim and witness testimony, statements by alleged perpetrators, official reports, including police reports, court records, medical certificates, forensic reports, etc. Other forms of evidence include media reports, government reports, reports by NGOs, etc. Assess the reliability of the evidence gathered and pay attention to any contradictions in the information gathered. Any questions of fact will need further investigation.
- **Application of International Standards**
Applying international human rights standards and constitutional rights guarantees to help identify and define what information to collect and to assess the information gathered.
- **Be Prepared Before Entering the Field**
Before entering the field, empower yourself by thoroughly researching relevant legal standards and case background. Compile a list of everything you already know about the locations, the incident and make a list of all the

information you are missing. Create a list of questions/issues you need to address during interviews to allow a proper assessment of the issue at hand.

- **Using Diverse Sources of Information**

Locate and use as many sources of information as possible. Interview both the victim's (individuals and communities) and witnesses of an event and the violator. Collect and evaluate ALL available evidence. This evidence could include periodic government budget or policy reports; legislative and judicial records; papers and studies produced by academic or research institutions; reports by or interviews with NGOs, official reports, including police reports, medical certificates, building permits, documents attesting to security of tenure, etc.

- **Respect all Parties**

All efforts should be carried out within an atmosphere of utmost respect for those concerned.

- **Ensure Safety/Take Steps Against Victimization**

It is very important to consider both the safety of the victim's of the rights violation you are documenting as well as your own and to take all measures possible to avoid or prepare individuals for any backlash they might suffer as a result of agreeing to participate in your investigation and subsequent actions. Monitors and fact-finders must therefore develop a plan of action and consider the above in relation to it. Ensure that the victims and witnesses to human rights, and housing rights, abuses, you interview understand both what you intend to use the information they provide you with as well as any possible repercussions they may face as a result so that they have all the facts in making their decision to co-operate. If potential interviewees agree to divulge information on a particular rights abuse after having explained this to them, proceed with your fact-finding activities. If at any time you feel that either the victims of and witnesses to abuse or yourself are in danger, cease your actions immediately. The purpose of human rights monitoring and fact-finding is not to place persons in the way of further harm.

Common methods of conducting fact-finding:

- Conducting investigation in the field for a limited period of time by skilled fact-finders;
- Long-term mission by trained field workers to collect and document information on violations;
- Conducting research studies, including surveys for the purpose of collecting data on housing rights;
- Observing trials in housing rights cases;
- Attending and observing demonstrations by Romani victims of housing rights violations;
- Conducting testing.

Testing to Prove Racial Discrimination

Excerpt from Alemu, Fitsum. "Testing to Prove Racial Discrimination" in **Roma Rights** No 3/2000. European Roma Rights Center. Budapest, 2000. Available on the Internet at: http://www.errc.org/rr_nr3_2000/legal_defence.shtml.

Testing is a technique that is used to collect evidence when there is an allegation of discrimination. It is applied if a member of a protected class group suspects disparate treatment on grounds of his or her national origin, religion, gender, the colour of his or her skin, or other characteristics covered by legal prohibitions on discrimination. It can be employed to gauge the existence or extent of discrimination in housing. [...] There are two kinds of testing: research-oriented testing, which is used for auditing, and enforcement-oriented testing, which uses the results of testing to file a law suit or monitor compliance with injunctive relief. [...]

In enforcement-oriented testing, first litigators should discuss the case with the complainant to draw up questions to be addressed by testing. One should also collect all materials concerning the firm or the club being tested, such as licences and earlier complaints against the firm, as well as legal provisions and case law. Then the selection and training of testers begins.

Testers are objective fact-finders who, after extensive training in both the classroom and the "field", conduct testing to uncover discrimination. A test requires two testers: a "protected tester" and a "comparison tester". [...] For example, in cases alleging discrimination against a Romani person, a Romani person would serve as a protected tester, while a non-Romani person would be in the role of a comparison tester. In a case of gender discrimination against a woman, a woman would be in the protected tester status while a man would be in the role of comparison tester. In general, testers should be quite similar. The key difference should be the quality at issue in the "test", for example, the race or national origin of the tester where racial discrimination is alleged.

Training should include practice testing under close supervision, orientation about the uses of testing results to enforce civil rights laws and information regarding the nature of legal procedures in which testers may eventually be involved. During the training, paired testers should work closely with each other, get to know each other, and develop a sense of teamwork. Testers should be asked to declare explicitly that they accept the roles in the project as objective fact-finders, and to promise to maintain confidentiality.

Testers conduct their tests on the same day, posing as *bona fide* job or home seekers, for example. In the process of the test, testing team partners are sent at closely spaced intervals to seek information about a job, an apartment or the availability of a certain service. When conducting a test, testers should dress appropriately for the occasion. In testing employers, each tester should take actions that are comparable to those likely to be undertaken by his or her

paired partner while still following the natural flow of each job application process. For instance, the protected class should apply first for the job at issue either by telephone or in person. Tailoring testers' conduct to the particular circumstances of each job application, maintaining a clear and complete record of the test experience, and ensuring that each tester acts in ways comparable to his or her partner is necessary to obtain evidence for litigation.

Testers record their experiences on assignment forms immediately after completion of each test. The report filed by each tester should include detailed information about job or housing availability, the application process, terms and conditions, questions asked by the tester and information volunteered by the agent or the employer. Beyond answers to the questions in the report forms, it may be worthwhile to request that testers write a detailed narrative description of their experiences during the test.

The forms on which testers record their experience should include at least the following: the time of application; information demanded of applicants (e.g. the length of interviews, the characteristics of interviews, questions asked at interviews); the flow of information (e.g. information provided spontaneously, information that had to be requested); how applicants are treated (e.g. length of they must wait, level of hospitality offered); manner in which jobs are described (e.g. discussion of salaries and benefits, the length of employment, and so on). Such well-organised testing aims at examining minute, discrete components of the hiring process and can be used to corroborate as well as dispel allegations of discrimination that have been levelled against an employer.

Evidence of the ultimate disparity — that one tester was offered a job while the other was not — should be documented as carefully as possible. It is not the role of the tester to determine whether or not discrimination has occurred, but rather to act as an unbiased recorder of information. Only the test coordinator (the organisation or the attorney) can evaluate whether or not differential treatment has taken place. During the test, the tester should refrain from making any leading remarks about race or ethnicity in the neighbourhood, in the work place or the club they are testing; testers should be observant, meticulous record-keepers so that their experiences will be completely and accurately documented. They should record their experiences independently and should not discuss their experiences with each other until after they have been documented. Under no circumstances should a tester discuss the testing experience or the institution tested with anyone unless authorised by the test coordinator or ordered by a court. If differential treatment is established, then the organisation can file a lawsuit against the perpetrator.

Enforcement-oriented testing may call upon testers to serve as plaintiffs and witnesses in litigation. This imposes at least three additional considerations in selecting testers. First, the personal backgrounds of testers must be free from

any difficulties that might reduce their credibility as witnesses. Second, testers must be sufficiently articulate to present their experiences clearly in written witness statements and oral testimony. Third, because litigation may last for several years, testers must be willing to remain in contact with the testing program and return periodically to participate in legal proceedings over an extended period. [...]

Worksheet 9: Devising Your Advocacy Strategy

A number of different advocacy actions open up to you once you possess good information on the ability of Roma to access adequate housing in Slovakia. Each action can be employed both domestically and internationally, and actions may be combined to produce a greater impact. An analysis of the domestic legal situation has revealed that Slovak law does not adequately address discrimination, particularly with regard to housing. Many local governments have announced plans to build housing for “non-rent payers, socially unadaptable persons and Roma”, and history reveals even Romani rent-payers are forced into such housing schemes, for example, in the case of the Stará Tehelná neighbourhood in Prešov. As an activist for housing rights for Roma, devise your advocacy strategy on the basis of this knowledge. Some questions to ask yourself include:

- What do you hope to achieve through your advocacy efforts?
- What advocacy strategies are available to you?
- Which strategy will have the best results in the short-term?
- Which strategy will have the best results in the long-term?
- Which strategy/strategies will you employ to reach your goal?
- What steps will you take in executing your advocacy action?

Domestic and International Advocacy Options

Human rights organisations and activists working from a localised, grassroots level to a national level have a number of advocacy options available to them in pursuing the realisation of the right to adequate housing for Roma in Slovakia.

Probably the most important activity is educating Romani individuals and communities as to what exactly their rights are with respect to access to adequate housing. Many victims of rights abuse are victims because they do not possess adequate knowledge about what access to a specific right entails. Facilitating the transfer of the information contained in this manual on a large scale to Roma in Slovakia will capacitate Romani victims of housing rights violations take appropriate steps to access adequate housing themselves.

Once a particular housing rights abuse has been well documented, you may choose to pursue one or many of the different advocacy strategies elaborated below. Regardless of which activity you choose to engage in, think carefully about the potential effects your action may have on both yourself and the people you are advocating on behalf of. As with monitoring activities, safety and victimisation must figure into your advocacy plan. If you feel the potential for harm as a result of your actions outweighs the potential for positive change, consider engaging in another type of advocacy activity or postponing your action until a later time. Another aspect to consider possibly building coalitions with other groups who may face similar problem and therefore have similar interests.

The general guidelines provided can be employed regardless of which level, from local to international, your advocacy activity targets.

Working with the Media

The media, print, radio, television or Internet, is a very important tool for human rights activists and organisations as your message must reach the widest possible audience. It is therefore crucial that you key that you foster a good relationship with media representatives and journalists from as many publications as possible. Over time, you will learn with media is most receptive to your information and can take a more tailored approach to using the media to convey your message.

Some tips for developing a good relationship with journalists and other media personnel include being clear about your message and flush out all the details while ensuring that all of the facts are covered (who, what, why, when, where and how). Focus on the accuracy of your message and don't add you opinion. The facts will speak for themselves. When you approach media sources, introduce yourself by telephone first and then in person. Present the information about the housing rights issue you have documented and offer to

reduce their workload by providing them the information you have collected or giving an interview on the topic. You may also consider holding a press conference in order to reach the widest range of media sources possible in a short amount of time. If you choose to hold a press conference, if possible, deliver background materials to all invited media personnel beforehand to maximise your time in their presence.

Organising Demonstrations

A number of Romani groups in Europe have successfully demonstrated to access their right to adequate housing, particularly to prevent forcible evictions from taking place. For example, according to ERRC research in Serbia and Montenegro, conducted in partnership with the Belgrade-based NGO *Minority Rights Center*, on August 15, 16 and 17, 2003, approximately one hundred Roma protested against their ensuing forcible eviction from the Grmec Romani settlement in Belgrade in front of Belgrade's Federation Palace. Some of the Roma had reportedly lived in the area for as long as 30 years. Mr Rasim Ljajic, Minister for Human and Minority Rights of the Union of Serbia and Montenegro, agreed to postpone the eviction until all legal issues related to ownership of the property and the eviction were sorted out.

While one may choose many strategies when organising a rally or a demonstration, the following are some basic guidelines you may want to follow when organising housing rights advocacy demonstrations.

Depending on the importance or urgency of the issue you are demonstrating, you may choose to invite the media. Before the demonstration, send a news release about your demonstration to media outlets, inviting them to your event as the presence of media will multiple the number of people your message reaches greatly. The day before the demonstration is to take place, follow-up on your invitation with a phone call to confirm receipt of the news release. This will also permit you an additional opportunity to stress the importance of the issue you are demonstrating about.

Organise the persons affected by the issue you are demonstrating, and invite activists, organisations and other persons who are sympathetic to your cause. Before the demonstration, assign one member of your group to act as mediator with the media. This person must possess a good understanding of the issue. The designation of the media mediator will avoid any possible confusion or dilution of your message to the media. It is a good idea for the mediator to practice conveying your message in a clear and concise manner beforehand. Due to the contentiousness of Romani issues in Slovakia, you should also place a member of your group in charge of contacting the authorities in the event of hostilities.

At the demonstration, display posters clearly portraying your message. Use large, readable print. Because most persons will pass you by within a few seconds, clear visual tools will allow even these people to understand your message. This also offers great opportunities for getting a photograph of your demonstration printed in the media. A member of your group should also be designated to pass out additional literature about the issue than appears on

your posters. Appear and act in a professional and respectable manner to reduce the number of people that will dismiss your actions without even a glance. The demonstration is not social gathering for activists to chat, relax or joke around. Pay attention to the demonstration while it is taking place. Don't confuse the issue. For example, don't chant about police violence at a demonstration about an abuse of Romani housing rights. It is also very important to not engage hostile people passing by. Your best tool is silence when faced with someone yelling at you in that you will not further agitate the passerby and you will appear all the more professional to others around at the time.

After your demonstration, it is important to reflect on what happened leading up to and at the demonstration. This evaluation will provide useful information on what worked and what did not for the next time you organise such an event.

Petitioning/Letter Writing

Writing to your local council, government bodies or Members of Parliament does make a difference. It can either alert the government of a problem or remind it of a persisting problem and the fact that they have yet to take sufficient actions towards a resolution.

Before writing your petition or letter, decide which is the most appropriate person or office to address. This means asking yourself, "Who is responsible for the matter I'm concerned with?" Your private landlord, local council, an office within your local council assigned to deal with housing issues, or an office of the national government may be most appropriate. You will also need to consider any steps already taken. For example, if you have already addressed your local council with no success, you will want to go to the next level. An important consideration in petitioning and letter writing campaigns is timing. There are times, such as national or local elections, when your letter can carry more weight than usual. Use such events to your advantage in your petitioning or letter writing campaign.

After introducing yourself, get right to the point in the text of your letter or petition. Long petitions or letters that dance around an issue will not likely have any influence and will likely end up in the garbage. Make reference to relevant documents or policies. Use any available statistics as well with a reference to where they came from. This lets the reader know that you are knowledgeable about the issue and mean business. Always ask for a written response. This way, you will know that your letter or petition has received attention and can give you leverage later if additional action is necessary to resolve an issue.

Whenever possible, prepare and use letter templates to save time. Use email to share letters with all interested parties so they can easily send them too. You can also send petitions electronically to gather as many signatures as possible before sending it off to your target.

Lobbying

Lobbying by individuals and organisations is a powerful tool for change. People who approach their elected officials for support can generate creative solutions to overcome the root causes of the housing problems of Roma. Personal stories are a powerful component of lobbying and as local activists and NGOs, you are closer to Roma than policy makers. Policy makers can learn from and use your knowledge. Various methods of lobbying include meeting with government officials and lawmakers, providing information about the housing situation of Roma or a specific event to committees and government offices, testifying in committee and negotiating with policy makers and other lobby groups for legislative or policy changes.

Before your lobbying visit, prepare yourself. Decide on the issue you would like to address and stick to it during the meeting. It is important to have a good basis of knowledge going into the meeting, but you need not know everything. Don't be afraid to say "I don't know", but offer to provide follow-up information after the meeting. Set in advance your goal for the visit: for example, you may be seeking the initiation of housing programmes, new legislation where none exists or the repealment/amendment of a bad law, i.e. changes to the civil code have eroded tenants' rights in Slovakia. If a group of people will engage in your lobbying activity set out in advance who will discuss what.

Listen and watch actively. Listening and watching the person you are meeting with will give you good insight as to where s/he stands on the particular issue you have brought before him or her as well as what information s/he may be lacking. Be prepared with questions and informational materials in the event that the person you meet does not offer much to the dialogue as a method to draw them into the conversation. Pay attention that you don't get bogged down in detail or on one specific point, it is important to convey your entire message. It is also important to avoid being argumentative or confrontational...you want the person you are meeting to be on your side or at minimum, to not become your enemy. If the person you meet has made a positive impact on the issue you are advocating, acknowledge this and express your gratitude during the visit.

Know when to end the meeting. When you have achieved your set goal, thank the person you have met for their time and leave. It is also a good time to leave when you feel you will not reach an understanding with the person you are meeting, but leave open the possibility to continue the discussion at a later date.

Be sure to follow-up on your lobbying visit with letter of appreciation to all person present and reiterate any agreements that were reached during the meeting. Also provide any information you promised to send after the meeting.

Communications within the International Treaty System

A very important opportunity for advocacy action around housing rights relates to the state reporting process under an international treaty. As a State Party to numerous international conventions, Slovakia has to present periodic reports

to a number of Committees on its compliance with its obligations under a given Convention; the most notable in terms of housing rights being the ICESCR. At the same time, NGOs, activists and other interested parties are invited to present their own comments on the government's performance, calling attention to information excluded from the government report or to refute allegations made by the state that it is complying with its obligations.

NGOs and activists can submit written materials to the Committee at any time. For these materials to be most effective, they should take the form of an alternative or shadow report or shorter documents in response to the State party's response to the List of Issues or fact sheets. Information to include in your report on the government's compliance with an international treaty includes:

- An introduction to yourself and/or your organisation and your interest in the issue;
- Statistical information about the housing situation in Slovakia;
- Roma-specific information on the level of homelessness, the number of people inadequately housed or living in overcrowded conditions and without access to basic services (including which); the number of Roma currently living in 'illegal' settlements or housing, social housing, public housing;
- The number of Roma forcibly evicted and/or living without legal security of tenure;
- The number of Roma paying more than the average cost of housing;
- The number of Roma on waiting lists for housing, the average length of waiting;
- Legislation that restriction access of Roma to adequate housing or information on the lack of sufficient legislation in a given area related to housing. For example, it is not obligatory for local authorities in Slovakia to set up offices to deal with housing issues in their jurisdiction;
- The lack of government supported monetary schemes with the aim of enabling disadvantaged Roma to remedy their own housing situation.

Prior to the formal review of a State's compliance with a treaty, Committees hold a Pre-Sessional Working Group to identify the questions on which to focus during dialogue with representatives country under review. You can provide written or in person information to the working group relating to matters on the agenda.

On the first afternoon of each formal session, Committees hold NGO hearings in which it allows NGO representatives to make presentations. Official approval from the Committee Secretariat or Chairperson is required before you can actually speak to the Committee.

It is important to meet the Committee Member named "Rapporteur" for your country when it is up for review. The Rapporteur takes the lead on deciding what issues are presented to the government and what is said in the Committee's Concluding Observations about that country.

IX. THE JUSTICABILITY OF HOUSING RIGHTS

Justiciable Components of Housing Rights

Pursuing the enforcement of the housing rights of Roma via legal measures is another available option and widely used. The right to adequate housing, including the right to be protected from forced eviction, has increasingly been the subject of judicial and quasi-judicial review at the international, regional and national levels. As a result, there exists a growing body of housing rights jurisprudence which may be helpful should you choose to pursue legal action in cases of alleged housing rights violations. It is therefore important that you identify a lawyer or a network of lawyers with whom you can work to bring housing rights cases to both domestic, then international, courts and other tribunals.

The following aspects of the right to adequate housing can be pursued via litigation:

- Forced Evictions and Demolition;
- Security of Tenure;
- Non-discrimination and Equality of Access;
- Housing Affordability;
- Landlord-Tenant Relations;
- Access to Services;
- Property Rights;
- The Substantive Right to Accommodation;
- The Right to Counsel and Legal Aid;
- The Right to Participation;
- The Right to Habitable Housing;

In pursuing justice for violations of a component of the right to adequate housing, the following remedies may be available to you:

- A declaration by a court of law that your right to adequate housing has been violated accompanied by an order to remedy in some way the violations suffered;
- A time-delayed provisional remedy, meaning a temporary process in which a plaintiff can secure him/herself against losses in a civil action, while the action is pending before the court; for example that the plaintiff's property or possessions are not seized before the completion of the court case;
- A structured, participatory process to recommend final remedies, wherein parties work together, perhaps using a mediator, to help them develop a solution that they are both satisfied with;
- Ordering by a Judge the creation of a regulatory regime in which measures are actually specified as being necessary where the law is not clear on a certain issue in a certain case and/or asking a Higher Court or the Government for clarification;
- Ordering a government committee of inquiry to report on the situation prior to litigation;

- Preventative remedy, whereby a court order prohibits someone from undertaking a specified act which s/he is threatening or attempting to commit, such as carrying out a forced eviction;
- Reparation in kind, for example, the return of property to the owner or the person entitled to possess it;
- Supervisory jurisdiction whereby a court exercises control to compel a lower court to act within its jurisdiction, to prohibit that court from acting outside of its jurisdiction and to reverse any extra jurisdictional acts;
- Recommendation to enact legislation.

Treaty Obligations

States are legally obligated to perform their treaty obligations in good faith. This means that States must adjust their domestic legal structure to comply with the international standards they have committed themselves to. The Vienna Convention on the Law of Treaties (1969) says, at Article 27, “A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.” Therefore, the obligation to perform treaties in good faith applies, as far as international law is concerned, irrespective of any conflicting domestic law;

- States cannot justify their failure to implement international obligations on the basis of a domestic law which is inconsistent with the international norm. States must ensure that courts, at a bare minimum, use international obligations of the State as an interpretative aide in determining the actual meaning of a domestic law of the same theme;
- States must ensure that courts do not intentionally misinterpret international obligations in court.

Applying the Covenant in National Courts

General Comment 9, of the CESCR offers important guidance on the application of the Covenant in national courts.

- It argues that remedies do not have to be judicial in nature (e.g. Administrative remedies can be effective) but says that judicial remedies are necessary whenever a Covenant right cannot be made fully effective without some role for the judiciary;
- There is no Covenant right which could not, in the great majority of systems, be considered to possess at least some significant justiciable dimensions;
- Courts are generally already involved in a considerable range of matters which have important resource implications. The adoption of a rigid classification of economic, social and cultural rights which puts them, by definition, beyond the reach of the courts would thus be arbitrary and incompatible with the principle that the two sets of human rights are indivisible and interdependent;

- It is generally accepted that domestic law should be interpreted as far as possible in a way which conforms to a State's international legal obligations. Thus, when a domestic decision-maker is faced with a choice between an interpretation of domestic laws that would place the State in breach of the Covenant and one that would enable the State to comply with the Covenant, international law requires the choice of the latter.

Engaging in Strategic Litigation

Through litigation, a growing group of activists and lawyers are using legal action, in conjunction with other tools of reform, to change legal rules, to raise public consciousness and alter patterns of behaviour on issues ranging from human rights to racial discrimination. Because it would be practically impossible for human rights organisation and activists to bring every case of housing rights violations experienced by Roma in Slovakia to court, the principles of strategic litigation should be taken into account. These include:

- whether the case raises an issue of general public importance with respect to the protection of Romani housing rights;
- whether the case constitutes a particularly grave violation of human rights, for example, a forced eviction;
- the quality of legal representation and the viability of the proposed legal strategy;
- the potential for the case to have an impact on similar cases or on domestic jurisprudence; and
- the potential for publicity about the case to serve a wider educational purpose.

When a Case Fails Before Domestic Courts

It is often the case that domestic courts fail to find violations of law or award just remedy in cases of violations of rights abuse of Roma; Slovakia is no exception to this. That being said, once you have exhausted domestic legal remedies, a number of further venues for justice are available to Romani victims of rights abuse. The following table offers a list of possible forums under which victims of housing rights abuse can further pursue access to justice and outlines potential advantages and disadvantages of each:

	Advantages	Disadvantages
I. European Court of Justice⁴	<ul style="list-style-type: none"> • Has by far the best jurisprudence on discrimination issues compared to any other international legal forum. • Will be bound by the Race 	<ul style="list-style-type: none"> • An individual has no standing to initiate proceedings directly. • The preliminary referral procedure may be somewhat difficult to

⁴ Jurisdiction only covers member states of the European Union, which Slovakia will join in May 2004.

	<p>Equality Directive, a document containing the highest anti-discrimination standards in terms of both substance and procedure.</p> <ul style="list-style-type: none"> • Its decisions are legally binding at least as regards the interpretation of EU law. 	<p>understand and utilise by both judges and lawyers otherwise used to arguing their cases in a more conventional manner.</p>
II. UN Human Rights Committee (HRC)⁵	<ul style="list-style-type: none"> • It is the most judicious of all UN Committees. • Article 26 of the ICCPR contains a comprehensive prohibition of discrimination not limited to civil and political rights only. • It has already recognised indirect discrimination in its case law. • Lower standard of proof required than in Strasbourg. • There is no time limit for filing cases. 	<ul style="list-style-type: none"> • Proceedings take almost as long as in Strasbourg. • It can merely find a violation and recommend remedies such as an unspecified amount for compensation. • Its decisions are not formally binding but may be a powerful lobbying tool.
III. CEDAW⁶	<ul style="list-style-type: none"> • There are currently very few individual complaints pending. • The Committee is therefore likely to deal with cases within a reasonable period of time. • It may also be more liberal in terms of admissibility as well as the merits. • Lower standard of proof required than in Strasbourg. • There is no time limit for filing cases. 	<ul style="list-style-type: none"> • CEDAW language is mainly focused on guaranteeing equality between men and women and creative arguments may be required in order to bring other forms of discrimination faced by women within its material scope. • It can merely find a violation and recommend remedies such as an unspecified amount for compensation. • Its decisions are not formally binding but can be a powerful lobbying tool.

⁵ Slovakia ratified the Optional Protocol to the ICCPR in 1993, thereby allowing the HRC to consider individual complaints of alleged violations.

⁶ Slovakia ratified the Optional Protocol to the Convention in 2000, thereby allowing the CEDAW to consider individual complaints in cases of alleged violations.

IV. CERD⁷	<ul style="list-style-type: none"> • Covers all forms of racial discrimination. • Has a relatively light caseload and is likely to deal with complaints within a reasonable period of time. • Is relatively flexible on issues concerning admissibility. • Lower standard of proof required than in Strasbourg. 	<ul style="list-style-type: none"> • Its decisions are not formally binding. • They often lack detailed legal reasoning. • There may be a six-month time limit for filing cases. • It can merely find a violation and recommend remedies such as an unspecified amount for compensation. • Its decisions are not formally binding but can be a powerful lobbying tool.
V. ECHR	<ul style="list-style-type: none"> • Compared to the ECJ, an individual has standing to initiate proceedings directly. • Its judgements are binding and contain detailed legal reasoning. • Can award specific amounts of damages to victims unlike the UN Committees. • Has the best enforcement machinery. 	<ul style="list-style-type: none"> • Article 14 of the ECHR offers weak protection against discrimination compared most other international instruments. • Has produced hardly any good case law under Article 14 relating to racial discrimination. • Very high standard of proof required. • The Courts current case law provides for no shift of the burden of proof in cases of discrimination. • There is a six month time limit for filing cases

⁷ Slovakia has made a declaration under Article 14 of the ICERD, allowing the Committee to consider individual complaints in cases of alleged violations.

APPENDICES

International Covenant on Economic, Social and Cultural Rights

Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966. Entry into force 3 January 1976, in accordance with article 27.

Preamble

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

PART I

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

Article 2

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures. General comment on its implementation

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, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

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.

Article 4

The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant.

2. No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

- (a) Remuneration which provides all workers, as a minimum, with:
 - (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
 - (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;
- (b) Safe and healthy working conditions;
- (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
- (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

Article 8

1. The States Parties to the present Covenant undertake to ensure:

- (a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
- (b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;
- (c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

Article 9

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

Article 10

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

Article 11 *General comment on its implementation*

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, 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. *General comment on its implementation*

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

Article 12 General comment on its implementation

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

(b) The improvement of all aspects of environmental and industrial hygiene;

(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Article 13 General comment on its implementation

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

(a) Primary education shall be compulsory and available free to all;

(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

(e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 14 *General comment on its implementation*

Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

Article 15

1. The States Parties to the present Covenant recognize the right of everyone:

- (a) To take part in cultural life;
- (b) To enjoy the benefits of scientific progress and its applications;
- (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.

3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.

4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

PART IV

Article 16

1. The States Parties to the present Covenant undertake to submit in conformity with this part of the Covenant reports on the measures which they

have adopted and the progress made in achieving the observance of the rights recognized herein.

2. (a) All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit copies to the Economic and Social Council for consideration in accordance with the provisions of the present Covenant;

(b) The Secretary-General of the United Nations shall also transmit to the specialized agencies copies of the reports, or any relevant parts therefrom, from States Parties to the present Covenant which are also members of these specialized agencies in so far as these reports, or parts therefrom, relate to any matters which fall within the responsibilities of the said agencies in accordance with their constitutional instruments.

Article 17 General comment on its implementation

1. The States Parties to the present Covenant shall furnish their reports in stages, in accordance with a programme to be established by the Economic and Social Council within one year of the entry into force of the present Covenant after consultation with the States Parties and the specialized agencies concerned.

2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Covenant.

3. Where relevant information has previously been furnished to the United Nations or to any specialized agency by any State Party to the present Covenant, it will not be necessary to reproduce that information, but a precise reference to the information so furnished will suffice.

Article 18

Pursuant to its responsibilities under the Charter of the United Nations in the field of human rights and fundamental freedoms, the Economic and Social Council may make arrangements with the specialized agencies in respect of their reporting to it on the progress made in achieving the observance of the provisions of the present Covenant falling within the scope of their activities. These reports may include particulars of decisions and recommendations on such implementation adopted by their competent organs.

Article 19

The Economic and Social Council may transmit to the Commission on Human Rights for study and general recommendation or, as appropriate, for information the reports concerning human rights submitted by States in accordance with articles 16 and 17, and those concerning human rights submitted by the specialized agencies in accordance with article 18.

Article 20

The States Parties to the present Covenant and the specialized agencies concerned may submit comments to the Economic and Social Council on any general recommendation under article 19 or reference to such general recommendation in any report of the Commission on Human Rights or any documentation referred to therein.

Article 21

The Economic and Social Council may submit from time to time to the General Assembly reports with recommendations of a general nature and a summary of the information received from the States Parties to the present Covenant and the specialized agencies on the measures taken and the progress made in achieving general observance of the rights recognized in the present Covenant.

Article 22 *General comment on its implementation*

The Economic and Social Council may bring to the attention of other organs of the United Nations, their subsidiary organs and specialized agencies concerned with furnishing technical assistance any matters arising out of the reports referred to in this part of the present Covenant which may assist such bodies in deciding, each within its field of competence, on the advisability of international measures likely to contribute to the effective progressive implementation of the present Covenant.

Article 23

The States Parties to the present Covenant agree that international action for the achievement of the rights recognized in the present Covenant includes such methods as the conclusion of conventions, the adoption of recommendations, the furnishing of technical assistance and the holding of regional meetings and technical meetings for the purpose of consultation and study organized in conjunction with the Governments concerned.

Article 24

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 25

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART V

Article 26

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Covenant.

2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed the present Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 27

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 28

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 29

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.

3. When amendments come into force they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 30

Irrespective of the notifications made under article 26, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph 1 of the same article of the following particulars:

- (a) Signatures, ratifications and accessions under article 26;
- (b) The date of the entry into force of the present Covenant under article 27 and the date of the entry into force of any amendments under article 29.

Article 31

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 26.

General Comment 4: The Right to Adequate Housing

CESCR General comment 4. The right to adequate housing (Art.11 (1)) : . 13/12/91.

1. Pursuant to article 11 (1) of the Covenant, States parties "recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions". The human right to adequate housing, which is thus derived from the right to an adequate standard of living, is of central importance for the enjoyment of all economic, social and cultural rights.

2. The Committee has been able to accumulate a large amount of information pertaining to this right. Since 1979, the Committee and its predecessors have examined 75 reports dealing with the right to adequate housing. The Committee has also devoted a day of general discussion to the issue at each of its third (see E/1989/22, para. 312) and fourth sessions (E/1990/23, paras. 281-285). In addition, the Committee has taken careful note of information generated by the International Year of Shelter for the Homeless (1987) including the Global Strategy for Shelter to the Year 2000 adopted by the General Assembly in its resolution 42/191 of 11 December 1987. The Committee has also reviewed relevant reports and other documentation of the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

3. Although a wide variety of international instruments address the different dimensions of the right to adequate housing article 11 (1) of the Covenant is the most comprehensive and perhaps the most important of the relevant provisions.

4. Despite the fact that the international community has frequently reaffirmed the importance of full respect for the right to adequate housing, there remains a disturbingly large gap between the standards set in article 11 (1) of the Covenant and the situation prevailing in many parts of the world. While the problems are often particularly acute in some developing countries which confront major resource and other constraints, the Committee observes that significant problems of homelessness and inadequate housing also exist in some of the most economically developed societies. The United Nations estimates that there are over 100 million persons homeless worldwide and over 1 billion inadequately housed. There is no indication that this number is decreasing. It seems clear that no State party is free of significant problems of one kind or another in relation to the right to housing.

5. In some instances, the reports of States parties examined by the Committee have acknowledged and described difficulties in ensuring the right to adequate housing. For the most part, however, the information provided has been insufficient to enable the Committee to obtain an adequate picture of the situation prevailing in the State concerned. This General Comment thus aims to identify some of the principal issues which the Committee considers to be important in relation to this right.

6. The right to adequate housing applies to everyone. While the reference to "himself and his family" reflects assumptions as to gender roles and economic activity patterns commonly accepted in 1966 when the Covenant was adopted, the phrase cannot be read today as implying any limitations upon the applicability of the right to individuals or to female-headed households or other such groups. Thus, the concept of "family" must be understood in a wide sense. Further, individuals, as well as families, are entitled to adequate housing regardless of age, economic status, group or other affiliation or status and other such factors. In particular, enjoyment of this right must, in accordance with article 2 (2) of the Covenant, not be subject to any form of discrimination.

7. In the Committee's view, the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one's head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity. This is appropriate for at least two reasons. In the first place, the right to housing is integrally linked to other human rights and to the fundamental principles upon which the Covenant is premised. This "the inherent dignity of the human person" from which the rights in the Covenant are said to derive requires that the term "housing" be interpreted so as to take account of a variety of other considerations, most importantly that the right to housing should be ensured to all persons irrespective of income or access to economic resources. Secondly, the reference in article 11 (1) must be read as referring not just to housing but to adequate housing. As both the Commission on Human Settlements and the Global Strategy for Shelter to the Year 2000 have stated: "Adequate shelter means ... adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities -

all at a reasonable cost".

8. Thus the concept of adequacy is particularly significant in relation to the right to housing since it serves to underline a number of factors which must be taken into account in determining whether particular forms of shelter can be considered to constitute "adequate housing" for the purposes of the Covenant. While adequacy is determined in part by social, economic, cultural, climatic, ecological and other factors, the Committee believes that it is nevertheless possible to identify certain aspects of the right that must be taken into account for this purpose in any particular context. They include the following:

(a) Legal security of tenure. Tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups;

(b) Availability of services, materials, facilities and infrastructure. An adequate house must contain certain facilities essential for health, security, comfort and nutrition. All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services;

(c) Affordability. Personal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised. Steps should be taken by States parties to ensure that the percentage of housing-related costs is, in general, commensurate with income levels. States parties should establish housing subsidies for those unable to obtain affordable housing, as well as forms and levels of housing finance which adequately reflect housing needs. In accordance with the principle of affordability, tenants should be protected by appropriate means against unreasonable rent levels or rent increases. In societies where natural materials constitute the chief sources of building materials for housing, steps should be taken by States parties to ensure the availability of such materials;

(d) Habitability. Adequate housing must be habitable, in terms of providing the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors. The physical safety of occupants must be guaranteed as well. The Committee encourages States parties to comprehensively apply the Health Principles of Housing prepared by WHO which view housing as the environmental factor most frequently associated with conditions for disease in epidemiological

analyses; i.e. inadequate and deficient housing and living conditions are invariably associated with higher mortality and morbidity rates;

(e) Accessibility. Adequate housing must be accessible to those entitled to it. Disadvantaged groups must be accorded full and sustainable access to adequate housing resources. Thus, such disadvantaged groups as the elderly, children, the physically disabled, the terminally ill, HIV-positive individuals, persons with persistent medical problems, the mentally ill, victims of natural disasters, people living in disaster-prone areas and other groups should be ensured some degree of priority consideration in the housing sphere. Both housing law and policy should take fully into account the special housing needs of these groups. Within many States parties increasing access to land by landless or impoverished segments of the society should constitute a central policy goal. Discernible governmental obligations need to be developed aiming to substantiate the right of all to a secure place to live in peace and dignity, including access to land as an entitlement;

(f) Location. Adequate housing must be in a location which allows access to employment options, health-care services, schools, child-care centres and other social facilities. This is true both in large cities and in rural areas where the temporal and financial costs of getting to and from the place of work can place excessive demands upon the budgets of poor households. Similarly, housing should not be built on polluted sites nor in immediate proximity to pollution sources that threaten the right to health of the inhabitants;

(g) Cultural adequacy. The way housing is constructed, the building materials used and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing. Activities geared towards development or modernization in the housing sphere should ensure that the cultural dimensions of housing are not sacrificed, and that, *inter alia*, modern technological facilities, as appropriate are also ensured.

9. As noted above, the right to adequate housing cannot be viewed in isolation from other human rights contained in the two International Covenants and other applicable international instruments. Reference has already been made in this regard to the concept of human dignity and the principle of non-discrimination. In addition, the full enjoyment of other rights - such as the right to freedom of expression, the right to freedom of association (such as for tenants and other community-based groups), the right to freedom of residence and the right to participate in public decision-making - is indispensable if the right to adequate housing is to be realized and maintained by all groups in society. Similarly, the right not to be subjected to arbitrary or unlawful interference with one's privacy, family, home or correspondence constitutes a very important dimension in defining the right to adequate housing.

10. Regardless of the state of development of any country, there are certain steps which must be taken immediately. As recognized in the Global Strategy for Shelter and in other international analyses, many of the measures required to promote the right to housing would only require the abstention by the Government from certain practices and a commitment to facilitating "self-help"

by affected groups. To the extent that any such steps are considered to be beyond the maximum resources available to a State party, it is appropriate that a request be made as soon as possible for international cooperation in accordance with articles 11 (1), 22 and 23 of the Covenant, and that the Committee be informed thereof.

11. States parties must give due priority to those social groups living in unfavourable conditions by giving them particular consideration. Policies and legislation should correspondingly not be designed to benefit already advantaged social groups at the expense of others. The Committee is aware that external factors can affect the right to a continuous improvement of living conditions, and that in many States parties overall living conditions declined during the 1980s. However, as noted by the Committee in its General Comment 2 (1990) (E/1990/23, annex III), despite externally caused problems, the obligations under the Covenant continue to apply and are perhaps even more pertinent during times of economic contraction. It would thus appear to the Committee that a general decline in living and housing conditions, directly attributable to policy and legislative decisions by States parties, and in the absence of accompanying compensatory measures, would be inconsistent with the obligations under the Covenant.

12. While the most appropriate means of achieving the full realization of the right to adequate housing will inevitably vary significantly from one State party to another, the Covenant clearly requires that each State party take whatever steps are necessary for that purpose. This will almost invariably require the adoption of a national housing strategy which, as stated in paragraph 32 of the Global Strategy for Shelter, "defines the objectives for the development of shelter conditions, identifies the resources available to meet these goals and the most cost-effective way of using them and sets out the responsibilities and time-frame for the implementation of the necessary measures". Both for reasons of relevance and effectiveness, as well as in order to ensure respect for other human rights, such a strategy should reflect extensive genuine consultation with, and participation by, all of those affected, including the homeless, the inadequately housed and their representatives. Furthermore, steps should be taken to ensure coordination between ministries and regional and local authorities in order to reconcile related policies (economics, agriculture, environment, energy, etc.) with the obligations under article 11 of the Covenant.

13. Effective monitoring of the situation with respect to housing is another obligation of immediate effect. For a State party to satisfy its obligations under article 11 (1) it must demonstrate, *inter alia*, that it has taken whatever steps are necessary, either alone or on the basis of international cooperation, to ascertain the full extent of homelessness and inadequate housing within its jurisdiction. In this regard, the revised general guidelines regarding the form and contents of reports adopted by the Committee (E/C.12/1991/1) emphasize the need to "provide detailed information about those groups within ... society that are vulnerable and disadvantaged with regard to housing". They include, in particular, homeless persons and families, those inadequately housed and without ready access to basic amenities, those

living in "illegal" settlements, those subject to forced evictions and low-income groups.

14. Measures designed to satisfy a State party's obligations in respect of the right to adequate housing may reflect whatever mix of public and private sector measures considered appropriate. While in some States public financing of housing might most usefully be spent on direct construction of new housing, in most cases, experience has shown the inability of Governments to fully satisfy housing deficits with publicly built housing. The promotion by States parties of "enabling strategies", combined with a full commitment to obligations under the right to adequate housing, should thus be encouraged. In essence, the obligation is to demonstrate that, in aggregate, the measures being taken are sufficient to realize the right for every individual in the shortest possible time in accordance with the maximum of available resources.

15. Many of the measures that will be required will involve resource allocations and policy initiatives of a general kind. Nevertheless, the role of formal legislative and administrative measures should not be underestimated in this context. The Global Strategy for Shelter (paras. 66-67) has drawn attention to the types of measures that might be taken in this regard and to their importance.

16. In some States, the right to adequate housing is constitutionally entrenched. In such cases the Committee is particularly interested in learning of the legal and practical significance of such an approach. Details of specific cases and of other ways in which entrenchment has proved helpful should thus be provided.

17. The Committee views many component elements of the right to adequate housing as being at least consistent with the provision of domestic legal remedies. Depending on the legal system, such areas might include, but are not limited to: (a) legal appeals aimed at preventing planned evictions or demolitions through the issuance of court-ordered injunctions; (b) legal procedures seeking compensation following an illegal eviction; (c) complaints against illegal actions carried out or supported by landlords (whether public or private) in relation to rent levels, dwelling maintenance, and racial or other forms of discrimination; (d) allegations of any form of discrimination in the allocation and availability of access to housing; and (e) complaints against landlords concerning unhealthy or inadequate housing conditions. In some legal systems it would also be appropriate to explore the possibility of facilitating class action suits in situations involving significantly increased levels of homelessness.

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

19. Finally, article 11 (1) concludes with the obligation of States parties to

recognize "the essential importance of international cooperation based on free consent". Traditionally, less than 5 per cent of all international assistance has been directed towards housing or human settlements, and often the manner by which such funding is provided does little to address the housing needs of disadvantaged groups. States parties, both recipients and providers, should ensure that a substantial proportion of financing is devoted to creating conditions leading to a higher number of persons being adequately housed. International financial institutions promoting measures of structural adjustment should ensure that such measures do not compromise the enjoyment of the right to adequate housing. States parties should, when contemplating international financial cooperation, seek to indicate areas relevant to the right to adequate housing where external financing would have the most effect. Such requests should take full account of the needs and views of the affected groups.

General Comment 7: Forced Evictions

CESCR: The right to adequate housing (Art.11.1): forced evictions : 20/05/97.

1. In its General Comment No. 4 (1991), the Committee observed that all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. It concluded that forced evictions are prima facie incompatible with the requirements of the Covenant. Having considered a significant number of reports of forced evictions in recent years, including instances in which it has determined that the obligations of States parties were being violated, the Committee is now in a position to seek to provide further clarification as to the implications of such practices in terms of the obligations contained in the Covenant.

2. The international community has long recognized that the issue of forced evictions is a serious one. In 1976, the United Nations Conference on Human Settlements noted that special attention should be paid to "undertaking major clearance operations should take place only when conservation and rehabilitation are not feasible and relocation measures are made". In 1988, in the Global Strategy for Shelter to the Year 2000, adopted by the General Assembly in its resolution 43/181, the "fundamental obligation [of Governments] to protect and improve houses and neighbourhoods, rather than damage or destroy them" was recognized. Agenda 21 stated that "people should be protected by law against unfair eviction from their homes or land". In the Habitat Agenda Governments committed themselves to "protecting all people from, and providing legal protection and redress for, forced evictions that are contrary to the law, taking human rights into consideration; [and] when evictions are unavoidable, ensuring, as appropriate, that alternative suitable solutions are provided". The Commission on Human Rights has also indicated that "forced evictions are a gross violation of human

rights". However, although these statements are important, they leave open one of the most critical issues, namely that of determining the circumstances under which forced evictions are permissible and of spelling out the types of protection required to ensure respect for the relevant provisions of the Covenant.

3. The use of the term "forced evictions" is, in some respects, problematic. This expression seeks to convey a sense of arbitrariness and of illegality. To many observers, however, the reference to "forced evictions" is a tautology, while others have criticized the expression "illegal evictions" on the ground that it assumes that the relevant law provides adequate protection of the right to housing and conforms with the Covenant, which is by no means always the case. Similarly, it has been suggested that the term "unfair evictions" is even more subjective by virtue of its failure to refer to any legal framework at all. The international community, especially in the context of the Commission on Human Rights, has opted to refer to "forced evictions", primarily since all suggested alternatives also suffer from many such defects. The term "forced evictions" as used throughout this general comment is defined as the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection. The prohibition on forced evictions does not, however, apply to evictions carried out by force in accordance with the law and in conformity with the provisions of the International Covenants on Human Rights.

4. The practice of forced evictions is widespread and affects persons in both developed and developing countries. Owing to the interrelationship and interdependency which exist among all human rights, forced evictions frequently violate other human rights. Thus, while manifestly breaching the rights enshrined in the Covenant, the practice of forced evictions may also result in violations of civil and political rights, such as the right to life, the right to security of the person, the right to non-interference with privacy, family and home and the right to the peaceful enjoyment of possessions.

5. Although the practice of forced evictions might appear to occur primarily in heavily populated urban areas, it also takes place in connection with forced population transfers, internal displacement, forced relocations in the context of armed conflict, mass exoduses and refugee movements. In all of these contexts, the right to adequate housing and not to be subjected to forced eviction may be violated through a wide range of acts or omissions attributable to States parties. Even in situations where it may be necessary to impose limitations on such a right, full compliance with article 4 of the Covenant is required so that any limitations imposed must be "determined by law only insofar as this may be compatible with the nature of these [i.e. economic, social and cultural] rights and solely for the purpose of promoting the general welfare in a democratic society".

6. Many instances of forced eviction are associated with violence, such as evictions resulting from international armed conflicts, internal strife and communal or ethnic violence.

7. Other instances of forced eviction occur in the name of development. Evictions may be carried out in connection with conflict over land rights, development and infrastructure projects, such as the construction of dams or other large-scale energy projects, with land acquisition measures associated with urban renewal, housing renovation, city beautification programmes, the clearing of land for agricultural purposes, unbridled speculation in land, or the holding of major sporting events like the Olympic Games.

8. In essence, the obligations of States parties to the Covenant in relation to forced evictions are based on article 11.1, read in conjunction with other relevant provisions. In particular, article 2.1 obliges States to use "all appropriate means" to promote the right to adequate housing. However, in view of the nature of the practice of forced evictions, the reference in article 2.1 to progressive achievement based on the availability of resources will rarely be relevant. The State itself must refrain from forced evictions and ensure that the law is enforced against its agents or third parties who carry out forced evictions (as defined in paragraph 3 above). Moreover, this approach is reinforced by article 17.1 of the International Covenant on Civil and Political Rights which complements the right not to be forcefully evicted without adequate protection. That provision recognizes, *inter alia*, the right to be protected against "arbitrary or unlawful interference" with one's home. It is to be noted that the State's obligation to ensure respect for that right is not qualified by considerations relating to its available resources.

9. Article 2.1 of the Covenant requires States parties to use "all appropriate means", including the adoption of legislative measures, to promote all the rights protected under the Covenant. Although the Committee has indicated in its General Comment No. 3 (1990) that such measures may not be indispensable in relation to all rights, it is clear that legislation against forced evictions is an essential basis upon which to build a system of effective protection. Such legislation should include measures which (a) provide the greatest possible security of tenure to occupiers of houses and land, (b) conform to the Covenant and (c) are designed to control strictly the circumstances under which evictions may be carried out. The legislation must also apply to all agents acting under the authority of the State or who are accountable to it. Moreover, in view of the increasing trend in some States towards the Government greatly reducing its responsibilities in the housing sector, States parties must ensure that legislative and other measures are adequate to prevent and, if appropriate, punish forced evictions carried out, without appropriate safeguards, by private persons or bodies. States parties should therefore review relevant legislation and policies to ensure that they are compatible with the obligations arising from the right to adequate housing and repeal or amend any legislation or policies that are inconsistent with the requirements of the Covenant.

10. Women, children, youth, older persons, indigenous people, ethnic and other minorities, and other vulnerable individuals and groups all suffer disproportionately from the practice of forced eviction. Women in all groups are especially vulnerable given the extent of statutory and other forms of discrimination which often apply in relation to property rights (including home

ownership) or rights of access to property or accommodation, and their particular vulnerability to acts of violence and sexual abuse when they are rendered homeless. The non-discrimination provisions of articles 2.2 and 3 of the Covenant impose an additional obligation upon Governments to ensure that, where evictions do occur, appropriate measures are taken to ensure that no form of discrimination is involved.

11. Whereas some evictions may be justifiable, such as in the case of persistent non-payment of rent or of damage to rented property without any reasonable cause, it is incumbent upon the relevant authorities to ensure that they are carried out in a manner warranted by a law which is compatible with the Covenant and that all the legal recourses and remedies are available to those affected.

12. Forced eviction and house demolition as a punitive measure are also inconsistent with the norms of the Covenant. Likewise, the Committee takes note of the obligations enshrined in the Geneva Conventions of 1949 and Protocols thereto of 1977 concerning prohibitions on the displacement of the civilian population and the destruction of private property as these relate to the practice of forced eviction.

13. States parties shall ensure, prior to carrying out any evictions, and particularly those involving large groups, that all feasible alternatives are explored in consultation with the affected persons, with a view to avoiding, or at least minimizing, the need to use force. Legal remedies or procedures should be provided to those who are affected by eviction orders. States parties shall also see to it that all the individuals concerned have a right to adequate compensation for any property, both personal and real, which is affected. In this respect, it is pertinent to recall article 2.3 of the International Covenant on Civil and Political Rights, which requires States parties to ensure "an effective remedy" for persons whose rights have been violated and the obligation upon the "competent authorities (to) enforce such remedies when granted".

14. In cases where eviction is considered to be justified, it should be carried out in strict compliance with the relevant provisions of international human rights law and in accordance with general principles of reasonableness and proportionality. In this regard it is especially pertinent to recall General Comment 16 of the Human Rights Committee, relating to article 17 of the International Covenant on Civil and Political Rights, which states that interference with a person's home can only take place "in cases envisaged by the law". The Committee observed that the law "should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances". The Committee also indicated that "relevant legislation must specify in detail the precise circumstances in which such interferences may be permitted".

15. Appropriate procedural protection and due process are essential aspects of all human rights but are especially pertinent in relation to a matter such as forced evictions which directly invokes a large number of the rights recognized in both the International Covenants on Human Rights. The Committee

considers that the procedural protections which should be applied in relation to forced evictions include: (a) an opportunity for genuine consultation with those affected; (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; (c) information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected; (d) especially where groups of people are involved, government officials or their representatives to be present during an eviction; (e) all persons carrying out the eviction to be properly identified; (f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise; (g) provision of legal remedies; and (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.

16. Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.

17. The Committee is aware that various development projects financed by international agencies within the territories of State parties have resulted in forced evictions. In this regard, the Committee recalls its General Comment No. 2 (1990) which states, *inter alia*, that "international agencies should scrupulously avoid involvement in projects which, for example ... promote or reinforce discrimination against individuals or groups contrary to the provisions of the Covenant, or involve large-scale evictions or displacement of persons without the provision of all appropriate protection and compensation. Every effort should be made, at each phase of a development project, to ensure that the rights contained in the Covenant are duly taken into account".

18. Some institutions, such as the World Bank and the Organisation for Economic Cooperation and Development (OECD) have adopted guidelines on relocation and/or resettlement with a view to limiting the scale of and human suffering associated with forced evictions. Such practices often accompany large-scale development projects, such as dam-building and other major energy projects. Full respect for such guidelines, insofar as they reflect the obligations contained in the Covenant, is essential on the part of both the agencies themselves and States parties to the Covenant. The Committee recalls in this respect the statement in the Vienna Declaration and Programme of Action to the effect that "while development facilitates the enjoyment of all human rights, the lack of development may not be invoked to justify the abridgement of internationally recognized human rights" (Part I, para. 10).

19. In accordance with the guidelines for reporting adopted by the Committee, State parties are requested to provide various types of information pertaining directly to the practice of forced evictions. This includes information relating to (a) the "number of persons evicted within the last five years and the number of persons currently lacking legal protection against arbitrary eviction or any other kind of eviction", (b) "legislation concerning the rights of tenants to

security of tenure, to protection from eviction" and (c) "legislation prohibiting any form of eviction".

20. Information is also sought as to "measures taken during, *inter alia*, urban renewal programmes, redevelopment projects, site upgrading, preparation for international events (Olympics and other sporting competitions, exhibitions, conferences, etc.) 'beautiful city' campaigns, etc. which guarantee protection from eviction or guarantee rehousing based on mutual consent, by any persons living on or near to affected sites". However, few States parties have included the requisite information in their reports to the Committee. The Committee therefore wishes to emphasize the importance it attaches to the receipt of such information.

21. Some States parties have indicated that information of this nature is not available. The Committee recalls that effective monitoring of the right to adequate housing, either by the Government concerned or by the Committee, is not possible in the absence of the collection of appropriate data and would request all States parties to ensure that the necessary data is collected and is reflected in the reports submitted by them under the Covenant.

CERD General Recommendation 27: Discrimination Against Roma

General Recommendation XXVII

Discrimination against Roma

(Fifty-seventh session, 2000)

The Committee on the Elimination of Racial Discrimination,

Having in mind the submissions from States parties to the International Convention for the Elimination of All Forms of Racial Discrimination, their periodic reports submitted under article 9 of the Convention, as well as the concluding observations adopted by the Committee in connection with the consideration of States parties' periodic reports;

Having organized a thematic discussion on the issue of discrimination against Roma and received the contributions of members of the Committee, as well as contributions by experts from United Nations bodies and other treaty bodies and from regional organizations,

Having also received the contributions of interested non-governmental organizations, both orally during the informal meeting organized with them and through written information,

Taking into account the provisions of the Convention,

Recommends that the States parties to the Convention, taking into account their specific situations, adopt for the benefit of members of the Roma communities, inter alia, all or part of the following measures, as appropriate.

1. Measures of a general nature

1. To review and enact or amend legislation, as appropriate, in order to eliminate all forms of racial discrimination against Roma as against other persons or groups, in accordance with the Convention.
2. To adopt and implement national strategies and programmes and express determined political will and moral leadership, with a view to improving the situation of Roma and their protection against discrimination by State bodies, as well as by any person or organization.
3. To respect the wishes of Roma as to the designation they want to be given and the group to which they want to belong.
4. To ensure that legislation regarding citizenship and naturalization does not discriminate against members of Roma communities.
5. To take all necessary measures in order to avoid any form of discrimination against immigrants or asylum-seekers of Roma origin.
6. To take into account, in all programmes and projects planned and implemented and in all measures adopted, the situation of Roma women, who are often victims of double discrimination.
7. To take appropriate measures to secure for members of Roma communities effective remedies and to ensure that justice is fully and promptly done in cases concerning violations of their fundamental rights and freedoms.
8. To develop and encourage appropriate modalities of communication and dialogue between Roma communities and central and local authorities.
9. To endeavour, by encouraging a genuine dialogue, consultations or other appropriate means, to improve the relations between Roma communities and non-Roma communities, in particular at local levels, with a view to promoting tolerance and overcoming prejudices and negative stereotypes on both sides, to promoting efforts for adjustment and adaptation and to avoiding discrimination and ensuring that all persons fully enjoy their human rights and freedoms.
10. To acknowledge wrongs done during the Second World War to Roma communities by deportation and extermination and consider ways of compensating for them.
11. To take the necessary measures, in cooperation with civil society, and initiate projects to develop the political culture and educate the population as a whole in a spirit of non-discrimination, respect for others and tolerance, in particular concerning Roma.

2. Measures for protection against racial violence

12. To ensure protection of the security and integrity of Roma, without any discrimination, by adopting measures for preventing racially motivated acts of violence against them; to ensure prompt action by the police, the prosecutors and the judiciary for investigating and punishing such acts; and to ensure that perpetrators, be they public officials or other persons, do not enjoy any degree of impunity.

13. To take measures to prevent the use of illegal force by the police against Roma, in particular in connection with arrest and detention.

14. To encourage appropriate arrangements for communication and dialogue between the police and Roma communities and associations, with a view to preventing conflicts based on racial prejudice and combating acts of racially motivated violence against members of these communities, as well as against other persons.

15. To encourage recruitment of members of Roma communities into the police and other law enforcement agencies.

16. To promote action in post-conflict areas, by States parties and from other responsible States or authorities in order to prevent violence against and forced displacement of members of the Roma communities.

3. Measures in the field of education

17. To support the inclusion in the school system of all children of Roma origin and to act to reduce drop-out rates, in particular among Roma girls, and, for these purposes, to cooperate actively with Roma parents, associations and local communities.

18. To prevent and avoid as much as possible the segregation of Roma students, while keeping open the possibility for bilingual or mother-tongue tuition; to this end, to endeavour to raise the quality of education in all schools and the level of achievement in schools by the minority community, to recruit school personnel from among members of Roma communities and to promote intercultural education.

19. To consider adopting measures in favour of Roma children, in cooperation with their parents, in the field of education.

20. To act with determination to eliminate any discrimination or racial harassment of Roma students.

21. To take the necessary measures to ensure a process of basic education for Roma children of travelling communities, including by admitting them temporarily to local schools, by temporary classes in their places of encampment, or by using new technologies for distance education.

22. To ensure that their programmes, projects and campaigns in the field of education take into account the disadvantaged situation of Roma girls and women.

23. To take urgent and sustained measures in training teachers, educators and assistants from among Roma students.

24. To act to improve dialogue and communication between the teaching personnel and Roma children, Roma communities and parents, using more often assistants chosen from among the Roma.

25. To ensure adequate forms and schemes of education for members of Roma communities beyond school age, in order to improve adult literacy among them.

26. To include in textbooks, at all appropriate levels, chapters about the history and culture of Roma, and encourage and support the publication and distribution of books and other print materials as well as the broadcasting of television and radio programmes, as appropriate, about their history and culture, including in languages spoken by them.

4. Measures to improve living conditions

27. To adopt or make more effective legislation prohibiting discrimination in employment and all discriminatory practices in the labour market affecting members of Roma communities, and to protect them against such practices.

28. To take special measures to promote the employment of Roma in the public administration and institutions, as well as in private companies.

29. To adopt and implement, whenever possible, at the central or local level, special measures in favour of Roma in public employment such as public contracting and other activities undertaken or funded by the Government, or training Roma in various skills and professions.

30. To develop and implement policies and projects aimed at avoiding segregation of Roma communities in housing; to involve Roma communities and associations as partners together with other persons in housing project construction, rehabilitation and maintenance.

31. To act firmly against any discriminatory practices affecting Roma, mainly by local authorities and private owners, with regard to taking up residence and access to housing; to act firmly against local measures denying residence to and unlawful expulsion of Roma, and to refrain from placing Roma in camps outside populated areas that are isolated and without access to health care and other facilities.

32. To take the necessary measures, as appropriate, for offering Roma nomadic groups or Travellers camping places for their caravans, with all necessary facilities.

33. To ensure Roma equal access to health care and social security services and to eliminate any discriminatory practices against them in this field.

34. To initiate and implement programmes and projects in the field of health for Roma, mainly women and children, having in mind their disadvantaged situation due to extreme poverty and low level of education, as well as to cultural differences; to involve Roma associations and communities and their representatives, mainly women, in designing and implementing health programmes and projects concerning Roma groups.

35. To prevent, eliminate and adequately punish any discriminatory practices concerning the access of members of the Roma communities to all places and services intended for the use of the general public, including restaurants, hotels, theatres and music halls, discotheques and others.

5. Measures in the field of the media

36. To act as appropriate for the elimination of any ideas of racial or ethnic superiority, of racial hatred and incitement to discrimination and violence against Roma in the media, in accordance with the provisions of the Convention.

37. To encourage awareness among professionals of all media of the particular responsibility to not disseminate prejudices and to avoid reporting incidents involving individual members of Roma communities in a way which blames such communities as a whole.

38. To develop educational and media campaigns to educate the public about Roma life, society and culture and the importance of building an inclusive society while respecting the human rights and the identity of the Roma.

39. To encourage and facilitate access by Roma to the media, including newspapers and television and radio programmes, the establishment of their own media, as well as the training of Roma journalists.

40. To encourage methods of self-monitoring by the media, through a code of conduct for media organizations, in order to avoid racial, discriminatory or biased language.

6. Measures concerning participation in public life

41. To take the necessary steps, including special measures, to secure equal opportunities for the participation of Roma minorities or groups in all central and local governmental bodies.

42. To develop modalities and structures of consultation with Roma political parties, associations and representatives, both at central and local levels, when considering issues and adopting decisions on matters of concern to Roma communities.

43. To involve Roma communities and associations and their representatives at the earliest stages in the development and implementation of policies and programmes affecting them and to ensure sufficient transparency about such policies and programmes.

44. To promote more awareness among members of Roma communities of the need for their more active participation in public and social life and in promoting their own interests, for instance the education of their children and their participation in professional training.

45. To organize training programmes for Roma public officials and representatives, as well as for prospective candidates to such responsibilities, aimed at improving their political, policy-making and public administration skills.

The Committee also recommends that:

46. States parties include in their periodic reports, in an appropriate form, data about the Roma communities within their jurisdiction, including statistical data about Roma participation in political life and about their economic, social and cultural situation, including from a gender perspective, and information about the implementation of this general recommendation.

47. Intergovernmental organizations, in their projects of cooperation and assistance to the various States parties, as appropriate, address the situation of Roma communities and favour their economic, social and cultural advancement.

48. The High Commissioner for Human Rights consider establishing a focal point for Roma issues within the Office of the High Commissioner.

The Committee further recommends that:

49. The World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance give due consideration to the above recommendations, taking into account the place of the Roma communities among those most disadvantaged and most subject to discrimination in the contemporary world.

1424th meeting
16 August 2000