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IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC,
SOCIAL AND CULTURAL RIGHTS

Written statement submitted by Habitat International Coalition,
a non-governmental organization on the Roster

The Secretary-General has received the following communication, which is circulated in accordance with Economic and Social Council resolutions 1296 (XLIV) and 1988/4.

[10 December 1989]

1. Habitat International Coalition (HIC) is an alliance of more than 250 non-governmental and community-based organizations from 60 countries, each concerned with various aspects of housing. Founded in 1976, HIC's major objective is the recognition and implementation of the right of everyone to secure a place in which to live in conditions of peace and dignity.

A. DEFINING THE RIGHT TO ADEQUATE HOUSING

2. Although the right to housing can be found in a great variety of international human rights instruments, a clear, concise and acceptable definition of this fundamental right will have to be agreed upon. HIC believes that without a legal definition of this right, the likelihood of it ever achieving its potential utility is greatly diminished. The Committee is one of the most important international human rights body concerned with, inter alia, the right to adequate housing and it has significant legal and

creative responsibilities which can be exercised towards the ultimate realization of this right for all who possess legal entitlements to it.

3. HIC applauds the increasing consideration and attention the Committee on Economic, Social and Cultural Rights continues to place on the right to housing. Nevertheless, the Committee could play an even more useful function if it were to give greater legal substance to this right. We realize, of course, that the right to housing is a complex right and one which will require substantial scrutiny before an acceptable "definition" is found. In order to assist the Committee with its work surrounding the human right to adequate housing, HIC would respectfully like to offer several points for consideration.

1. What the right to housing does not mean

4. Through HIC's International Campaign for Housing Rights we have learned that there are some popular misconceptions of the right to housing. In order to clarify some of these, the right to housing does not mean that:

- (a) Housing is to be provided to all persons free of charge;
- (b) Housing is to be seen primarily as a commodity;
- (c) Housing problems will be inevitably solved by market, planned or mixed economies. None of these systems has led to the full realization of the right to housing;
- (d) All elements of housing rights are subject to immediate implementation;
- (e) The qualitative enjoyment of housing rights are solely dependent upon an individual or family's income;
- (f) The right to housing is exclusively a right of families exclusive of individual needs;
- (g) Acceptable standards of housing will be the same throughout the world.

2. What the right to housing does mean

5. The complexity of housing rights makes it impossible to cover all aspects of this right in this short submission. Still some points can be made as to what the right to housing does mean in legal terms:

- (a) Housing is a fundamental basic human need relevant to all human beings. The "core contents" of this right must recognize that every person requires housing which is (i) secure; (ii) safe and decent for health, including the immediate environment; (iii) affordable; (iv) accessible; (v) culturally adequate; (vi) free from discrimination and of such a form that it does not detract from one's dignity as a human being; (vii) properly located with easy access to basic services and infrastructure; (viii) possessive of a physical quality which promotes well-being;

(b) The obligation to respect the right to housing includes protection against eviction, harassment or interferences of rights to privacy or the right to participate in any decisions which relate to one's housing or community situation.

(c) The obligation to protect the right to housing includes the right to be protected against actions and inactions of others which impinge on the enjoyment of this right such as arbitrary rent increases by landlords (whether public, private or otherwise), any form of discrimination by any entity, eviction or harassment, tolerance of inadequate or minimum housing standards (particularly by property owners who may have a statutory duty in this respect), any action which prohibits or discourages the free association of non-governmental organizations and community-based organizations, etc.

(d) The obligation to fulfil the right to housing includes the duty of taking whatever necessary measures for the fulfilment of this right such as monitoring and regulating land markets, implementing "enabling policies", the granting of tenure security to "illegal" settlements, regulating the housing market in general and the rental sector and rent levels in particular, guaranteeing through financial and other means the provision of housing resources to homeless persons, eradicating all forms of discrimination in the housing sector, etc.

(e) Several "benchmarks" which may be used by the Committee in establishing compliance with the right to housing could include:

- (i) The adoption of justiciable legislation leading towards the full enjoyment of the right to housing for all sectors of the population and the repeal of legislation which clearly inhibits housing rights from being realized;
- (ii) The percentage increase or decrease over the last five years of persons: inadequately housed in any form whatsoever, made homeless for any reason, evicted from their homes for any justification, subjected to any form of discrimination in the housing sector;
- (iii) The conferral of tenure security to all segments of the population realizing the central importance of tenure to the realization of housing rights;
- (iv) The percentage increase or decrease of public expenditure as a portion of the Gross National Product and State budget on the fulfilment of the right to housing, disaggregated according to income groups of the population;
- (v) The provision of basic infrastructure and social and other services inherent in the right to housing, etc.

These few examples are merely illustrative of what could be done.

B. EVICTIONS

6. Evictions (also referred to as forced removals, resettlements, displacements, clearances, etc.) constitute the most grievous violation of the

right to adequate housing. The human rights implications of evictions are abundantly clear, and in the instances of South Africa and Israel, this has been recognized and condemned in United Nations resolutions. Evictions are far from taking place in these two countries alone. In one form or another, this is a phenomenon which affects many countries, even though the United Nations Vancouver Declaration on Human Settlements states that undertaking major clearance operations should take place only when conservation and rehabilitation are not feasible and relocation measures are made. HIC accepts that in some situations and with certain circumstances met (such as rehousing at a mutually agreed upon location and at which living conditions do not worsen), evictions may be justifiable. Yet in many instances, evictions are carried out with insufficient warning, inadequate legal protection and often accompanied by violence.

7. For the past two years, Habitat International Coalition has been collecting evidence and information about evictions from all corners of the earth and from all regions. Our data gathering is thus far certainly not exhaustive. None the less, we have documented mass and forced evictions in more than 12 different countries. HIC has carried out on-site fact-finding missions in 3 of these States. Combined data from the 12 States alone (9 of which are States parties to the Covenant on Economic, Social and Cultural Rights), reveals that the 1980s has been witness to over 3 million persons being evicted from their homes against their will.

8. In the reports from States parties which the Committee monitors, HIC has noticed no mention of evictions. HIC urges the Committee to permanently include inquiries into the phenomenon of evictions when questioning States parties on issues relevant to article 11 of the Covenant.

C. GENERAL DISCUSSION

9. HIC is encouraged by the new practice of the Committee of holding "general discussions" on certain rights or articles found in the Covenant. The initial general discussion on article 11 held during the third session of the Committee was a fruitful and precedent-setting initiative. Yet, due to lengthy presentations and discussion of the right to food as found in this article, virtually no time was accorded for the other constituted rights of article 11, including the right to housing. We applaud the Committee's decision of allowing an expert to speak briefly on some of the issues surrounding the right to housing last year. However, this short statement is, in our view, clearly insufficient. During the first general discussion, there was no time allotted to crucial discussions amongst Committee members about the right to housing.

10. HIC strongly urges the Committee to complete the unfinished discussion of article 11 at this year's fourth session, by allocating sufficient time and resources to consideration equal to that provided to the right to food, yet this year concerning the right to adequate housing.

D. GENERAL COMMENTS

11. HIC is pleased with the practice of "general comments" by the Committee. The first such comment on "Reporting by States parties" provides valuable insight and clarity about some of the legal obligations of States parties to the Covenant.

12. The Human Rights Committee inevitably plays a variety of roles. One of the most important are the pronouncements this body makes about the legal nature of the Covenant. As the Committee has revealed through its practice of general comments, these can add significant clarity and judicially based insight into the nature of the rights which this and other bodies are obliged to monitor. General comments can and should assist in the legal interpretation of both the entitlements and the State obligations inherent in certain rights, which is more precise than the often vaguely worded passages of the Covenant or other instruments.

13. The Committee's work or pronouncements on the Covenant have ramifications for the entire United Nations system and international law in general. Conversely, the Committee must take into account relevant developments in these other human rights organs. In this respect we urge the Committee to pay special attention to the statement made in the Preliminary Report of the Special Rapporteur on Economic, Social and Cultural Rights, Mr. Danilo Turk, where it is stated in paragraph 73 that "... the rights relating to housing remain without clear indication as to their substance, and there is a clear need to develop clearer standards in this area - taking into account the complex nature of the problem and the very different situations in which it occurs" (E/CN.4/Sub.2/1989/19) (emphasis added).

14. HIC thus requests in accordance with paragraph 330 of the Committee's Report of its third session, that the Committee give priority to the adoption of a general comment on article 11 of the Covenant.

E. GUIDELINES FOR STATES REPORTS

15. While HIC is well aware of and accepts many of the reasons and arguments supporting a revision of the existing guidelines for States reports, we also feel that over-generalization of the guidelines as opposed to giving them greater specificity, can lead to several problems. Part of this purpose of the existing guidelines, however inadequate they may be, is to provide at least some degree of precision as to what each of the rights in the Covenants imply in legal terms. This is of special importance in view of the frequently heard criticism about the lack of specificity given to many economic, social and cultural rights. This vagueness may lead to States sensing they have more or less free rein in determining both what this right means and how to go about enforcing it, if indeed they choose to actively do so.

16. HIC feels quite strongly that broad guidelines such as those found in the draft proposal of the third session, if adopted by the Committee, may serve to trivialize the more detailed elements of the rights in question, including the right to adequate housing. For instance, in the draft revised guidelines, it is said that States should "provide detailed statistics as to the extent to which the right to ... is not currently enjoyed by all individuals". If no mutually agreed-upon interpretation of a right exists, phrases such as these merely serve to reinforce the status quo. HIC sincerely hopes that the interests of efficiency and streamlining of efforts will not impede the true realization of the rights found in the Covenant.
