



# HABITAT INTERNATIONAL COALITION

## *Housing and Land Rights Network*

### Key Habitat Terms

**Accountability:** To be accountable is the quality of being willingly or unwillingly subject to being called to explain, rationalize and/or justify an action or deed. The term has a wide usage in ethics, finance, politics and administration. In human rights, “accountability” conveys a moral and legal sense of duty that can be based on a human rights norm, such as a treaty obligation. However, the basis for the claim of accountability calls for more-precise terms.

**Adequate housing:** Living conditions that the State must respect, protect and fulfill such that integrates the following in elements and entitlements:

- legal security of tenure,
- reasonable access to public goods and services,
- reasonable access to environmental goods and services,
- affordability at a level that does not threaten other basic needs (usually meaning a cost of no more than 30% of household income spent on housing, maintenance and services),
- habitability, with sound structure; adequate space, lighting and ventilation; a clean and healthy environment; and corresponding with human needs for physical health and safety;
- physical accessibility, particularly for those with special physical or mobility constraints;
- a location that is safe, reasonably accessible to work and economic resources, services and community;
- cultural adequacy, such that corresponds with custom and practice that ensures participation in cultural life.

Adequate housing also embodies the congruent human rights of:

- participation, freedom of expression, association and peaceful assembly;
- education, information, capability and capacity building;
- displaced persons’ rights to reparation (i.e., restitution, return, resettlement, rehabilitation, compensation and pledge of nonrepetition); refugee rights to nonrefoulement (the prohibition against coerced return), and freedom of movement; and
- security of person and privacy, including protection of the family and freedom from domestic violence.

**Adverse possession:** A means by which one can legally take another’s property without paying for it. The requirements for adversely possessing property vary from country to country, but usually include continuous use for a period of five or more years and paying taxes and/or paying for services on the property.

**Affordable housing:** Individuals and communities should have access to adequate housing that is affordable such that expenditures for occupancy are not at a level that threatens other basic needs affordability at a level that threatens other basic needs (usually meaning a cost of no more than 30% of household income spent on housing, maintenance and services). States must ensure affordability through market regulation, convenient financing schemes, cooperative arrangements, availability of reasonably prices building materials and/or subsidies.

**Alternative Planning:** involves a preemptive initiative, or a responsive mechanism to development plans implemented by the government and/or corporations that often negatively affect communities. An “alternative plan” can involve many different mechanism and processes, but ultimately involves “creating an accountable and critical balance between the public and private sectors” (Burnham). This process involves many different levels of interventions, including skill-building, empowerment and the affected community consultations and cooperation. A key aspect of alternative planning is capacity building, involving empowerment, mobilizing a local community by providing its members with the skills and knowledge, and/or with experts in these areas, in order to produce its own, alternative development plan. The plan then serves as a vehicle for articulating and advocating the community’s collective vision before planning authorities.

Thus, alternative planning processes entail many contributions, including social production of habitat by production of a plan that represents a community’s collective common development objectives, rather than one imposed by external forces.

**Apartheid** (a·part·heid: a-part-hāt; اِپَارْتَهَيْت):

A crime against humanity legally defined as “inhumane acts...committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime”<sup>1</sup>

Apartheid involves the following practices:

- (a) Denial to a member or members of a racial group or groups of the right to life and liberty of person:
  - (i) By murder of members of a racial group or groups;
  - (ii) By the infliction upon the members of a racial group or groups of serious bodily or mental harm, by the infringement of their freedom or dignity, or by subjecting them to torture or to cruel, inhuman or degrading treatment or punishment;
  - (iii) By arbitrary arrest and illegal imprisonment of the members of a racial group or groups;
- (b) Deliberate imposition on a racial group or groups of living conditions calculated to cause its or their physical destruction in whole or in part;
- (c) Any legislative measures and other measures calculated to prevent a racial group or groups from participation in the political, social, economic and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group or groups, in particular by denying to members of a racial group or groups basic human rights and freedoms, including the right to work, the right to form

<sup>1</sup> Article 7.2(h), *Rome Statute of the International Criminal Court*, UN doc. 2187 UNTS 90, entered into force 1 July 2002.

recognized trade unions, the right to education, the right to leave and to return to their country, the right to a nationality, the right to freedom of movement and residence, the right to freedom of opinion and expression, and the right to freedom of peaceful assembly and association;

(d) Any measures, including legislative measures, designed to divide the population along racial lines by the creation of separate reserves and ghettos for the members of a racial group or groups, the prohibition of mixed marriages among members of various racial groups, the expropriation of landed property belonging to a racial group or groups or to members thereof;

(e) Exploitation of the labour of the members of a racial group or groups, in particular by submitting them to forced labour;

(f) Persecution of organizations and persons, by depriving them of fundamental rights and freedoms, because they oppose apartheid.”<sup>2</sup>

**Autonomy:** When dwellers control the major decisions and are free to make their own contributions in the design, construction, or management of their housing, both this process and the environment produced stimulate individual and social well-being. When people have no control over, nor responsibility for key decisions in the housing process, on the other hand, dwelling environments may instead become a barrier to personal fulfillment and a burden on the economy.<sup>3</sup>

**Bantustan:** Any of the ten territories set aside under South African apartheid for black South Africans on the remaining 14% of the country’s lands not reserved for Whites and slated for eventual independence. The ten bantustans were also referred to as “homelands” and, formerly, as “native reserves” or “Black states.” The South African National Party created these administrative units under the white-dominated government’s apartheid policy. (See apartheid defined in Land Times No. 2). They were **Gazankulu, KwaZulu, Lebowa, KwaNdebele, KaNgwane, Qwaqwa, Transkei, Bophuthatswana, Venda, and Ciskei**. The last four were proclaimed independent—**Transkei** (1976), **Bophuthatswana** (1977), **Venda** (1979), and **Ciskei** (1981)—but no foreign government recognized them as independent states. Citizens of the Bantustans lost the limited rights they had as South Africans.

Although the creation of Bantustans was rooted in earlier legislation, the Bantu Homelands Citizenship Act (1970) defined blacks living throughout South Africa as legal citizens only of the homelands designated for their particular ethnic groups, thus stripping them of their South African citizenship. From the 1960s through the 1980s, the South African government continuously removed black people still living in “white areas” of South Africa and forcibly relocated them to the Bantustans. South African citizenship was restored to homeland residents, and the homelands were abolished under the South African Constitution that was approved in 1993 and ended apartheid. In 1994, after the end of apartheid, the South African government created nine new South African provinces, which included both former provinces and former Bantustans.

The term was first used in the late 1940s, and was coined from Bantu (meaning “people” in some of the **Bantu group of African languages**) and **-stan** (a suffix meaning “land” in the **Sanskrit and Persian language**). It was regarded as a disparaging term by critics of the apartheid-era government’s “homelands” (from **Afrikaans** tuisland). The word “bantustan,” today, is habitually used in a **pejorative** sense when describing a region that

<sup>2</sup> International Convention on the Suppression and Punishment of the Crime of Apartheid (1973, entered into force 18 July 1976).  
<sup>3</sup> Robert Fichter, John F.C. Turner and Peter Grenell, “The Meaning of Autonomy,” in Turner, John F.C. *Freedom to Build: Dweller Control of the Housing Process* (New York: MacMillan, 1972).

lacks any real legitimacy, or one that consists of discontinuous enclaves, and/or emerges from national or international **gerrymandering**. The Palestinian Authority jurisdictional areas “A” are sometimes referred to as bantustans by analogy to their South African apartheid counterparts.

**Campaign:** a sustained, organized public effort making collective claims on target authorities. (See “social movement” below.)

**Coalition:** a collaborative, means-oriented arrangement, especially a temporary one, that allows distinct people or organizational entities to pool resources and combine efforts in order to effect change. The combination of such persons or entities into one body, as a union, variously organized and structured, but generally less formal than a covenant. Although persons and groups form coalitions for many and varied reasons, the most common purpose is to combat a common threat or to take advantage of a certain opportunity; hence, the often-temporary nature of coalitions. The common threat or existence of opportunity is what gives rise to the coalition and allows it to exist. Such collaborative processes can gain political influence and potentially initiate social movements. (See “Social movement(s)” below.)

According to Sidney Tarrow, five elements are necessary to maintain a coalition:

1. Members must frame the issue to bring them together with a common interest;
2. Members’ trust in each other and believe that their peers have a credible commitment to the common issue(s) and/or goal(s);
3. The coalition must have a mechanism(s) to manage differences in language, orientation, tactics, culture, ideology, etc. between and among the collective’s members (especially in transnational coalitions);
4. The shared incentive to participate and, consequently, benefit.

Coalitions manifest in a variety of forms, types and terms of duration:

- Campaign coalitions with high intensity and long-term cooperation;
- Federations, characterized by relatively lower degree of involvement, intensity and participation, involving cooperation of long duration, but with members’ primary commitment remaining with their own entities;
- Instrumental coalitions, involving low-intensity involvement without a foundation “to carry them beyond the issues and conflicts that bring them together”;
- Event-based coalitions that have a high level of involvement and the potential for future collaboration.<sup>4</sup>

*(For some definitions of terms distinguishing types of collective action such as alliance, coalition, collective, movement and network, click [here](#).)*

**Civil rights:** (sometimes also called legal rights or statutory rights) are rights conveyed by a particular polity, codified into legal statutes by some form of legislature (or unenumerated but implied from enumerated rights), and as such are contingent upon local laws, customs, or beliefs. In contrast to, natural rights In contrast, legal rights are culturally and politically relative.

At the international and universal level, civil rights as human rights are those defined in the International Covenant on Civil and Political Rights.

(See **moral rights**, **natural rights** or **inalienable rights** for contrasting concepts.)

<sup>4</sup> Sidney Tarrow, *The New Transnational Activism* (Cambridge University Press, 2005).

**Colonialism** is not confined to a single decisive definition of the colonialism, but according to some dictionaries vocabulary is “the implementation of various political, economic, and social policies to enable a state to maintain or extend its authority and control over other territories. In Wikipedia definition mentioned” Colonialism is the building and maintaining of colonies in one territory by people from another territory. Colonialism is a process whereby sovereignty over the colony is claimed by the metropole and social structure, government and economics within the territory of the colony are changed by the colonists. Colonialism is a certain set of unequal relationships, between metropole and colony and between colonists and the indigenous population” but in Declaration on Colonialism indicated to five elements consists of the colonial characters: namely, violations of the territorial integrity of occupied territory; depriving the population of occupied territory of the capacity for self-governance; integrating the economy of occupied territory into that of the occupant; breaching the principle of permanent sovereignty over natural resources in relation to the occupied territory; and denying the population of occupied territory the right freely to express, develop and practice its culture

**Commitment:** As a relatively general and vague designation, “commitment” means a state’s nonbinding adherence to a principle of behavior or its statement of will to comply with it. Common principles that states agree upon in the form of “declarations,” “basic principles” and “minimum rules,” for example, are often referred to as not legally binding “commitments,” even though they already may be grounded in existing rights and treaty obligations and/or general principles in the major legal systems of the world. Typically, distinguishing between levels of committed action, a state may enter into a theoretical agreement with other states on common values that may be considered “commitments,” falling under a heading of “general principles” or “basic principles.” Another habitual term found in such instruments, “goals,” can express intent, however at a more-abstract level. The expression of those values and intents in practical application often appear under the heading of “commitments.” (See Declaration of Vancouver (1976), Habitat Agenda [1996], Doha Declaration [2001], Paris Declaration on Aid Effectiveness [2005], etc.) Some legal scholars may consider the Millennium Development Goals to be part of international law, for example, but they are not yet universally found to be legally binding,<sup>5</sup> even though legally binding treaty obligations apply consistent with the goals.<sup>6</sup>

**Commons (or common),** in old English law, was a tract of ground shared by residents of a village, but owned by no one. A common, or commons, could be grazing grounds, or the village square, but it was property held in common for the benefit of all.

More recently, a wide variety of resources have become identified as commons. These include the Internet, health care, urban space, the atmosphere, the open sea and Antarctica, etc. That usage expands the meaning to include those new kinds of shared resources and innovations that meet certain criteria. Such criteria are not absolute, but represent a continuum between opposite poles. Certain commons may meet some of the criteria, and not others. A new commons is a resource that meets a preponderance of the following criteria, with the criterion at the left of the arrow being more commons-like, and those to the right being less indicative of commons:

Recognition:

<sup>5</sup> Philip Alston, “Ships Passing in the Night: The Current State of the Human Rights and Development Debate Seen through the Lens of the Millennium Development Goals, *Human Rights Quarterly* 27 (2005), pp 755–829.

<sup>6</sup> See *Closing the Human Rights Gap in MDG 7: Ensure Environmental Sustainability (Tools and Techniques Series, No. 3)* (Cairo: Habitat International Coalition • Housing and Land Rights Network, 2007).

Resource is recognized as a commons ↔ Resource is not recognized as a commons

Identifiable stakeholders:

Users with a stake in the resource are identifiable ↔ No stakeholders are identified or identifiable.

Interdependence:

Users recognize their interdependence ↔ Users think of their use as independent.

Conflicts between individual and group interests:

Conflicts prevail between individual and group interests (i.e., social dilemmas related to the commons) ↔ No conflicts between individual and group interests

Vulnerability:

It is vulnerable to failure (e.g., depletion, degradation, privatization, etc.) in the future ↔ The resource is stable and not threatened.

Participatory management:

The resource requires participatory management ↔ The resource is self-sustaining.

Rules:

Appropriate rules are necessary to govern the resource ↔ Rules are not needed.

Self-governance:

The rules are created from within ↔ The rules are created by outsiders or from the top down.<sup>7</sup>

**Community:** A social group of any size whose members reside in a specific locality, share government and often have a common cultural and historical heritage. The term has acquired several related meanings, including:

1. the commons or common people, as distinguished from those of rank;
2. a state of organized society, in its later uses relatively small;
3. the people of a district;
4. the quality of holding something in common, as in community of interests, community of goods;
5. a sense of common identity and characteristics.

The international law definition of “community,” as developed, refers to “a group of persons living in a given country or locality having a race, religion, language and tradition of their own and united in the identity of race, religion, language and tradition in a sentiment of solidarity, with a view to preserving traditions, maintaining their form of worship, insuring the instruction and upbringing of their children in accordance with the spirit and traditions of their race and rendering mutual assistance to each other.”<sup>8</sup>

**Compensation:** should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious

<sup>7</sup> Charlotte Hess, Howard Rheingold, Andrea Saveri, Kathi Vian, Kathryn Milun, Marc Smith, Josh Teneberg, and Matt Chwierut, resulting from a workshop Institute for the Future (ITF), Palo Alto CA, 19 April 2007, and refined via wiki discussion. It builds on the work of Hess, Charlotte. "Is There Anything New Under the Sun? A Discussion and Survey of Studies on New Commons and the Internet," presentation at "Constituting the Commons: Crafting Sustainable Commons in the New Millennium," the Eighth Conference of the International Association for the Study of Common Property, Bloomington, Indiana, 31 May–4 June 2000, at: <http://dlc.dlib.indiana.edu/archive/00000512/>.

<sup>8</sup> Permanent Court of International Justice, *The Greco-Bulgarian "Communities,"* Advisory Opinion No. 17, 31 July 1930 (Leyden: Sijthoff, 1930), p. 21.

violations of international humanitarian law, such as:

- (a) Physical or mental harm;
- (b) Lost opportunities, including employment, education and social benefits;
- (c) Material damages and loss of earnings, including loss of earning potential;
- (d) Moral damage;
- (e) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services.<sup>9</sup>

Compensation does not substitute for the other elements of reparation, including restitution of the original situation before the violation, among others. (See "Reparation" below.)

**Confiscation:** forcible or coerced dispossession of property belonging to a person or persons, without adequate compensation. The confiscation of land, shelter or materials needed for housing, by a State or other actor, is a type of housing rights violation.

**Crime against Humanity:** The Rome Statute has defined the term in Article (7) as any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (a) Murder;
- (b) Extermination;
- (c) Enslavement;
- (d) Deportation or forcible transfer of population;
- (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) Torture;
- (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
- (i) Enforced disappearance of persons;
- (j) The crime of apartheid;
- (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

2. For the purpose of paragraph 1:

- (a) "Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;
- (b) "Extermination" includes the intentional infliction of conditions of life, *inter alia* the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;
- (c) "Enslavement" means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;
- (d) "Deportation or forcible transfer of population" means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;

<sup>9</sup> "Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law," Commission on Human Rights Resolution E/CN.4/2005/35, Article 20.

- (e) "Torture" means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;
- (f) "Forced pregnancy" means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;
- (g) "Persecution" means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;
- (h) "The crime of apartheid" means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;
- (i) "Enforced disappearance of persons" means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

3. For the purpose of this Statute, it is understood that the term "gender" refers to the two sexes, male and female, within the context of society. The term "gender" does not indicate any meaning different from the above.

**Decentralization:** the process of delegating authority and assigning responsibilities for service provision away from the central governance structures to more-local authorities institutions or structures. An example of decentralization is the restructuring of government institutions to devolve more decision-making and service-delivery responsibilities to local levels.

Decentralization is linked also to the concept of local self-determination; whereas, all rights and responsibilities devolve to the local community or population unit. That entails the authority to legislate (pass ordinances) and levy taxes for local purposes that serve the local service-provision democratically required by the local community.

In no sense does decentralization imply absolving the central state of its obligations to respect, protect and fulfill human rights, including the right to development, by implementing the seven over-riding ICESCR principles of implementation for states parties, including the prohibition against discrimination on any geographic or other arbitrary basis. Nor does it absolve any local authority from human rights obligations borne by the treaty-bound central state, of which it is part. Decentralization should be applied in light of the

**Democide:** is a term coined by political scientist R. J. Rummel for "the murder of any person or people by a government, including genocide, politicide, and mass murder." Rummel created the term as an extended concept to include forms of government murder that are not covered by the legal definition of genocide, and it has found currency among other scholars. Democide is death by government relating to genocides. Democides are not the elimination of entire cultural groups, but rather groups within the country that the government feels they need to be eradicated for political reasons and future threats. According to Rummel, genocide has three different meanings. The ordinary meaning is murder by government of people due to their national, ethnic, racial, or religious group membership. The legal meaning of genocide refers to the international treaty, the *Convention on the Prevention and Punishment of the Crime of Genocide*. This also includes nonlethal acts that in the end eliminate or greatly hinder the group. Looking



back on history one can see the different variations of democides that have occurred, but it is still the act of killing or mass murder. A great example would relate to Hitler and Mao Zedong. A generalized meaning of genocide is similar to the ordinary meaning but also includes government killings of political opponents or otherwise intentional murder. In order to avoid confusion over which meaning is intended, Rummel created the term democide for the third meaning.<sup>10</sup>

The objectives of such a plan would be disintegration of the political and social institutions, of culture, language, national feelings, religion, and the economic existence of national groups, and the destruction of the personal security, liberty, health, dignity, and even the lives of the individuals belonging to such groups.<sup>11</sup>

Rummel defines democide as "The murder of any person or people by a **government**, including **genocide**, **politicide**, and **mass murder**". For example, government-sponsored killings for political reasons would be considered democide. Democide can also include deaths arising from "intentionally or knowingly reckless and depraved disregard for life"; this brings into account many deaths arising through various neglects and abuses, such as forced **mass starvation**. Rummel explicitly excludes battle deaths in his definition. Capital punishment, actions taken against armed civilians during mob action or riot, and the deaths of noncombatants killed during attacks on military targets so long as the primary target is military, are not considered democide.<sup>12</sup>

He has further stated: "I use the civil definition of **murder**, where someone can be guilty of murder if they are responsible in a reckless and wanton way for the loss of life, as in incarcerating people in camps where they may soon die of malnutrition, unattended disease, and forced labor, or deporting them into wastelands where they may die rapidly from exposure and disease."

Some examples of democide cited by Rummel include **the Great Purges** carried out by **Joseph Stalin** in the **Soviet Union** (despite those people were executed), the deaths from the **colonial** policy in the **Congo Free State**, and **Mao Zedong's Great Leap Forward** resulting in a famine which killed millions of people. According to Rummel, these were not cases of genocide, because those who were killed were not selected on the basis of their race, but were killed in large numbers as a result of government policies. Famine is classified by Rummel as democide if it fits the definition above.

For instance, Rummel only recently classified **Mao Zedong's Great Leap Forward** as democide. He believed that Mao's policies were largely responsible for the famine, but he was misled about it, and finally when he found out, he stopped it and changed his policies. Thus, according to Rummel, is not an intentional famine and thus not a democide. However, contradictory claims from **Jung Chang** and **John Halliday's** controversial **Mao: the Unknown Story** allege that Mao knew about the famine from the beginning but did not care, and eventually Mao had to be stopped in a meeting of 7,000 top Communist Party members. Based on the book's claims, Rummel now views the famine as intentional and a democide.

**Demographic manipulation:** In the field of human settlements, the term "demographic manipulation" refers to changes induced in the ethnic or social composition of a community, population or region. "Manipulation," in this case, implies a deliberate act, practice or policy that causes the change without the will and or free, prior and informed consent of the host (i.e., receiving) population or the introduced population. The purpose of such acts, practices or policies is generally understood to be the acquisition,

<sup>10</sup> Theodore, Abel, "The Sociology of Concentration Camps," *Social Forces*, Vol. 30, No. 2 (December 1951), pp. 150–55

<sup>11</sup> Stephen Thane Davis, *Encountering Evil: Live Options in Theodicy* (Westminster: John Knox Press, 2001).

<sup>12</sup> R.J. Rummel, "Democide versus Genocide: Which is What?" at: <http://www.hawaii.edu/powerkills/GENOCIDE.HTM>.

annexation and/or effective control of territory.

The changes and the measures to achieve them are generally considered to be illegal and, therefore, subject to reversal and reparations, as a right to remedy, in favor of the affected population under applicable international law norms and the standards of human rights as developed.

Demographic manipulation is conceptually and functionally linked to population transfer as it is among the circumstances in which population transfer occurs. The demographic manipulation is, thus, unlawful and subject to international human rights, humanitarian and criminal law when the state or its agents adopt and implement conduct, practices or policies designed to alter the human composition of the relevant unit so as to affect the indigenous inhabitants' exercise of self-determination. That may amounting to carence de souveraineté of an external self-determination unit, where the territory is so badly governed that it is alienated from the metropolitan state.<sup>13</sup> Alternatively, the acts, practices or policies may affect an internal self-determination unit, where the state does not have "a government representing the whole people belonging to the territory without distinction as to race, creed or color,"<sup>14</sup> or where a "people" is subjected to alien subjugation or domination such that revives the right of self-determination.

Article 49 of the Fourth Geneva Convention relative to Protection of Civilian Persons in Time of War (29 August 1949) prohibits the transfer by an occupying power of its own civilian population in the area it occupies. It stipulates that the "Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies." The Commentary on Article 49(6) clarifies that the provision is intended to prohibit the demographic manipulation by an occupying power that either actively transfers its own population into the occupied territory or allows them to settle there voluntarily.

A violation of Article 49 constitutes a grave breach of the Geneva Conventions and carries penal sanction (Art.146, 147). Article 85 (4)(a) of the 1977 Protocol I Additional to the Geneva Conventions considers the transfer by the occupying power of parts of its own civilian population into the territory it occupies as being a "grave breach" of the Convention.

Article 1, common to the four Geneva Conventions and Art.86 of Protocol I Additional to the Geneva Conventions (1977), impose an obligation upon all High Contracting parties to implement its provisions.

In its Advisory Opinion in The Wall Case of 9 July 2004, the International Court of Justice (ICJ) resolved that Article 49(6) prohibits not only forced transfers "but also any measures taken by an occupying Power in order to organize or encourage transfers of parts of its own population into the occupied territory" (par. 120).

The same ICJ ruling provides that all High Contracting Parties to the Geneva Conventions are under a legal obligation to ensure the occupying Power's compliance by with international humanitarian law as embodied in the 1949 Fourth Geneva Convention (paras. 158–9).

The Rome Statute of the International Criminal Court (1998), Article 8 (2) (b) (viii) cites the "transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies" as a "war crime."

Article 7 (1) (d) defines deportation or forcible transfer of population as a "crime against

<sup>13</sup> James Crawford, *The Creation of States in International Law* (Oxford: Oxford University Press, 1979), pp. 67, 100, 116–18.

<sup>14</sup> Declaration on Principles of International Law Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations, GA/RES/2625 (XXV), 24 October 1970.

humanity,” whereby “Deportation or forcible transfer of population” means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law.”

As a crime against humanity, demographic manipulation that results in population transfer is not necessarily conduct that is part of a cross-border war, but could also involve prohibited acts having harmful effects on a domestic population.

In Resolutions 33/15 (1978), 24/30 (1979), 37/253 (1983), among others, the United Nations General Assembly deplored “all unilateral actions that change the demographic structure of Cyprus.” In its Resolution 4 (XXXII) (27/2/76) the Commission of Human Rights calls on parties to refrain from unilateral acts to change the demographic structure of Cyprus and in resolution 1987/50 (11 March 1987) the Commission on Human Rights expressed concern for the influx of settlers and calls for respect for the rights and freedoms of the population of Cyprus. The presence of the settlers impedes implementation of the right of the refugees to return to their homes contrary to numerous Security Council and General Assembly Resolutions.

Israeli professor and advisor to the Israeli military Moshe Ma'oz describes the policy of Israeli governments since 1967 as aimed at “maintain[ing] a unified Jerusalem; to Judaize or Israelize it, demographically and politically.”<sup>15</sup> These policies, which aim to change Jerusalem demographically, socially, culturally and politically, have intensified after the initiation of the Oslo peace process in 1993.<sup>16</sup> The United Nations has criticized Israel's efforts to manipulate and alter the demographic composition of Jerusalem in several resolutions. All legislative and administrative measures taken by Israel, which have altered or aimed to alter the character, legal status and demographic composition of Jerusalem, are described by the UN as “null and void” and having “no validity whatsoever.” Both the General Assembly and the Security Council, in several resolutions, have declared invalid the measures taken by Israel to change the status of Jerusalem. Security Council resolution 252 (1968), in particular, is explicit in this regard. An early resolution of the GA, the Assembly expressed “grave anxiety and concern” Israel measures designed to change the demographic composition of the City of Jerusalem.<sup>17</sup>

When Israel took steps to make annex Jerusalem its capital, the Security Council adopted resolution 476 (1980) on 30 June 1980, urgently calling on Israel, the occupying Power, to abide by this and previous Security Council resolutions and to desist forthwith from persisting in the policy and measures affecting the character and status of the Holy City of Jerusalem. After Israel's noncompliance with that resolution, the Council adopted resolution 478 (1980) on 20 August to reiterate its position that all actions altering the status of the city were null and void, and call upon States that had established diplomatic missions in Jerusalem to withdraw them. reaffirmed the continued invalidity of all actions taken by Israel, the occupying Power, that have altered or purported to alter the character, legal status and demographic composition of Jerusalem.

**Dispossession:** the act of seizing and controlling someone's property without her/his consent or agreement. (See “confiscation.”)

<sup>15</sup> Moshe Ma'oz, “The Future of Jerusalem: Israeli Moshe Ma'oz and Sari Nusseibeh, eds., *Jerusalem: Points of Friction and Beyond* (The Hague: Kluwer Law International for the Truman Institute and the Palestine Consultancy Group, 2000), p. 2

<sup>16</sup> Cheryl Rubenberg, *The Palestinians in Search of a Just Peace* (Bolder CO: Lynne Rienner, 2003), p. 194.

<sup>17</sup> “Recent illegal Israeli measures in the occupied Arab territories designed to change the legal status, geographical nature and demographic composition of those territories in contravention of the principles of the Charter of the United Nations, of Israel's international obligations under the fourth Geneva Convention of 1949 and of United Nations resolutions, and obstruction of efforts aimed at achieving a just and lasting peace in the Middle East,” A/RES/32/5, 28 October 1977.

**Duty:** A duty is a required task, deed, action, service or function arising from a position or relationship held by a person, state or other entity. The duty can be moral or legal, but, in its general usage, conveys a moral connotation more than a legally binding sense. When used to refer to a duty holder in an economic, social and cultural rights case/situation, the duty could be held by the territorial state (primary duty holder) or other party (secondary duty holder). However, use of the term “duty” does not necessarily assume a legal “obligation” or verbal “commitment” (official statement). Such a level of requirement for the particular function would require other terms, instruments and arguments.

**Duty holders:** Duty holders may be primary/principal and/or secondary/ancillary. It is generally understood that primary duty holders fall under one or more of the following designations as being: “authorities,” “responsible parties,” “perpetrators,” “instigators” and/or “protectors.” Duty holders can be territorially specific (i.e., responsible for authoring or regulating actions within a state’s jurisdiction or area/territory of effective control), or an instigator of the harm/deprivation. Whether by committed action, instigation or condoning actions, or omissions leading to violations, the state, as the author of international law subject of various levels of duty, is always a principal and primary duty holder for actions or omissions within its “jurisdiction and area of effective control” leading to harm subject to dispute. The jurisdictional state is a “primary duty holder” in all situations.

In case of a dispute, only a tribunal or other judicial process can determine the fact and level of a state’s (and others’) “duty” and “liability.” Relating to the accountability side of the equation, the following levels and categories of duty (and potential liability) present themselves, depending on the type of agreement to which the state is party.

## Empowerment

The World Bank defines “empowerment” as:

“The process of increasing the capacity of individuals or groups to make choices and to transform those choices into desired actions and outcomes. Central to this process are actions [that] both build individual and collective assets, and improve the efficiency and fairness of the organizational and institutional context [that] govern the use of these assets.”

This definition is good; however, it neglects the process and objective of accessing rights, which is a critical component to empowerment in practice.

In 2005, UN Secretary General Kofi Annan **reported** that “empowerment” has two aspects that include (1) focus on rights holders and (2) equipping those who are responsible for implementing human rights (local authorities, government, etc.) with the necessary tools to do so.

Empowerment as a strategy and outcome of programming is often aimed at marginalized or vulnerable groups such as women, rural and urban poor, and indigenous persons, who often find more challenges in accessing and asserting their rights. **UN WOMEN** has developed seven principles for women’s empowerment in business, which indicate how the idea of “empowerment” can be operationalized for a specific goal. These principles are:

1. Leadership promotes gender equality;

2. Equal opportunity, inclusion and nondiscrimination;
3. Health, safety and freedom from violence;
4. Education and training;
5. Enterprise development;
6. Community leadership and engagement;
7. Transparency, measuring and reporting.

Empowerment has several synonyms, including enabling, capacity building and capacization, when applied in a remedial sense of transforming powerless into the ability to control or influence events and developments, and involving claims to rights. This relates closely to the work of Amartya Sen, which emphasizes synonymous “capabilities” as the repertoire of skills and power needed to transform a situation and develop through the exercise of rights and freedoms (**Development as Freedom**). Pedagogue **Páolo Freire** pioneered an approach to education that leads to empowerment to exercise agency to transform a situation for the better. In the habitat domain, concepts of empowerment are identified with John F.C. Turner’s concept of **Freedom to Build**, with all the capabilities that building a homes and community implies.

In the domain of housing and land rights, “empowerment” is a theory or an approach whereby persons or communities become agents in the realization of their own adequate housing, in all aspects of material and procedural rights. This often entails supporting communities in social production and effective participation in development and asserting rights vis-à-vis government authorities and other development actors.

**Enforced Disappearance:** according to the definition of the Declaration for the Protection of All Persons against Enforced Disappearances, adopted in 1992, enforced disappearances occur when persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law. The declaration also, has affirmed the connection between enforced disappearances and crimes against humanity. In Article 5 of the 2006 International Convention on the Protection of All Persons against Enforced Disappearances states that: “The widespread or systematic practice of enforced disappearance constitutes a crime against humanity as defined in applicable international law and shall attract the consequences provided for under such applicable international law.”

**Ethnic cleansing:** various policies and practices with the effect and/or purpose of eliminating an unwanted group from a society or territory, as by genocide or forced migration, in order to create an ethnically homogenous, or supposedly “pure” society, area or state. Although no legal definition yet exists, “ethnic cleansing” has become a commonly used term in international legal writings, discourse and official documents.

A UN Commission of Experts on grave breaches and other violations of international humanitarian law in the former Yugoslavia defined the practice as “rendering an area ethnically homogeneous by using force or intimidation to remove persons of given groups from the area. ‘Ethnic cleansing’ is contrary to international law.”<sup>18</sup>

<sup>18</sup> *Interim Report of the Commission of Experts Established Pursuant to Security Council Resolution 780 (1992)*, 55, para. 55.

One author defines ethnic cleansing such that,

“At one end, it is virtually indistinguishable from forced emigration and population exchange while at the other it merges with deportation and genocide. At the most general level, however, ethnic cleansing can be understood as the expulsion of an "undesirable" population from a given territory due to religious or ethnic discrimination, political, strategic or ideological considerations, or a combination of these.<sup>19</sup>

Ethnic cleansing could be defined broadly and narrowly. Broader definitions identify eviction or expulsion on the basis of ethnic criteria. Some narrower definitions add specific characteristics, including the “systematic” or “illegal” nature of the evictions/expulsions, involving gross violations of human rights or grave breaches of international humanitarian law, or describe their context of an ongoing internal or international war, and/or deliberate policy. For example, another author characterizes ethnic cleansing is:

“a well-defined policy of a particular group of persons...systematically [to] eliminate another group from a given territory on the basis of religious, ethnic or national origin. Such a policy involves violence and is very often connected with military operations. It is to be achieved by all possible means, from discrimination to extermination, and entails violations of human rights and international humanitarian law.”<sup>20</sup>

The term "ethnic cleansing" entered the English lexicon as a calque (loan translation) of the Serbo-Croatian/Bosnian phrase etničko čišćenje. In the early the 1990s journalists and news media used the term extensively in reporting on events in the former Yugoslavia, and it has since become popularized and used more generally to describe analogous situations. The term may have earlier antecedents in the military doctrine of the former Yugoslav People's Army, which adopted the phrase "cleansing the field" (čišćenje terena); i.e., eliminating enemy presence, in order to gain total control of a conquered territory.<sup>21</sup>

Ethnic cleansing does not have a legal definition. However, the term has been used in numerous legal texts, including UN documents.<sup>22</sup>

**Evacuation:** the act of evacuating; leaving a place in an orderly fashion; especially for protecting the moved persons from impending harm. (Note distinction from “**Eviction**” below.)

**Eviction:** The act or process of evicting; or state of being evicted; the recovery of lands, tenements, etc., from another's possession by due course of law; dispossession by paramount title or claim of such title; ejection; ouster. Removal of a tenant from rental property by a law enforcement officer following the landlord's successful lawsuit, also known as an "unlawful detainer." (See “**Forced eviction**” below.)

**Family:** A fundamental social group in society typically consisting of one or two parents and their children. However, family may be considered for the purposes of enumerating

<sup>19</sup> Andrew Bell-Fialkoff, "A Brief History of Ethnic Cleansing," *Foreign Affairs*, Vol. 72, No. 3 (summer 1993).

<sup>20</sup> Drazen Petrovic, "Ethnic Cleansing - An Attempt at Methodology," *European Journal of International Law*, Vol. No. 3, pp. 342–60, at 352, and quoted in quoted by Ilan Pappé, *The Ethnic Cleansing of Palestine* (Oxford: Oneworld Publications, 2006), p.1.

<sup>21</sup> "Ethnic cleansing," in *Wikipedia*, at: [http://en.wikipedia.org/wiki/Ethnic\\_cleansing#\\_note-1](http://en.wikipedia.org/wiki/Ethnic_cleansing#_note-1).

<sup>22</sup> See, for example, World Summit Outcome Document (2005), paras. 138–39; and S/RES/1674, para. 4.

similarly formed social units inhabiting a housing unit: A group of individuals related by blood or marriage or by a feeling of closeness.<sup>23</sup>

**Fixed asset:** A long-term, tangible asset held for business use and not expected to be converted to cash in the current or upcoming fiscal year, such as manufacturing equipment, real estate, and furniture, also called “plant.”

**Forced eviction:** defined in international law as “the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land [that] they occupy, without the provision of, and access to, appropriate forms of legal or other protection.”<sup>24</sup>

**Forced migration:** Refers to the movements of refugees or internally displaced persons compelled to flee to avoid harm arising from violent conflict or by natural or environmental disasters, chemical or nuclear disasters, famine, or development projects. Forced migration is a complex, wide-ranging and pervasive set of phenomena that manifest as three separate, although sometimes simultaneous and inter-related, types identified by their causal factors: conflict, development policies and projects, and disasters.<sup>25</sup> (See “**Internally displaced person(s)**” and “**Refugee**” below.)

**Forced removal:** refers to various forms of coercive and often-violent displacement of persons from their habitation or residence. The meaning can vary according to the context, methods and affected persons.

In some cases, “forced removal” is a term synonymous with eviction, as in the case of the forced removal of squatters.

In the United States, “forced removal” describes the policy applied since the Thomas Jefferson presidency in the United States and throughout the 19<sup>th</sup> Century against indigenous peoples living east of the Mississippi River. Congress adopted the “Indian Removal Act” of 1830, which provided a legal basis and funds for President Andrew Jackson to “negotiate” removal (land exchange) treaties. One of the most famous applications of that removal policy was the forced migration of Cherokee Nation from their homeland in today’s State of Georgia to present-day Oklahoma in the 1835 “Trail of Tears,” or, in the original Cherokee language, “Nunna dual Tsuny” [trail where they cried]. (See “**Indigenous people(s)**” below.)

In Australia, forced removal is commonly understood to describe an aspect of assimilationist policy whereby governments of Australian states forcibly separated Aboriginal children from their families in order to place them in non-Aboriginal institutions and families during the 1960s and 1970s. The victims of that policy are known as the “stolen generations.”

South Africa’s apartheid parliament devised the Land Act, Group Areas Act and Pass Laws to dispossess and expel Africans from their lands and homes to distant locations. From the 1950s until the early 1980s, the Government of South African implemented a “resettlement” policy to force people into their designated “group areas.” Estimates place the number of affected persons at over three and a half million. (See “**Resettlement**” below.) These removals included:

<sup>23</sup> Webster’s New World Medical Dictionary, at: <http://www.medterms.com/script/main/art.asp?articlekey=16603>

<sup>24</sup> Committee on Economic, Social, and Cultural Rights, General Comment 7, para. 3.

<sup>25</sup> Based on the definition adopted by the [International Association for the Study of Forced Migration](http://www.iafmm.org/).

- People evicted through slum-clearance programs,
- Tenant laborers on white-owned farms,
- Inhabitants of so-called “Black Spots,” (Black-owned land surrounded by white farms),
- Families of workers living in townships near the homelands,
- “Surplus people” living in urban areas, including thousands of people moved to Transkei and Ciskei homelands from the Western Cape (which was declared a “Coloured Labour Preference Area”).

One of the most well-known cases was the 1950s forced removal of some 60,000 Africans in Johannesburg to the new township of Soweto (an acronym for South Western Township).

The detention and deportation of an individual or group of migrants is also common referred to as “forced removal.” International law strictly proscribes the practice and prohibits forced removals if carried out arbitrarily; without due process or access to affective remedies; collectively (against a particular group, amounting to discrimination); with undue or excessive force; against vulnerable persons, seriously ill persons, refugees, children or victims of trafficking.<sup>26</sup> (See “**Refugee**” below.)

**Free Prior and Informed Consent (FPIC):** States must hold good faith consultations with indigenous, peasant, fisher-folk, traditional, urban or other communities before any plan, project, legislative or constitutional reform, or administrative measure that may affect directly or indirectly the housing or land, territories or natural wealth in their possession, or that they occupy, or traditionally utilize or depend on for their traditional and livelihood activities. States must generate consensus regarding the procedures of these consultations that must be in harmony with the criteria, customary rules and decision-making structures of the indigenous peoples or other communities, as to facilitate access to the consultations to all the affected population, giving it ample diffusion and creating a climate of trust that will favor a productive dialogue.

The consultation aims for both parties to reach a mutual understanding and to adopt decisions by consensus. If the consulted communities do not give their free, prior and informed consent (FPIC) to the plan, project, policy, or legislative or administrative measure object of the consultation, then this cannot be implemented.

FPIC applies distinct rights to livelihood, food and housing, as enshrined in the International Covenant on Economic, Social and Cultural Rights (Article 11), as well as its prohibitions against violating self-determination: “In no case may a people be deprived of its own means of subsistence” (Article 1.2). It combines also human rights to information and participation, as guaranteed in the International Covenant on Civil and Political Rights (Articles 19 and 21, respectively).

In local application, FPIC grounded in the principle that “a community has the right to give or withhold its consent to proposed projects that may affect the lands they customarily own, occupy or otherwise use.” A concept advanced by many organizations, including the **Forest Peoples Program**, is now a key principle in international law and jurisprudence related to indigenous peoples.

Case law establishing FPIC rights includes *Occupiers of 51 Olivia Road, Berea Township and 197 Main Street Johannesburg v City of Johannesburg and Others* (24/07) [2008] ZACC 1; 2008 (3) SA 208 (CC); 2008 (5) BCLR 475 (CC) (19 February 2008).

<sup>26</sup> For further information, see “Common principles on removal of irregular migrants and rejected asylum seekers” (August 2005), at: <http://www.ccme.be/archive/2005/Common%20principles%20on%20removal%20lay-out.pdf>.



For more detail, see: [Civil Society Organizations' Proposals for the FAO Guidelines on Responsible Governance of Land and Natural Resources Tenure](#) (pp. 20–23).

**Freehold:** An interest in land, housing or other real property that permits the owner to enjoy possession during her/his life without interference from others.

An estate of freehold is an estate in lands or other real property, held by a free tenure, for the life of the tenant, or that of some other person holding the freehold tenure, or for some uncertain period. Freehold tenure, frank tenement, or liberum tenementum was formerly described to be such an estate as could be created only by livery of seisin, a ceremony similar to the investiture of the feudal law. However, since the introduction of certain modern conveyances and methods by which an estate of freehold may be created without livery of seisin, that old description is not sufficient. Freehold estates may be inherited, or subject to inheritance.

Two qualities are essentially requisite to the existence of a freehold estate:

1. Immobility; that is, the property must either be land or some interest issuing out of or annexed to land;
2. A sufficient legal indeterminate duration; for, if the utmost period of time to which an estate can last is fixed and determined, it is not an estate of freehold. For example, if lands are conveyed to a person and her/his heirs, or for her/his life, or for the life of another, or until s/he shall be married, or leave the country, s/he has an estate of freehold. However, if such lands are limited to a person for one hundred or five hundred years, if s/he should live so long, s/he has not an estate of freehold.<sup>27</sup>

**Genocide:** Pursuant to the Article 6 of the Rome Statute, "genocide" means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

<sup>27</sup> Bouvier, John. *A Law Dictionary* 6<sup>th</sup> edition (Philadelphia: Childs & Peterson, 1856).

**Gentrification**: The restoration and upgrading of deteriorated urban property by middle-class or affluent people, often resulting in displacement of lower-income people.

Local authorities typically facilitate the process by extending home improvement loans or grants as part of a policy-driven urban renewal program. Loans and/or grants are repaid by tax revenues, including increased return on the renovated properties and surrounding businesses. The original inhabitants move out as leases end, houses are sold, or landlords harass their tenants into moving. Gentrification often involves a change of tenure from rent (leasehold) to private ownership (freehold).

Neill Smith interprets the driver of gentrification to be the de-industrialization of the inner city and its consequent devaluation of land.<sup>28</sup> Chris Hamnett sees the increase in service employment in city centers, the feminization of the workforce, the reduced cost of do-it-yourself materials and the increase in single and dual households as increasing demands for living and working space in central business districts of cities.<sup>29</sup> David Ley emphasizes the effect of liberal middle classes taste for historic preservation in relation to concepts of material capital—wealth—and cultural capital—values.<sup>30</sup>

The result of gentrification is a distinctive lifestyle; whereas, a gentrified neighborhood becomes the spatial expression of a new middle-class habitat at the expense of prior, lower-income residents who consequently lose their access to the city's goods and services upon which they depend. Those former residents leave the gentrified neighborhood by various forms of displacement, including forcible evictions, or by their inability to pay for higher rents and other costs in the gentrified zone.

“Gentrification” derives from the English term for the land-owning class residing outside of the urban center. The phenomenon of migrating social classes with capital migrating to the city center resembles a migration of the gentry into the city. Thus, the term “gentrification” was applied. Its original usage is attributed to British Sociologist Ruth Glass, who coined the term in 1964 to describe the influx of wealthier individuals into cities or neighborhoods, replacing working people or lower classes already living there.<sup>31</sup>

**Global Commons** is that which no one person or state may own or control and which is central to life. A Global Common contains an infinite potential with regard to the understanding and advancement of the biology and society of all life; e.g., forests, oceans, land mass and cultural identity and hence requires absolute protection.

See also “**Commons**” above.

**Globalism** is a set of values and ethical beliefs that share the premise that we share one fragile planet whose survival requires mutual respect and careful treatment of all its people and its environment. Three central activities that uphold globalism are (1) active communications to foster understanding, (2) the sharing of resources on the basis of equity and sustainability, and (3) mutual aid in times of need.<sup>32</sup>

<sup>28</sup> Smith, N. *The New Urban Frontier: Gentrification and the Revanchist City* (London: Routledge, 1996).

<sup>29</sup> Chris Hamnett, “Gentrification and Residential Location Theory: A Review and Assessment,” in David T. Herbert and Ronald J. Johnston, eds., *Geography and the Urban Environment (Progress in Research and Applications, 6)*, 283–319.

<sup>30</sup> David Ley, *The New Middle Class and the Remaking of the Central City* (Oxford: Oxford University Press, 1996).

<sup>31</sup> Ruth Glass, *London: aspects of change* (London: MacGibbon & Kee, 1964).

<sup>32</sup> Based on a definition provided in Ritchie, Mark Ritchie. *Globalization v. Globalism: Giving Internationalism a Bad Name*, background paper presented at CESCR Day of General Discussion: Globalization and its impact on the enjoyment of economic and social rights, Geneva, 11 May 1998.

**Globalization** is the increasing interdependence, integration and interaction among people and public or private bodies, organizations or corporations, featuring the exchange of information, labor, goods, or other resources, across disparate locations around the world.

**Globalism and Globalization (contrasted):** While globalism incorporates the idea of the "Global Commons" to describe the ozone layer, oceans and genetic diversity, globalization is the exploitation of these resources by large and powerful corporations beyond the reach of democratic processes or direct human rights obligations. While globalism implies respect for diversity, globalization demands the standardization or homogenization of nearly everything and everybody.<sup>33</sup>

**Green economy:** is an economy or economic development model based on sustainable development and knowledge of ecological economics. "Green economics" is loosely defined as any theory of economics by which an economy is considered to be component of the ecosystem in which it resides. One of the earliest proponents of green economy was the microbiologist **Lynn Margulis**, who held that economy, ethics and biology are indistinguishable.

Green economics is often used with or in place of the more widely used term of "sustainability" or "sustainability science." Both terms reflect an evolving, and diffuse discipline, or an objective sought through multiple disciplines, including ecology, economics, engineering, natural sciences and sociology.

The green economy is one that results in improved human well-being and social equity, while significantly reducing environmental risks and ecological scarcities.

For the purposes of its **Green Economy Initiative**, The UN Environmental Programme (UNEP) has developed a working definition of a green economy as one that results in improved human well-being and social equity, while significantly reducing environmental risks and ecological scarcities. In its simplest expression, a green economy can be thought of as one [that] is low carbon [producing], resource efficient and socially inclusive.

**Gross & Large-scale Violations of Human Rights:** In its forty fifth session of the sub commission on prevention of discrimination and protection of minorities. The sub commission adopted resolution E/CN.4/Sub.2/1993/10, to define the term of Gross & Large- Scale Violations of Human Rights, in article 1. Gross and large-scale human rights violations committed on the orders of a Government, or with its sanction are a grave violation of the principle of respect for human rights and constitute an international crime. Such violations shall be deemed to include principally the following:

- (a) Murder, including arbitrary execution;
- (b) Torture;
- (c) Genocide;
- (d) Apartheid;
- (e) Discrimination on racial, national, ethnic, linguistic or religious grounds;
- (f) Establishing or maintaining over persons the status of slavery, servitude or forced labour;

<sup>33</sup> Adapted from Ritchie, Mark. Ibid.

- (g) Enforced or involuntary disappearances;
- (h) Arbitrary and prolonged detention;
- (i) Deportation or forcible transfer of population.

2. The provisions of paragraph 1 should not be regarded as detracting from the right of States to establish, in conformity with the norms of international law currently in force, lawful restrictions of human rights, especially in connection with the declaration of states of emergency or war.

In 1993, the UN Commission on Human Rights affirmed that “the practice of forced evictions constitutes a gross violation of human rights, in particular the right to adequate housing...”(preamble to resolution 1993/77). [See **Forced eviction** above.]

**Homelessness:** the condition of living without permanent home or shelter and relying on temporary means of shelter.

According to a UN definition, ‘homeless household’ refers to “households without a shelter that would fall within the scope of living quarters. They carry their few possessions with them sleeping in the streets, in doorways or on piers, or in any other space, on a more-or-less random basis.”<sup>34</sup> Other commentators have defined homelessness as the lack of access to secure and minimally adequate housing, variously described as rooflessness (living rough), houselessness (relying on emergency accommodation or long-term institutions), or inadequate housing (including insecure accommodation, intolerable housing conditions or involuntary sharing).<sup>35</sup>

In the United States, the Stewart B. McKinney Homeless Assistance Act of 1987, defined “homeless” to mean:

- (1) An individual who lacks a fixed, regular, and adequate night-time residence; and
- (2) An individual who has a primary night-time residence that is:

A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelter, and transitional housing for the mentally ill);

An institution that provides a temporary residence for individuals intended to be institutionalized; or

A public or private place not designed for, or ordinarily used as, regular sleeping accommodations for human beings.<sup>36</sup>

The European Typology on Homelessness and Housing Exclusion (ETHOS) classifies homeless people according to their living situation:

- rooflessness (without a shelter of any kind, sleeping rough);
- houselessness (with a place to sleep but temporary in institutions or shelter)
- living in insecure housing (threatened with severe exclusion due to insecure tenancies, eviction, domestic violence);
- living in inadequate housing (in caravans on illegal campsites, in unfit housing, in extreme overcrowding).<sup>37</sup>

<sup>34</sup> “Compendium of Human Settlement Statistics,’ Principles and recommendation for population and housing censuses (New York: United Nations, 1998), 50.

<sup>35</sup> Edgar, B., Doherty, J., and Mina-Coull, A. *Services for Homeless People: Innovation and Change in the European Union* (Bristol: The Policy Press, 1999), 2.

<sup>36</sup> The legislation also asserts that: “(3) This term does not include any individual imprisoned or otherwise detained under an Act of Congress or state law.” *Priority: Home! The Federal Plan to Break the Cycle of Homelessness* (Washington: US Government, 1994).

Many countries do not have official definitions of homelessness, except for the purpose of allocating land for housing. The criteria for determining “homelessness” could derive from four deficits in accommodation:

- Tenure,
- Shelter,
- Quality, or
- Permanence.

Thus, a tenure-based definition of homelessness in Peru and Zimbabwe would include only those persons who lack legal title to land or housing (property). That definition would include street dwellers and inhabitants awaiting legal title and “regularization.” (See **Regularization** below.) However, it would exclude poorly housed formal tenure-holding inhabitants.

A shelter-based definition of homelessness in India and Ghana would cover those persons without a roof such as street dwellers. That definition would exclude people living in abandoned structures, under stairwells and other inadequate shelters having a roof. In India, a person may be eligible for assistance under land or housing allocation programs if not living in a “census house”; that is, structure with a roof that is counted as a house/unit of housing in the official census.

In South Africa, Egypt and Bangladesh, homeless persons may be considered to include also those inhabiting inadequate structures, such as cemeteries, rooftops, shacks, etc., but would exclude some squatters.

The Indonesia census of 200 distinguishes population as those having a permanent place of residence and those without. This categorization, perforce, mixes nomads, ship crews, house boat residents, as well as squatters and shelterless persons.<sup>38</sup>

**Household:** A social unit that includes all the persons who occupy a housing unit. The occupants may be a single family, one person living alone, two or more families living together, or any other group of related or unrelated persons who share living arrangements. (People not living in households are classified generally as living in group quarters.)

**Human security:** “the liberation of human beings from those intense, extensive, prolonged, and comprehensive threats to which their lives and freedom are vulnerable”. The definition rests on the classic analysis of human security advanced in the 1994 global Human Development Report sponsored by UNDP

**Impunity :** Refers to the exemption from punishment or loss attaching to an act. In the

<sup>37</sup> Over the past few years, the FEANTSA expert Data Collection Working Group and the European Observatory on Homelessness have developed a European definition of Homelessness and housing exclusion (ETHOS) as a means of improving understanding and measurement of homelessness in Europe, and to provide a common “language” for transnational. This typology was launched beginning 2005 and has been discussed at various national and local meetings/seminar. It is now being used for different purposes - as a framework for debate, for data collection purposes, for policy purposes, monitoring purposes, and in the media. It is important to note that this typology is an open exercise which makes abstraction of existing legal definitions in the EU member states. ETHOS is a “home”-based definition that uses the physical, social and legal domains to create a broad typology of homelessness and housing exclusion. (See <http://feantsa.horus.be/code/en/pg.asp?Page=484>.)

<sup>38</sup> These definitions are derived from the survey of homelessness in Graham Tipple and Suzanne Speak, “Definitions of homelessness in developing countries,” *Habitat International* 29 (2005) 337–52; and Tipple and Speak, “Homelessness in Developing Countries” (Newcastle: University of Newcastle upon Tyne, May 2003).

international law of human rights, it refers to the failure to bring perpetrators of human rights violations to justice and, as such, itself constitutes a denial of the victims' right to justice and redress. Impunity is especially common in countries that lack a tradition of the rule of law, suffer from corruption or that have entrenched systems of patronage, or where the judiciary is weak or members of the security forces are protected by special jurisdictions or immunities. The definition of impunity was defined in the context of the Right of the Justice principle as "the impossibility, de jure or de facto, of bringing the perpetrators of violations to account, whether in criminal, civil, administrative or disciplinary proceedings, since they are not subject to any inquiry that might lead to their being accused, arrested, tried and, if found guilty, sentenced to appropriate penalties, and to making reparations to their victims.

**Impoverishment:** [forthcoming]

**Inalienable rights:** (See natural rights or moral rights.)

**Indigenous people(s)** [شعب أصلي/اصلائي - شعوب أصلية/اسلامية]: cultural groups (and their descendants) who have an historical continuity or association with a given region, or parts of a region, and who formerly or currently inhabit the region:

- before its subsequent colonization or annexation; or
- alongside other cultural groups during the formation of the current State; or
- independently or largely isolated from the influence of the claimed governance by a State,

And who furthermore:

- have maintained at least in part their distinct linguistic, cultural and social / organizational characteristics, and in doing so remain differentiated in some degree from the surrounding populations and dominant culture of the state in which they live.

To the above, a criterion is usually added also to include:

- peoples who are self-identified as indigenous, and those recognized as such by other groups.

Other related terms for indigenous peoples include aborigines, native peoples, first peoples, Fourth World, first nations and autochthonous (this last term having a derivation from Greek, meaning "sprung from the earth"). Indigenous peoples may often be used in preference to these or other terms, as a neutral replacement where these terms may have taken on negative or pejorative connotations by their prior association and use. It is the preferred term in use by the United Nations and its subsidiary organizations.

**Informal settlement:** A cluster of housing and other structures built without the formal consent of the planning authorities, or settlements that have only temporary permission to occupy the settled land.

**Internally displaced person(s) (IDP[s]):** "Persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of, or in order to avoid the effects of armed conflict, situations of

generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.”<sup>39</sup>

**International cooperation:** The concept and term “international cooperation” in international relations and law is a foundational element of the United Nations, its purposes and its Charter. The first article of the United Nations Charter provides that one of the purposes of the world organization is “to achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.”<sup>40</sup>

Providing further specificity, the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States promotes “the progressive development and codification of...

(d) the duty of States to cooperate with one another in accordance with the Charter;...

(g) the principle that States shall fulfill in good faith the obligations assumed by them in accordance with the Charter, so as to secure their more-effective application within the international community would promote the realization of the purposes of the United Nations;...<sup>41</sup>

The duty of States to cooperate with one another in accordance with the Charter means to do so:

“irrespective of the differences in their political, economic and social systems, in the various spheres of international relations, in order to maintain international peace and security and to promote international economic stability and progress, the general welfare of nations and international cooperation free from discrimination based on such differences.”

The Declaration goes on to specify that cooperation in accordance with the Charter, its purposes and principles extends to economic, social, cultural, technical and trade fields and that states should cooperate also in the field of science and technology and to promote international cultural and educational progress. It also calls for states to cooperate in promoting “economic growth throughout the world, especially that of the developing countries.” It further provides that “Every State has the duty to promote through joint and separate action universal respect for, and observance of human rights and fundamental freedoms in accordance with the Charter....” The Universal Declaration on Human Rights goes so far as to assert that “Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized” (Article 28).

ICCPR and ICESCR share a common article 1(2), making “international cooperation” an over-riding principle of treaty compliance. It reads:

"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 cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence."

Two articles unique to ICESCR are explicit in setting forth how state parties are to apply

<sup>39</sup> *Guiding Principles on Internal Displacement*, E/CN.4/1998/53/Add.2.

<sup>40</sup> *Charter of the United Nations*, 26 June 1945, Article 1: Purposes and Principles of the United Nations, para. 3.

<sup>41</sup> Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations,” GA 2625, 24 October 1970, at:

<http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/348/90/IMG/NR034890.pdf?OpenElement>.

the over-riding principle of international cooperation. Article 2 provides:

"Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, 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."

Article 22 addresses specific forms of international cooperation through the intermediary of the UN and its agencies:

"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 [sic] 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."

International cooperation is one of seven explicit over-riding principles arising from the first three articles of ICESCR that explain how a state party is required to perform in order to comply with the obligations corresponding to the rights guaranteed in the Covenant. (See **Over-riding principles** below.)

At the regional level, the African Charter on Human and Peoples' Rights (1981) affirms the principle and "obligation" of international cooperation in its Article 21, which states:

3. The free disposal of wealth and natural resources shall be exercised without prejudice to the obligation of promoting international economic cooperation based on mutual respect, equitable exchange and the principles of international law.

The same article goes further in defining the means of discharging the treaty obligation of international cooperation, including through the regulation of extraterritorial actors:

4. State Parties to the present Charter shall individually and collectively exercise the right to free disposal of their wealth and natural resources with a view to strengthening African Unity and solidarity.

5. State Parties to the present Charter shall undertake to eliminate all forms of foreign exploitation, particularly that practised by international monopolies, so as to enable their peoples to fully benefit from the advantages derived from their national resources (emphasis added).

While the international cooperation principle bears direct consequence on the extraterritorial conduct of states under treaty, it also relates to domestic conduct not only in regulating the cross-border activities of persons and entities that it hosts, but also in the conduct of foreign agents within the state's territorial jurisdiction. International cooperation as an over-riding principle of state obligation grounds the legal argument to hold multilateral organizations accountable and liable for their conduct through the human rights treaty-bound states parties that comprise the governing bodies of those organizations.

**International law (general)**: Effectively in practice since the Middle Ages,<sup>42</sup> "international law" the term commonly used with reference to the system of implicit and explicit agreements that have their source in the international community of states, rather than

<sup>42</sup> The first treatise on international law (*Siyar* in Arabic) was the *Introduction to the Law of Nations* written at the end of the 8th century by Muhammad al-Shaybani. See Herbert J. Liebesny and Majid Khadduri, eds, *Law in the Middle East: Volume I: Origin and Development of Islamic Law* (Washington: The Middle East Institute, 1955).



individual states, and that bind states together in common adherence to recognized values and standards of behavior. In its most general sense, international law consists of rules and principles of general application dealing with the conduct of states and of intergovernmental organizations and with their inter-relations, as well as with some of their relations with persons, whether natural or juridical.

(See **Legal person** and **Natural person** below.)

**International law (private)**: Private international law (a.k.a., conflict of laws) is the body of conventions and model laws that regulate private relationships across national borders; e.g., divorce law or the law relating to the sale and transport of goods. Private international law is that branch of international law and interstate law that regulates all lawsuits involving a "foreign" law element, where different judgments will result depending on which jurisdiction's laws are applied. Private international law addresses the questions of (1) in which legal jurisdiction (i.e., which legal bodies entitled to act<sup>43</sup>) may a case be heard; and (2) the law concerning which jurisdiction(s) apply to the issues in the case law of supranational organizations.

Multilateral private international law treaties cover such areas as trade and commerce, finance and banking, trusts and estates, family and children (e.g., custody, adoption, etc.) matters, international judicial assistance, and regulations on real property, consumer law, currency control, insurance and banking. For ETO Consortium purposes, private international law matters concern those cases where regional or international agreements render the domestic laws of nation states inapplicable when conflicting with a supranational legal system.

In civil law systems, private international law is a branch of the internal legal system dealing with the determination of which state law is applicable to situations crossing over the borders of one particular state and involving a "foreign element" (élément d'extranéité), (collisions of law, conflict of laws, clash of regimes). Lato sensu (at large) it also includes international civil procedure and international commercial arbitration (collisions of jurisdiction, conflict of jurisdictions).

In common law systems, private law/conflict of laws is principally concerned with determining whether the proposed forum has jurisdiction to adjudicate and is the appropriate venue for dealing with the dispute. Secondly, it is concerned with determining which of the competing state's laws are to be applied to resolve the dispute. It also deals with the enforcement of foreign judgments.

There are two major streams of legal thought on the nature of conflict of laws. One group of researchers regard Conflict of Laws as a part of international law, claiming that its norms are uniform, universal and obligatory for all states. This stream of legal thought in Conflict of Laws is called "universalism". Other researchers maintain the view that each State creates its own unique norms of Conflict of Laws pursuing its own policy. This theory is called "particularism" in Conflict of Laws.

(See **International law, public and private (compared)** below.)

**International law (public)**: **Public international law** includes, but is not limited to: the United Nations human rights treaties, maritime law (law of the sea), international criminal law, international norms pertaining to nationality and citizenship, the Geneva Conventions and other sources of international humanitarian law (IHL). A common

<sup>43</sup> Rosslyn Higgins, *Problems and Process: International Law and How We Use It* (Oxford: Clarendon Press, 1994), p. 146.

classification of public-law fields is fourfold: (1) constitutional, (2) administrative, (3) public international and (4) international human rights law.<sup>44</sup>

Public international law concerns the structure and conduct of states and intergovernmental organizations. To a lesser degree, international law also may affect multinational corporations and individuals, an impact increasingly evolving beyond domestic legal interpretation and enforcement. Public international law has increased greatly in use and importance over the last century, due all to the increase in adjudicating disputes involving global trade, armed conflict, environmental deterioration and human rights violations.

Public international law is sometimes called the "law of nations." It should not be confused with "private international law," which is concerned with the resolution of conflict of laws.

(See **International law, public and private** (compared) below.)

**International law, public and private** (compared): The primacy of human rights as a core objective of the United Nations is encapsulated explicitly in article 103 of the UN Charter: "In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail."<sup>45</sup> When any treaty is interpreted according to its "object and purpose" in line with article 31(1) of the Vienna Convention on the Law of Treaties (1969), that object and purpose must cohere with, or at least not offend the purpose and principles embodied in the UN Charter that article 103 seeks to protect.<sup>46</sup> Even when an international court is not called upon to interpret a treaty, it is still required to observe the coherence of the international legal system given both the peremptory norm status of article 103<sup>47</sup> and the broad reading of that article's reference to international agreements.

Although jurists and UN bodies have tried to classify certain rules, including rights and duties, with adjectives such as "inalienable," "inherent" or "fundamental," these terms have not assumed precise legal meaning, but have influenced some tribunals' interpretation of human rights and corresponding duties, including treaty obligations. Some eminent court opinions have supported the view that certain over-riding principles of international law form the body of *jus cogens*, or obligations of behavior that states owe to the entire international community as a whole. A principle of *jus cogens* is also considered a preemptory norm in international law.<sup>48</sup> The ICJ has ruled that "such obligations derive, for example, in contemporary international law, from the outlawing of acts of aggression, and of genocide, as also from the principles and rules concerning the basic rights of the human person, including protection from slavery and racial discrimination."<sup>49</sup> Such rules cannot be diluted or superseded by an international treaty, but only by the codification of, or other means of establishing another countervailing

<sup>44</sup> David Dyzenhaus, ed., *The Unity of Public Law* (Oxford and Portland OR: Hart Publishing, 2004).

<sup>45</sup> U.N. Charter art. 103

<sup>46</sup> 113. U.N. Charter art. 103; see also Vienna Convention on the Law of Treaties on relations between States and International Organizations, or between/among International Organizations art. 30 ¶ 6, 21 March 1986, 25 I.L.M. 562 ("The preceding paragraphs are without prejudice to the fact that, in the event of a conflict between obligations under the Charter of the United Nations and obligations under a treaty, the obligations under the Charter shall prevail.")

<sup>47</sup> Stanislaw E. Nahlik, "Book Note, 84 AM. J. INT'L L. 779 (1990) (reviewing Lauri Hannikainen, *Preemptory Norms (jus cogens) in International Law: Historical Development, Criteria, Present Status* [1988]).

<sup>48</sup> The Vienna Convention defines a peremptory norm of general international law as "a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character." The Vienna Convention on the Law of Treaties, Article 53: Treaties conflicting with a peremptory norm of general international law (*jus cogens*).

<sup>49</sup> Barcelona Traction (second phase). ICJ Reports (1970), 3 at. 32.

norm. The UN Charter principles of nondiscrimination and self-determination, as well as crimes against humanity, fall into the category of jus cogens.<sup>50</sup> As the International Law Commission accepted<sup>51</sup> and the Vienna Convention on the Law of Treaties (1969) affirms that “A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law.”<sup>52</sup>

The least that can be said is that public international law has an effect on private international law<sup>53</sup> and the relationship between the two disciplines involved public international law significantly governing private international law.<sup>54</sup>

**Landpedia:** is a specialized database dedicated to issues related to the human rights dimensions and people’s struggles over land. It includes proceedings of the HLRN [Land Forums](#), a [Library](#) (containing [Legal Materials: Customary law instruments](#), [Treaty law instruments](#), [Soft law instruments](#), [Legislation](#), [Jurisprudence](#) and [Legal Commentary; Popular Sources](#); [Analytical Materials](#); and [Other Documentation](#)), [Land Struggles](#) information, opinion and studies about land, based on HLRN Land Forum contributions and related research, as well as access to all issues of [Land Times](#). The [Landpedia](#) is available on the internet in Wikipedia format.

**Law of nations:** (See **International law (public)** above.)

**Leasehold:** The right to hold or use property for a fixed period of time at a given price, without transfer of ownership, on the basis of a lease contract. A leasehold is a fixed asset.

**Legal person:** A “legal person” (also sometimes called “juridical person” or “juristic person”) is a legal entity through which the law allows a group of natural persons to act as if they were a single entity (composite individual) for certain legal purposes. In some jurisdictions, a single person also may have a separate legal personality other than her/his natural own.<sup>55</sup> (Common examples include heads of corporations, ecclesiastical offices, such as a bishop and his/her office, and certain statutory offices, such as a public environmental protection agency, or minister of trade.)

Such a legal distinction does not mean that these corporations or offices are human beings, but only that the law allows such composite entities to act as persons for certain limited purposes, most commonly as parties to lawsuits and contracts, or owners of property. (This concept is distinct from and should not be confused with limited liability or the joint stock principle.<sup>56</sup>)

<sup>50</sup> Also the acquisition of territory by force and piracy. See Ian Brownlie, *Principles of Public International Law* (Oxford: Clarendon, 1991), pp. 512–14.

<sup>51</sup> In the ILC’s terms, “a treaty is void if it conflicts with a peremptory norm of general international law from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.” Final draft on the law of treaties (1966), Article 50. See *Yearbook of the International Law Commission* (1966), ii, pp. 247–49.

<sup>52</sup> Vienna Convention, op cit., Article 53.

<sup>53</sup> Dan Jerker B. Svantesson, “The Relation between Public International Law and Private International Law in the Internet Context,” *Yearbook of New Zealand Jurisprudence*, Volume 9 (2006), pp. 154–60.

<sup>54</sup> “Discussion of the relationship of private to public international law is meaningful, however, only if private international law is carefully delimited.” John R. Stevenson, *The Relationship between Private International Law and Public International Law*, *Columbia Law Review*, Vol. 52, No. 5 (May 1952), pp. 561–88

<sup>55</sup> For example, under English law, this is referred to as a corporation sole. See Luigi Cerri, “Corporate Personhood and Economic Democracy,” Università di Siena, Dipartimento di Economia Politica; Université de Paris X, Ecole Doctorale “Economie, Organisation, Société,” at:

<http://www.econ-pol.unisi.it/econdem/Documenti/Luigi%20Cerri.doc>.

<sup>56</sup> A joint stock company is financed with capital invested by the members or stockholders who receive transferable shares, or stock. It is under the control of certain selected managers called directors. Joint stock companies are a form of partnership in

Certain basic rights, like freedom of expression, adequate housing, food security and due process of law, do not necessarily follow from legal personhood, but instead from natural personhood.

A legal person is sometimes called an “artificial person” or “legal entity,” although the latter is sometimes understood also to include natural persons as well.

The “legal person” concept is more central to Western—both common law and civil law—countries, but it is also found in virtually every legal system.<sup>57</sup>

**Legal rights:** (See **civil rights** or **statutory rights**.)

**Limited equity coop(erative):** a form of housing tenure in which shareholder residents manage their buildings, within limits imposed by a charter, and have the right to recover the costs and payments that they have paid for their shares, plus an allowance for improvements, if and when they decide to leave.<sup>58</sup>

**Mass exodus:** An event in which a large group of people leave a region because of conflict, ethnic or religious persecution, or natural disaster.

**Massacre:** A term borrowed from French,<sup>59</sup> used as either a noun or verb, referring to the killing of a “significant number” of (at least five<sup>60</sup>) persons in a single event, whereas victims are undefended, or have little capability of defending themselves relative to their attacker(s).<sup>61</sup>

**Migrant:** “Any person who lives temporarily or permanently in a country where he or she was not born, and has acquired some significant social ties to this country.”<sup>62</sup>

**Minimum core obligation:** A minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the right to housing is incumbent upon every State party to the relevant human rights treaties (ICESCR, ICERD, etc.).

which each member, or stockholder, is financially responsible for the acts of the company. It is not a legal entity separate from its stockholders.

<sup>57</sup> George F. Deiser, “The Juristic Person,” *University of Pennsylvania Law Review and American Law Register*, Vol. 57, No. 3 [new series Vol. 48] (December 1908), pp. 131–42.

<sup>58</sup> Duncan Kennedy, “The Limited Equity Coop as a Vehicle for Affordable Housing in a Race and Class Divided Society,” 46 *Howard Law Journal* 85–125, 85 (Fall 2002).

<sup>59</sup> From Old French *macecre* or *macecle*, meaning slaughter, derived from the verb *macecler / macecrer* (massacrer), also in its 12<sup>th</sup> Century form: *maçacre*. Its origins may be either from the Arabic *maslakh* (مسلخ), also meaning to butcher, or to skin, or from the Latin vulgate *matteuculare*, derived from gallo-roman *matteuca*.

<sup>60</sup> Rocio Mezquita, “The Guatemalan Commission for Historical Clarification: *Data Processing*,” in Patrick Ball, Herbert F. Spierer, and Louise Spierer, eds. *Making the Case: Investigating Large Scale Human Rights Violations Using Information Systems and Data Analysis* (Washington: AAAS, 2000); Eric Carlton, “Race, Massacre and Genocide: An Exercise in Definitions,” *International Journal of Sociology and Social Policy*, Vol. 10, No. 2 (1990), 80–93. The United Nations Office of the High Commissioner for Human Rights refers to a massacre as an act of killing *three* or more persons. OHCHR, *Human Rights and Law Enforcement: A Manual on Human Rights training for Police* (Professional Training Series No. 5) (Geneva: OHCHR, 1997).

<sup>61</sup> The foregoing definition is based on the application of the term in human rights, humanitarian law and criminal contexts. More generally, the Oxford English Dictionary defines “massacre” as, “The indiscriminate and brutal slaughter of people or (less commonly) animals; carnage, butchery, slaughter in numbers.” The first known use of the term in the English language refers to events in France known as the Saint Bartholomew’s Day Massacre (*Massacre de la Saint-Barthélemy*), in which an estimated 5,000 to 30,000 victims were killed. A long but incomplete list of events commonly referred to as “massacres” is found at: [http://en.wikipedia.org/wiki/List\\_of\\_massacres#cite\\_ref-OED\\_N\\_0-0](http://en.wikipedia.org/wiki/List_of_massacres#cite_ref-OED_N_0-0).

<sup>62</sup> Council of Europe, “Migration and integration - basic concepts and definitions,” at: <http://social.coe.int/en/cohesion/action/publi/migrants/concepts.htm#back1>.

“Thus, for example, a State party in which any significant number of individuals is deprived of... basic shelter and housing, or of the most basic forms of education is, prima facie, failing to discharge its obligations... [A]ny assessment as to whether a State has discharged its minimum core obligation must also take account of resource constraints applying within the country concerned. Article 2 (1) [of ICESCR] obligates each State party to take the necessary steps ‘to the maximum of its available resources.’ In order for a State party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources it must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations.<sup>63</sup>

**Moral rights:** (See natural rights or inalienable rights.)

**Natural person:** a “natural person” is a perceptible human being that is subject to physical laws, as opposed to an “artificial,” “legal” or “juristic” person. Those latter categories of legal subjects (“legal persons”) could be something other than a human person. Such a “legal person” could be an organization that the law treats for some purposes as if it were a “person” (entity) apart from its members or owners.

Certain rights apply to “natural persons” only.<sup>64</sup> Natural persons inherently possess fundamental human rights, like the right to life. For example, a corporation, although a “legal person,” cannot vote or hold public office as a “natural person” has the right to do. However, a corporation or formal organization, as a “legal person,” can file a lawsuit and seek remedy/reparation.

As distinct from a natural person, normally, every natural person is also a legal person in the sense that a natural person holds at least as many rights as a legal person. For our purposes, a natural person is the principal rights holder in human rights law and international humanitarian law, and a legal person, such as a corporation, may also be a duty holder and subject to regulation through the state’s extraterritorial obligations.

Certain basic rights, like freedom of expression, adequate housing, food security and due process of law, do not necessarily follow from legal personhood, but instead from natural personhood.

A legal person is sometimes called an “artificial person” or “legal entity,” although the latter is sometimes understood also to include natural persons as well.

**Natural rights:** (also called moral rights or inalienable rights) are rights that are not contingent upon the laws, customs, or beliefs of a particular society or polity. Natural rights are thus necessarily universal. (See also civil rights, legal rights or statutory rights for contrasting concepts.)

<sup>63</sup> *Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 3: The nature of States parties’ obligations (art. 2, para. 1, of the Covenant), para. 9.*

<sup>64</sup> For example, such legal provisions as Amendment XIX to the *United States Constitution*, which guarantees a woman’s right to vote, or Section 15 of the *Canadian Charter of Rights and Freedoms*, which guarantees equality rights, apply to natural persons only.

**Network:** A social organization whose structure resembles an openwork fabric or composition in form or concept, especially:

- A complex, interconnected group or system;
- An association of people drawn together by common relation or interest;
- An extended group of people or entities with similar interests or concerns who interact and remain in informal contact for mutual assistance or support.

The term “social network” was first coined by London School of Economics professor J. A. Barnes in the 1950s, who defined the size of a social network as a group of about 100 to 150 people.<sup>65</sup>

(For some definitions of terms distinguishing types of collective action such as alliance, coalition, collective, movement and network, click [here](#).)

**Neoliberal is** refers to a school of thought which believes that nation-states are, or at least should be, concerned first and foremost with **absolute gains** rather than **relative gains** to other nation-states. This theory is often mistaken with **neoliberal** economic ideology, although both use some common methodological tools, such as game theory

**Non-refoulement:** The fundamental principle that prescribes that no person should be returned to any country where s/he is likely to face persecution or torture. The principle encompasses both nonreturn and nonrejection.

**Obligation:** As the state is the only legal personality authorized to enter into a treaty and make international law, the state bears a legally binding duty (obligation) either to act positively or refrain from acting negatively so as to uphold the terms of the treaty or other norm of international law. In human rights law, to every right correspond obligations of the state as the primary duty holder. Consistent with its ratification of international human rights treaties, the State Party must “take steps, individually and through international assistance and cooperation...to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized...by all appropriate means, including particularly the adoption of legislative measures. Thus, the State also guarantees “that the rights...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.”<sup>66</sup> Likewise, the state is obliged to meet its obligations by ensuring gender equality.

A State’s human rights obligation is comprised of three aspects: (1) to respect, (2) to protect and (3) to fulfill the right.<sup>67</sup> The obligation to respect requires States to refrain from interfering with the enjoyment of the right. (Thus, the State fulfills its duty to respect the right to housing when it refrains from arbitrary forced evictions or other outright violation.) The obligation to protect requires States to prevent violations of such rights by other (third) parties. (Thus, the State discharges its obligation to protect the human right to adequate housing when it prevents private developers from carrying out forced evictions and/or prosecutes those responsible for the violation; or the State meets its obligations to protect inhabitants’ housing rights by treating domestic violence as a crime.) The obligation to fulfill requires States to take appropriate legislative, administrative, budgetary, judicial and other measures toward the full realization of the right. Therefore, when the State increases the amount or proportion of its budget for participatory slum upgrading through domestic or overseas development assistance, it is

<sup>65</sup> J. A. Barnes, “Class and Committees in a Norwegian Island Parish,” *Human Relations* No. 7, pp. 39–58 (1954).

<sup>66</sup> *International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 2.*

<sup>67</sup> *Maastricht Guidelines on Violations of Economic, Social and Cultural Rights*, Maastricht, 22–26 January 1997.

acting in compliance with its treaty-bound obligation by applying the over-riding principle of ensuring the maximum of available resources to fulfill the right to adequate housing.

“Obligation” is a term usually reserved for a state’s agreed-upon, ratified and required preventive or remedial actions that are specifically treaty-based. Compliance with an “obligation” is binding and, thus, subject to various forms of adjudication. Grounding a claim in an “obligation” implies that the state bears a duty arising from a treaty, or a general principle of customary law that is also theoretically subject to adjudication.

“Obligation” is the strongest and most “black-letter law”-based of the three terms (commitment, responsibility and obligation) evoking duty and liability of the state. (See **Commitment** above and **Responsibility** below.)

**Over-riding principles of (human rights) application:** Principles found in the initial articles common to both international human rights Covenants and other major international human rights treaties and standards, and to norms of justice arising from the major legal systems of the world. These explain how a State is to perform its obligation under human rights law and standards and involve principles of immediate application, including to ensure (1) the inalienable rights to self-determination; (2) nondiscrimination, in general; (3) gender equality; and (4) the rule of law, including access to justice and domestic application of the human rights contained in each treaty, particularly by adopting legislative measures. In the case of ESC rights, these also include (5) progressive realization of the rights and (6) the State’s devotion of the maximum of available resources to the respect, protection and fulfillment of the rights. States are obligated also to engage in (7) international cooperation in order to ensure the respect, protection and fulfillment of human rights domestically and extraterritorially. Thus, comprehensive monitoring of the human right to adequate housing requires assessing each entitlement (element) in light of the rights and corresponding obligations arising from these over-riding legal principles:

1. Self-determination
2. Nondiscrimination
3. Gender equality
4. Rule of law
5. Applying the maximum of available resources
6. Progressive realization (nonregressivity/nonretrogression)
7. International cooperation

**Pastoralist:** A person who derives her/his main source of livelihood from tending and raising livestock, which may involve moving seasonally in search of pasture and water.

**Peasant:** a small-scale or subsistence farmer who may rely on, and claim occupancy of cultivatable land under various forms of tenure.

**Population transfer:** Known also by other of synonyms, it is a process involving the movement of people as a consequence of processes in which a State government or State-authorized agencies participate. Such processes, whether intended or unintended, negatively affect the human rights of the transferred population, as well as the inhabitants of an area into which settlers move or are transferred. The term "transfer" implies purpose in the act of moving a population; however, it is not necessary that a

destination be predefined. The State's role in population transfer may be active or passive, but nonetheless contributes to the systematic, coercive and deliberate nature of the movement of population into or out of an area. Thus, an element of official force, coercion or malign neglect is present in the state population transfer practice or policy. The state's role may involve financial subsidies, planning, public information, military action, recruitment of settlers, legislation or other judicial action, and even the administration of justice.<sup>68</sup>

Article 7 of the Rome Statute of the International Criminal Court<sup>69</sup> defines "crime against humanity" to include "any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:...(d) Deportation or forcible transfer of population," which means "forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law..." Article 8 of the Rome Statute defines "war crimes" to include "(vii) Unlawful deportation or transfer or unlawful confinement" and other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, such as "(viii) the transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory..." International humanitarian law also embodies the prohibition against population transfer. The Geneva Convention relative to the Protection of Civilian persons in Time of War (1949) determines that "Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive....The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies."<sup>70</sup>

**Private international law:** (See **International law, public and private** [compared].)

**Privatization of public goods and services:** The act or policy of selling or transferring control of publicly owned goods and services, such as water, electricity, and utilities, to persons or privately owned enterprises. Such privatizations often are instituted without public input and can result in land and housing dispossession, increased living costs, and evictions.

**Prosecution:** the act or process of prosecuting; especially: the institution and carrying on of a criminal action involving the process of seeking formal charges against a person and pursuing those charges to final judgment. In from the legal aspect The act of prosecuting ( charges leading to trial) the defendant(offender) in the criminal case in the court, by the government attorney to establish justice.

**Public international law:** (See **International law, public and private** [compared].)

<sup>68</sup> "The human rights dimensions of population transfer, including the implantation of settlers" [preliminary report presented by Mr. A.S. al-Khasawneh and Mr. R. Hatano], E/CN.4/Sub.2/1993/17, 6 July 1993, paras. 14–15.

<sup>69</sup> UN Doc. 2187 UNTS 90, entered into force 1 July 2002.

<sup>70</sup> 75 *United Nations Treaty Series (UNTS)*, 287.



**Public housing:** A housing unit or development that is publicly funded and administered for low-income persons and families. Public housing or project homes usually involve forms of housing tenure in which a central or local government authority owns the property. (See also “**Social housing**” below.)

**Refugee:** anyone “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his [or her] nationality and is unable or, owing to such fear, is unwilling to avail himself [or herself] of the protection of that country; or who, not having a nationality and being outside the country of his [or her] former habitual residence, is unable or, owing to such fear, is unwilling to return to it.”<sup>71</sup>

**Refugee protection:** Protection is first and foremost the duty of a state to protect persons within its borders from persecution. States must minimally respect the principles of nondiscrimination and non-refoulement; i.e., the right of persons not to be forcibly expelled or returned to territories where their life or freedom would be at risk on account of their race, religion, nationality or membership of a particular social group, or political opinion. The prohibition against refoulement forms part of customary law and, therefore, applies to all States, irrespective of whether they are signatories to the 1951 Convention Relating to the Status of Refugees. When states are unable or unwilling to protect, this responsibility falls upon the international community.

The refugee protection regime is enshrined in the 1951 Refugee Convention and its 1967 Protocol, which cover the gamut of activities through which the rights of refugees are secured. The primary goals are to ensure physical security, access to territory and asylum procedures, as well as respect for the principle of non-refoulement. Once refugees are admitted to a territory, an international agency or the host country will normally provide shelter, water, food and medical care. Protecting agencies will also encourage host countries to show respect for the basic human rights of refugees. States party to the 1951 Refugee Convention and its 1967 Protocol are obliged to guarantee freedom of religion, freedom of movement, the right to work, housing, property ownership and education, as well as the right to identity papers, travel documents and social security. The 1951 Refugee Convention requires that most of these rights be guaranteed at the same level as nationals of the state; all are guaranteed at least at the same level as the most-favored category of foreigner in the host country. Promoting a proper legislative framework for refugee status determination within states is also a component of protection.

Protection also includes the search for durable solutions for refugees and IDPs at all stages of displacement. The search for durable solutions is a core component of protection. Durable solutions refer to the three possible solutions that will restore refugees’ rights; i.e., repatriation (return), local integration in the host country, and resettlement in a third country.

The preferred solution for refugees and IDPs is repatriation, the only option constituting a fundamental and inalienable right (i.e., the right of return) that can be implemented by individuals independently of the search for durable solutions.

**Refugee temporary protection:** (See “Temporary protection” below.)

<sup>71</sup> *Convention relating to the Status of Refugees*, 189 UNTS 150, entered into force 22 April 1954, Article 1.A.2.

**Rehabilitation:** the restoration of normal living conditions following a disruption or displacement so as to return the inhabitant(s) to a state of personal and community integrity. Such process “should include medical and psychological care as well as legal and social services.”<sup>72</sup>

Rehabilitation is one of the six forms of reparation: restitution, compensation, return (for refugees and IDPs), satisfaction and guarantees of nonrepetition. No single one of the six elements of reparation can substitute for another form. (See also “**Compensation**,” “**Guarantees of nonrepetition**,” “**Rehabilitation**,” “**Resettlement**,” “**Restitution**” and “**Satisfaction**” in this list of term.)

**Remedy:** Effective legal or judicial resolutions for victims of violations of rights and protection guaranteed in legislation, international human rights law or international humanitarian law. Remedy involves fulfilling the victim’s right to the following as provided for under international law, including:

- (a) Equal and effective access to justice;
- (b) Adequate, effective and prompt reparation for harm suffered; and
- (c) Access to relevant information concerning violations and reparation mechanisms.<sup>73</sup>

**Reparation:** In order to promote justice, international law establishes norms for adequate, effective and prompt reparation to redress gross violations of international human rights law or serious breaches of international humanitarian law. Reparation should be proportional to the gravity of the violations and the harm suffered. In accordance with its domestic laws and international legal obligations, States are obliged to provide reparation to victims for acts or omissions resulting in such violations that can be attributed to the State. In cases where any entity is found liable for reparation to a victim, such party should provide reparation to the victim or compensate the State if the State has already provided reparation to the victim. Reparation includes the following forms of redress: restitution, compensation, rehabilitation, return (for refugees and IDPs), resettlement to an agreed-upon alternative dwelling (if return to the original one is physically impossible), satisfaction and guarantees of nonrepetition. No single one of the six elements of reparation can substitute for another form. (See also “**Compensation**,” “**Guarantees of nonrepetition**,” “**Rehabilitation**,” “**Resettlement**,” “**Restitution**” “**Return**,” and “**Satisfaction**” in this list of terms.)

**Resettlement** (refugee): A durable solution for an asylum seeker such that results in her/his consensual relocation to a destination country, where authorities accept the asylum seeker as an immigrant for the purpose of permanent residence and naturalization (i.e., citizenship).

Resettlement (displaced person): The transportation of a person or persons (as a family or community) for relocation at a different settlement (as after some kind of upheaval). The term resettlement includes:

1. the relocation of living quarters;
2. finding and engaging in acceptable new employment for those whose jobs are lost or severely
3. affected;

<sup>72</sup> “Remedy and Reparation Guidelines,” Article 21.

<sup>73</sup> “Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law” [Remedy and Reparation Guidelines] Human Rights Resolution 2005/35, para. 11.

4. restoration (or compensation, as necessary) of affected productive resources, including land, workplaces, trees and infrastructure;
5. restoration of other adverse effects on affected persons' living standards (quality of life) through
  - adequate land acquisition for affected persons and communities;
  - restoration of, or compensation for affected private and public enterprises;
  - restoration of adversely affected persons on cultural or common property, as appropriate.<sup>74</sup>

Resettlement forms an integral part of reparation for victims of gross violation of housing rights and victims of grave breaches of humanitarian law that result in displacement. Thus, resettlement is closely linked to the other forms of redress that constitute the legally defined elements of reparation: restitution, return, compensation, rehabilitation, satisfaction and guarantees of nonrepetition. No single one of the six elements of reparation can substitute for another form. (See “**Reparation**,” “**Compensation**,” “**Guarantees of nonrepetition**,” “**Rehabilitation**,” “**Return (right of)**,” “**Restitution**” and “**Satisfaction**” in this list of terms.)

**Resettlement** (homeless person): A planned supported process of change in an accommodation context.<sup>75</sup> In particular, a process for vulnerable homeless people with a history of sleeping rough of securing access to long-term accommodation that best suits their needs and reasonable preferences, and of ensuring that they do not subsequently lose it, or move to less-suitable accommodation<sup>76</sup> The process by which people are enabled to live as full a life as possible within an appropriate form of housing<sup>77</sup>

**Resettlement** (apartheid South Africa): From the 1950s until the early 1980s, the Government of South African implemented a “resettlement” policy that forced people into their designated “group areas.” This policy, amounting to “forced removal,” affected an estimated three and a half million. (See “**Forced removal**” above.)

**Resilience**: This term has many different definitions that apply to specific contexts. Different definitions of “resilience” include “the ability of a system, community or society exposed to hazards to resist, absorb accommodate to and recover from the effects of a hazard in a timely and efficient manner” (**UNISDR**), or “the ability of a social or ecological system to absorb disturbances while retaining the same basic structure and ways of functioning, the capacity for self-organisation, and the capacity to adapt to stress and change” (**IPCC**), or alternatively “the capacity of a system to absorb disturbance and reorganize while undergoing change” (**Resilience Alliance**).

According to—“the resilience of communities is particularly important in protracted crises, during and after violent conflicts, and whenever state institutions and the systems through which livelihoods normally operate (e.g. markets) are weak and ineffective” (**FAO**). Despite variances among definitions for “resilience” most have two common elements: (1) capacity to bounce back after a shock and (2) capacity to adapt to a changing environment. Building resilience requires building support and networks between and among individuals, communities and governments, in order to transform

<sup>74</sup> Objectives of Resettlement Plan and Definition of Resettlement Terminology, at: [http://209.225.62.100/Documents/Resettlement\\_Plans/PRC/Ningxia/ningxia\\_chap01.pdf](http://209.225.62.100/Documents/Resettlement_Plans/PRC/Ningxia/ningxia_chap01.pdf).

<sup>75</sup> National Resettlement Conference, Manchester (1995), at: <http://handbooks.homeless.org.uk/resettlement/howtouse>.

<sup>76</sup> Outreach and Resettlement Work with people Sleeping Rough by G. Randall and S. Brown, Department of the Environment (1995), at: <http://handbooks.homeless.org.uk/resettlement/howtouse>.

<sup>77</sup> Settlement and Housing Policy, Simon Community of Ireland (1994), at: <http://handbooks.homeless.org.uk/resettlement/howtouse>.

policy into action and assist in recovery.

In housing and land rights, resilience refers to the capability of a person, household or community to recuperate after a shock or crisis involving the loss of, or damage to home or landed property, and/or displacement from a habitual residence.

For more information on this term, see the [brief](#) produced by the High-Level Expert Forum on Food Insecurity in Protracted Crises, released in September 2012.

**Responsibility (state responsibility):** “State responsibility” can be invoked in arguing that a state bears a duty to (an)other state(s) and may be liable for a wrongful act, including one that is not explicitly covered by an explicit treaty. The International Law Commission’s (draft) Articles on State Responsibility<sup>78</sup> and Articles on International Liability for Injurious Consequences arising out of Acts Not Prohibited by International Law<sup>79</sup> have sought to establish a state’s duty and a basis for liability and remedy owed to another state for harm caused by such wrongful acts. Acts invoking “state responsibility” could include certain cross-border social or environmental consequences such as pollution or population transfer.

That effort is related also to the ILC’s work on “international liability for injurious consequences arising out of acts not prohibited by international law.”<sup>80</sup> By the same token, where an act is not covered by an explicit treaty provision, the concept and term “responsibility” could apply also to international organizations, which are not party to treaties. The effort of the ILC continues to explore the extent and content of that “responsibility.”<sup>81</sup> Similarly, in the case of international organizations, “responsibility” can be invoked along with other general terms (accountability, commitment, duty, etc.), except for “obligation,” which habitually refers to required behavior in accordance with binding terms of a treaty.

The wrongfulness of the act also may constitute a cross-border breach/violation of a treaty obligation or general principles of international law, including human rights and humanitarian law. However, the prospective application of the (draft) Articles could provide a further basis and opportunity to (prevent wrongful acts and) establish liability and the corresponding remedy/reparations required. Because the (draft) Articles are explicit about the state’s responsibility (duty) to provide/ensure reparations, at least to the aggrieved state, they may offer greater problem-solving/conflict-resolution potential than less-evolved norms, standards and their instruments from earlier generations.

<sup>78</sup> International Law Commission, “Responsibility of States for Internationally Wrongful Acts,” *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 10 (A/56/10)*. Text reproduced in annex to General Assembly resolution 56/82, 12 December 2001, and corrected by document A/56/49 (Vol. I)/Corr.4. Report of the International Law Commission on the work of its fifty-third session: report of the Sixth Committee (A/56/589 and Corr.1), 26 November 2001.

<sup>79</sup> By decision of the ILC in 1997, it subdivided this topic into two parts: “prevention of transboundary damage from hazardous activities” and “international liability in case of loss from transboundary harm arising out of hazardous activities.” The ILC concluded its work with its adoption of the respective draft articles and draft principles and commentaries on the two subjects and submitted them to the General Assembly review and action. The draft articles on Prevention of Transboundary Damage from Hazardous Activities are annexed to “Consideration of prevention of transboundary harm from hazardous activities and allocation of loss in the case of such harm,” A/RES/62/68, 8 January 2008. The draft Principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities are annexed to “Allocation of loss in the case of transboundary harm arising out of hazardous activities,” A/RES/61/36, 18 December 2006.

<sup>80</sup> From the outset of its work on the topic of State responsibility, the Commission agreed that that topic should deal only with the consequences of internationally wrongful acts, and that, in defining the general rule concerning the principle of responsibility for internationally wrongful acts, it was necessary to adopt a formula which did not prejudice the existence of responsibility for lawful acts. At its forty-ninth session, in 1997, the Commission decided to split the topic into two parts: “prevention of transboundary damage from hazardous activities” Report of the International Law Commission on the work of its fifty-third session (23 April–1 June and 2 July–10 August 2001), A/56/10, 24 October 2001 and “international liability in case of loss from transboundary harm arising out of hazardous activities” (“Draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities” and commentary, in Report of the International Law Commission Fifty-eighth session (1 May–9 June and 3 July–11 August 2006), A/61/10 (2006), pp. 101–82.

<sup>81</sup> See Giorgio Gaja, Special Rapporteur, “Fifth report on responsibility of international organizations,” A/CN.4/583, 2 May 2007.

However, that prospect has yet to be affirmed in actual application of the Articles on State Responsibility.<sup>82</sup>

Responsibility also conveys a general, nonlegal sense, meaning simply to be supposed to do something, or liable to answer for one's action or omission. Thus, the use of the term could mean something far short of a binding treaty obligation, and the Articles on State Responsibility are intended also to cover wrongful acts that are not specifically proscribed by treaty as black letter law. Some may find the universal use of the term "responsibility" to be too broad and imprecise to distinguish which level or type (i.e., respect, protect and/or fulfill) of accountability is meant. Others may find that reserving the term "responsibility" only to mean nontreaty-specified norms, as in the (draft) Articles, to be too restricting.

This note attempts to achieve greater precision of terminology so as to obviate the need for explanations that arises from mixing usages in a single case, volume or more-complex project, like the ETO Consortium. Therefore, it is proposed to reserve use of the term "responsibility" to cases in which that form of accountability is meant as a function of invoking the Articles on State Accountability (or Articles on International Liability for Injurious Consequences arising out of Acts Not Prohibited by International Law).

**Restitution:** should, whenever possible, restore the victim to the original situation before the gross violations of international human rights law or serious violations of international humanitarian law occurred. Restitution includes, as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property.<sup>83</sup>

Thus, restitution is closely linked to the other forms of redress that constitute the legally defined elements of reparation: restitution, return, compensation, rehabilitation, satisfaction and guarantees of nonrepetition. No one of the seven elements of reparation can substitute for another form. (See "**Reparation**," "**Compensation**," "**Guarantees of nonrepetition**," "**Rehabilitation**," "**Return (right of)**," "**Resettlement**" and "**Satisfaction**" in this list of terms.)

---

<sup>82</sup> The ICJ cited an earlier draft text of the Articles in *Gabčíkovo-Nagyamaros Project (Hungary/Slovakia)*, *ICJ Reports 1997*, at 7; and *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, case 91, International Court of Justice (ICJ) Judgment returned on 26 February 2007. For a critique of the Court's standard in this case see Mark Gibney, Katarina Tomaševski and Jens Vedsted-Hansen, "Transnational State Responsibility for Violations of Human Rights," *Harvard Human Rights Journal* 12:267–96 (1999); also Mark Gibney, "ETOs and the Draft Articles on state responsibility" paper presented to ETO Consortium (2008).

<sup>83</sup> "Remedy and Reparation Guidelines," Article 19.

**Return (right of)**: one of the elements of the right of all refugees to reparation,<sup>84</sup> as codified in international law and incumbent upon all States to respect protect and fulfill, entitling refugees to go back to their country of origin of their own volition, regardless of the present sovereign or any other conditions. The right of return is independent of the acquisition of citizenship or any other legal status. It is a fundamental right enshrined in both human rights law<sup>85</sup> and international humanitarian law.<sup>86</sup> At any time, even if locally integrated or resettled in a country other than their country of origin, refugees may decide to return to their homes spontaneously, or as part of a repatriation program. UNHCR stresses the following features of the right to return: (1) refugees are free and have the right to return to their country of origin at any time; (2) refugee's decision to return should be voluntary; (3) refugees must be provided with objective [true, reliable] and up-to-date information on the situation in their of origin, in order to make an informed decision about repatriation; and (4) the level of assistance and protection provided in the country of refuge should not be the determining factor for refugees to decide whether or not to return.<sup>87</sup>

Thus, return is closely linked to the other forms of redress that constitute the legally defined elements of reparation: restitution, return, compensation, rehabilitation, satisfaction and guarantees of nonrepetition. No one of the seven elements of reparation can substitute for another form. (See "**Reparation**," "**Compensation**," "**Guarantees of nonrepetition**," "**Rehabilitation**," "**Restitution**" "**Resettlement**" and "**Satisfaction**" in this list of terms.)

**"Right to the city"**: a slogan and claim of urban social movements to guide policies to be more equitable and inclusive, as an alternative to current policies and planning practices that lead to segregation, privatization and inequitable distribution of public goods and services. Henri Lefebvre is generally attributed as having developed the notion of a "right to the city" in his book, *Le droit à la ville* (Paris: Anthropos, 1968). Currently, the "right to the city" argument rests on a bundle of existing human rights, in addition to specific claims of right to access land, water, sanitation, transport and public space, as well as the concept of the "social function" of land, housing and related infrastructure and public goods and services. The "right to the city" is elaborated in the draft "Charter on the Right to the City," which developed out of the urban social movements in Latin America and spread through the World Social Forum.<sup>88</sup> (See "**Social function**" below.)

**Rom (sing.), Roma (plural), Romani/y (adj.)**: a traditionally mobile or nomadic ethnic group largely of Rajastani origin found globally, but concentrated in Europe. They often face severe persecution and violation of rights in their countries of residence, in particular, housing and land rights, in the form of forced eviction, dispossession, destruction, marginalization, denial of access to services and other forms of spatial, physical, psychological and material discrimination.

<sup>84</sup> See "Reparation," "Rehabilitation," "Compensation" and "Restitution" above.

<sup>85</sup> Universal Declaration of human Rights, 10 December 1948, Article 13(2); International Covenant on Civil and Political Rights, 16 December 1966, Article 12(4); and International Convention on the Elimination of All Forms of Racial Discrimination, 4 January 1969, Article 5(d)(ii).

<sup>86</sup> Fourth Geneva Convention relative to the Protection of Civilian Persons in Times of War, 12 August 1949, Article 45; Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, Article 85(4)(a); Turku Declaration of Minimum Humanitarian Standards, 2 December 1990, UN Doc. E/CN.4/Sub.2/1991/55, Article 7

<sup>87</sup> UNHCR, *Resettlement handbook* (Geneva: Department of International Protection, November 2004), Chapter II, P. 5.

<sup>88</sup> For more information, refer to "The Right to the City," at Habitat International Coalition, at: <http://www.hic-net.org/indepth.asp?PID=18>.

**Satisfaction:** In the case of reparation, the victim is entitled to the state of well-being in which s/he perceives that justice was done. Thus, satisfaction is an international legal norm providing that, where applicable, the remedy of the original violation/harm includes any or all of the following:

- (a) Effective measures aimed at the cessation of continuing violations;
- (b) Verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim's relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations;
- (c) The search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed, and assistance in the recovery, identification and reburial of the bodies in accordance with the expressed or presumed wish of the victims, or the cultural practices of the families and communities;
- (d) An official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim;
- (e) Public apology, including acknowledgement of the facts and acceptance of responsibility;
- (f) Judicial and administrative sanctions against persons liable for the violations;
- (g) Commemorations and tributes to the victims;
- (h) Inclusion of an accurate account of the violations that occurred in international human rights law and international humanitarian law training and in educational material at all levels.<sup>89</sup>

Satisfaction is closely linked to the other forms of redress that constitute the legally defined elements of reparation: restitution, return, compensation, rehabilitation, satisfaction and guarantees of nonrepetition. No single one of the seven elements of reparation can substitute for another form. (See "**Reparation**," "**Compensation**," "**Guarantees of nonrepetition**," "**Rehabilitation**," "**Restitution**" "**Resettlement**" and "**Return (right of)**" in this list of terms.)

**Secure tenure:** The legally protected entitlement of all individuals and groups to occupy property and enjoy effective state protection against unlawful evictions.<sup>90</sup> Major types of tenure include freehold (ownership) and leasehold, "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 [that] guarantees legal protection against forced eviction, harassment and other threats. States [...consequently should] 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."<sup>91</sup>

**Self-determination:** the right of all peoples and nations freely to determine their political status and freely pursue their economic, social and cultural development.<sup>92</sup>

The principle of equal rights and self-determination of peoples is considered to have

<sup>89</sup> "Remedy and Reparation Guidelines," Article 22.

<sup>90</sup> "Expert seminar on the practice of forced evictions, Geneva, 11–13 June 1997," E/CN.4/Sub.2/1997/7 (2 July 1997).

<sup>91</sup> Committee on Economic, Social and Cultural Rights, "General Comment No. 4 'the right to adequate housing' (Article 11[1] of the Covenant)," 13 December 1991, UN document HRI/GEN/1/Rev.8, para. 8(a), p. 20.

<sup>92</sup> ICCPR and ICESCR, common Article 1(1).

been a general principle of international law arising from common State practice already at the founding of the League of Nations. However, self-determination was first codified in the Charter of the United Nations in 1945, which sets forth the purposes of the United Nations as:

2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace...<sup>93</sup>

The Charter's Article 55 stipulates further:

With a view to the creation of conditions of stability and well-being, which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

- a. higher standards of living, full employment, and conditions of economic and social progress and development;<sup>94</sup>
- b. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and
- c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

Every State has the duty, therefore, through unilateral, bilateral and multilateral action to promote universal respect for, and observance of human rights and fundamental freedoms in accordance with the Charter. Its Article 2.2 clarifies the universal duty of State membership such that:

All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with the present Charter....

The principle of self-determination has been progressively reaffirmed and legally defined throughout the UN system since its founding.<sup>95</sup> The material significance of self-determination is further elaborated in the Covenants on human rights adopted in 1966.<sup>96</sup> The common Article 1(2) of both the ICCPR and ICESCR sets forth that:

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 cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

How concerned persons/communities exercise an effective role in determining the terms by which they realize the human right to adequate housing is also a subject of the inalienable right (see "**natural right**") of self-determination. Self-determination is the right of peoples, not of States. It is the State, however, that is the legal personality obliged to ensure the protection, defense, promotion and fulfillment of self-determination as a duty

<sup>93</sup> *Charter of the United Nations, 26 June 1945, Article 1(2).*

<sup>94</sup> *Ibid.*, Chapter IX, "**International Economic and Social Co-operation**," Article 55.

<sup>95</sup> For example, see Declaration on the Granting of Independence to Colonial Countries and Peoples (1960), preamble and Article 7; "Permanent sovereignty over natural resources," General Assembly resolution 1803 (XVII) (1962), preamble and paras. 1–2, 5–7; International Convention on the Elimination of All Forms of Racism and Racial Discrimination (1965), Articles 1 and 5; Declaration on Social Progress and Development (1969), Articles 2, 3 and Part II; Declaration on Principles of International Law (1970), preamble and, esp., "The principle of equal rights and self-determination of peoples"; ECOSOC Declaration on Race and Racial Prejudice (1978), Articles 1, 3, 5 and 9 Declaration on the Right to Development (1986) preamble and Article 1, 6 and 8.

<sup>96</sup> International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI), 16 December 1966 (entered into force 3 January 1976 in accordance with Article 27); Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI), 16 December 1966 (entered into force 23 March 1976 in accordance with Article 49).



under international public law, as well as the essential legitimizing factor of the State itself.<sup>97</sup>

The UN Committee on the Elimination of Racial Discrimination has provided its General Recommendation XXI on the right to self-determination, which provides a classical interpretation of this over-riding principle for application of the International Convention on the Elimination of All Forms of Racial Discrimination:

4. In respect of the self-determination of peoples two aspects have to be distinguished. The right to self-determination of peoples has an internal aspect, that is to say, the rights of all peoples to pursue freely their economic, social and cultural development without outside interference. In that respect there exists a link with the right of every citizen to take part in the conduct of public affairs at any level, as referred to in article 5 (c) of the International Convention on the Elimination of All Forms of Racial Discrimination. In consequence, Governments are to represent the whole population without distinction as to race, colour, descent or national or ethnic origin. The external aspect of self-determination implies that all peoples have the right to determine freely their political status and their place in the international community based upon the principle of equal rights and exemplified by the liberation of peoples from colonialism and by the prohibition to subject peoples to alien subjugation, domination and exploitation.<sup>98</sup>

The concept of, and right to self-determination manifest in a spectrum of types and expressions of effective local control over developments and relations within a community and territory may involve either external or internal self-determination; that is, national independence as in the formal distinction of a self-determination unit with its own internationally recognized borders, a self-determination unit within the internationally recognized borders of a unitary State, or a community's<sup>99</sup> effective control over developments and relations affecting it as an independent State.<sup>100</sup>

In its General Comment No. 12 on "the right of self-determination of peoples" (1984), The UN Human Rights Committee (HRC) gave its guidance on the corresponding obligations of States, with the following:

1. In accordance with the purposes and principles of the Charter of the United Nations, Article 1 of the International Covenant on Civil and Political Rights recognizes that all peoples have the right of self-determination. The right of self-determination is of particular importance because its realization is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights. It is for that reason that States set forth the right of self-determination in a provision of positive law in both Covenants and placed this provision as Article 1 apart from and before all of the other rights in the two Covenants.

2. Article 1 [of ICCPR] enshrines an inalienable right of all peoples as described in its paragraphs 1 and 2. By virtue of that right they freely "determine their political status and freely pursue their economic, social and cultural development". The

<sup>97</sup> Consistent with the principle of the Universal Declaration of Human Rights, Article 21, which states that "the will of the people shall be the basis of the authority of government."

<sup>98</sup> **Adopted in document A/51/18, at the Committee's forty-eighth session (1996).**

<sup>99</sup> While a standard legal definition of nation and people remains a subject of debate, the International Court of Justice has offered criteria for a community, having distinct rights as "a group of persons living in a given country or locality, having a race, religion, language and traditions of their own and united by the identity of race, religion, language and traditions in a sentiment of solidarity, with a view to preserving their traditions, maintaining their form of worship, insuring the instruction and upbringing of their children in accordance with the spirit and traditions of their race and rendering mutual assistance to each other," *Permanent Court of International Justice, The Greco-Bulgarian "Communities" Advisory Opinion No. 17*, 13 July 1939 (Leyden: Sijthoff, 1930), 21.

<sup>100</sup> For a comprehensive consideration of the human right of self-determination and its applications, see Hurst Hannum. *Autonomy, Sovereignty, and Self-Determination: The Accommodation of Conflicting Rights* (Philadelphia: University of Pennsylvania Press, 1996).

article imposes on all States parties corresponding obligations. This right and the corresponding obligations concerning its implementation are interrelated with other provisions of the Covenant and rules of international law.

3. Although the reporting obligations of all States parties include Article 1, only some reports give detailed explanations regarding each of its paragraphs. The Committee has noted that many of them completely ignore Article 1, provide inadequate information in regard to it or confine themselves to a reference to election laws. The Committee considers it highly desirable that States parties' reports should contain information on each paragraph of Article 1.

4. With regard to paragraph 1 of Article 1, States parties should describe the constitutional and political processes which in practice allow the exercise of this right.

5. Paragraph 2 affirms a particular aspect of the economic content of the right of self-determination, namely the right of peoples, for their own ends, freely to "dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence." This right entails corresponding duties for all States and the international community. States should indicate any factors or difficulties which prevent the free disposal of their natural wealth and resources contrary to the provisions of this paragraph and to what extent that affects the enjoyment of other rights set forth in the Covenant.

6. Paragraph 3, in the Committee's opinion, is particularly important in that it imposes specific obligations on States parties, not only in relation to their own peoples but vis-à-vis all peoples which have not been able to exercise or have been deprived of the possibility of exercising their right to self-determination. The general nature of this paragraph is confirmed by its drafting history. It stipulates that "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". The obligations exist irrespective of whether a people entitled to self-determination depends on a State party to the Covenant or not. It follows that all States parties to the Covenant should take positive action to facilitate realization of and respect for the right of peoples to self-determination. Such positive action must be consistent with the States' obligations under the Charter of the United Nations and under international law: in particular, States must refrain from interfering in the internal affairs of other States and thereby adversely affecting the exercise of the right to self-determination. The reports should contain information on the performance of these obligations and the measures taken to that end.

7. In connection with Article 1 of the Covenant, the Committee refers to other international instruments concerning the right of all peoples to self-determination, in particular the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, adopted by the General Assembly on 24 October 1970 (General Assembly resolution 2625 (XXV)).

8. The Committee considers that history has proved that the realization of and respect for the right of self-determination of peoples contributes to the establishment of friendly relations and cooperation between States and to strengthening international peace and understanding.

Self-determination applied to communities:

The over-riding principle of self-determination is inspired by classic (customary and

treaty) law criteria, as well as popular claims to the same. In both senses, the claim is legally fixed in the common Article 1 of the human rights treaties. Using the ICESCR as a basic and integrated instrument, the "Toolkit" especially applies this over-riding principle to Article 11, which guarantees the human right to housing.

In making the case for ultimate "self-determination" at the community level, a number of popular instruments (mostly written and collectively endorsed statements, but also those rooted in oral traditions) assert the "right" of communities to determine their own destiny. "Community" also enjoys a legal definition (see below).

Self-determination becomes as vital as any other need that grounds other human rights, including those other over-riding principles of rule of law, nondiscrimination, gender equality and international cooperation consistent with all human rights. In their collective dimension, these all become community "needs" and, consequently, "rights" insofar as their absence leads to erosion and violation of a bundle of individual, stand-alone rights and can lead to the deprivation or demise of a community as such.

It should be noted that States and others have recognized the real problem of "ethnocide" and "cultural genocide" resulting from assimilation policies so as to compel the rewriting of the International Labour Organisation (ILO) Convention No. 107 on Indigenous and Tribal Populations in Independent Countries (1956), eventually to adopt the Indigenous and Tribal Peoples Convention No. 169 (1989). Relevant to the practice of self-determination is the question of land tenure, which ILO Convention No. 169 treats in Articles 13–19, while at the same time disclaiming that the term "people" in the Convention does not convey implications as a term of international law (i.e., conferring the right of self-determination).

However, it is the human consequence of the deprivation, rather than the legal "peoplehood," that makes self-determination vital for any putative victims. Therefore, collective self-determination becomes the right of communities as necessary, even if they are not (or not yet) internationally recognized as a "people" or "nation." To avoid the horrendous consequences of demise and deprivation, and to ensure survival of communities as a "right", local self-determination is vital, no matter what assimilationist governments individually or jointly say. In human rights, it is the human who has the first and final subject of respect, protection, promotion and fulfillment.

That having been said, and recognizing that self-determination can be either internal or external, the international public law term of art "internal self-determination unit" applies in the case of a group or community, and is subject to case-by-case interpretation. This could refer to the rightful place of a minority or an indigenous people. It could conceivably apply also to a community of urban poor, particularly if their survival and/or well-being is threatened and their self-determination then becomes a need/right and requisite to the realization of other rights (life, adequate housing, culture, health, etc.).

In any case, the claimant of self-determination, whether an external or internal type, must meet the challenge and legal test of asserting that the claim at any level does not conflict with—or at least is balanced with—the rights of others. That may mean, of course, ensuring that self-determination claims do not negate general ecological values, others' self-determination rights, the rights of women to gender equality, security of person, regional peace and security, etc.

What are the criteria for bona fide claimants to local self-determination in the terms of international law as developed? The criteria presented by Martinez-Cobo (Study of Discrimination against Indigenous Peoples, UN document E/CN.4/Sub.2/1986/7/Add.4) has grounded much of the self-determination thinking about indigenous peoplehood and the rights arising. Based on his criteria for indigenous "people," the characteristics

constituting a community with the right to claim external or internal self-determination could also be that the community (1) predate the influx of "others," (2) possess distinct cultural attributes, (3) occupy an identifiable territory and (4) identify itself as a people/community having the right to self-determination.

Self-determination applied to communities:

The over-riding principle of self-determination is consistent with classic (customary and treaty) law criteria, as well as popular claims to the same. In both senses, the claim is legally fixed in the common Article 1 of the human rights treaties. With ICESCR as a basic treaty, integrated with other human rights instruments and enshrining the human right to adequate housing in its Article 11, that right is to be exercised together with the right to self-determination. That is particularly clear in cases of housing rights violations against a committed community that can be so severe in degree and large in scale as to violate also the right to self-determination.

Making the case for ultimate "self-determination" at the community level, numerous popular instruments (mostly written and collectively endorsed statements, but also those rooted in oral traditions) assert the "right" of communities to determine their own destiny. (See also "Community" above.)

Self-determination becomes as vital as any other need that grounds other human rights, including those other over-riding principles of rule of law, nondiscrimination, gender equality and international cooperation consistent with all human rights. In their collective dimension, these all become community "needs" and, consequently, "rights" insofar as their absence leads to erosion and violation of a bundle of individual, stand-alone rights and can lead to the deprivation or demise of a community as such.

It should be noted that States and others have recognized the real problem of "ethnocide" and "cultural genocide" resulting from assimilation policies so as to compel the rewriting of the International Labour Organisation (ILO) Convention No. 107 on Indigenous and Tribal Populations in Independent Countries (1956), eventually to adopt the Indigenous and Tribal Peoples Convention No. 169 (1989). Relevant to the practice of self-determination is the question of land tenure, which ILO Convention No. 169 treats in Articles 13–19, while at the same time disclaiming that the term "people" in the Convention does not convey implications as a term of international law (i.e., conferring the right of self-determination).

However, it is the human consequence of the deprivation, rather than the legal "peoplehood," that makes self-determination vital for any putative victims. Therefore, collective self-determination becomes the right of communities as necessary, even if they are not (or not yet) internationally recognized as a "people" or "nation." To avoid the horrendous consequences of demise and deprivation, and to ensure survival of communities as a "right", local self-determination is vital, no matter what assimilationist governments individually or jointly say. In human rights, it is the human who has the first and final subject of respect, protection, promotion and fulfillment.

With that, and recognizing that self-determination can be either internal or external, the international public law term of art "internal self-determination unit" applies in the case of a group or community, and is subject to case-by-case interpretation. This could refer to the rightful place of a minority or an indigenous people. It could conceivably apply also to a community of urban poor, particularly if their survival and/or well-being is threatened and their self-determination then becomes a need/right and requisite to the realization of other rights (life, adequate housing, culture, health, etc.).

In any case, the claimant of self-determination, whether an external or internal type, must meet the challenge and legal test of asserting that the claim at any level does not

conflict with—or at least is balanced with—the rights of others. That may mean, of course, ensuring that self-determination claims do not negate general ecological values, others' self-determination rights, the rights of women to gender equality, security of person, regional peace and security, etc.

What are the criteria for bona fide claimants to local self-determination in the terms of international law as developed? The criteria presented by Martinez-Cobo (Study of Discrimination against Indigenous Peoples, UN document E/CN.4/Sub.2/1986/7/Add.4) has grounded much of the self-determination thinking about indigenous peoplehood and the rights arising. Based on his criteria for indigenous "people," the characteristics constituting a community with the right to claim external or internal self-determination could also be that the community (1) predate the influx of "others," (2) possess distinct cultural attributes, (3) occupy an identifiable territory and (4) identify itself as a people/community having the right to self-determination.

**Settlement, informal settlement** and **settler colony**: "Settlement" is the social science and planning term referring areas of human habitation, also referred to as "human settlement." An inhabited area is also a "settlement," irrespective of its density, the ethnic or religious composition of their population, or legal status. However, legal status may distinguish a human settlement as "formal" or "informal." An "informal settlement" is a cluster of housing and other structures built without the formal consent of the planning authorities, or settlements that have only temporary permission to occupy the settled land. Thus, an informal settlement exists outside the conditions established in textual law.

The word "colony" has its etymological roots in Latin and Greek. The literal meaning of the word *colonia* is settlement. The act of "settlement" is an essential characteristic of colonialism, meaning the movement of people to a peripheral region or a foreign territory from a metropolitan state.

"Settler colony" is a term distinguished by its reference to wholly illegal human settlements of an Occupying Power's population. Both the process and the actual structures forming "settler colony" violate the [Fourth Geneva Convention](#), [\[Arabic\]](#) Article 49, and, under article 147, constitute "grave breaches." Settler colonies form part of the practice of population transfer, recognized also as a "crime against humanity" (Article 7) and a "war crime" (Article 8) under the Rome Statute (1998). [\[Arabic\]](#)

The term "settler colony" is also used to distinguish between two types of historic European colonies: "settler (or settler invader) colonies" and "colonies of occupation" (or "exploitation colonies"). The primary difference between settlement and exploitation colonies is that settlers took possession of the land and cultivated it, stay permanently in "settler colonies," without intending to return home. In "settler colonies," according to [Ashcroft](#), "the invading Europeans (or their descendants) annihilated, displaced and/or marginalized the indigenes to become a majority nonindigenous population" (p. 193). In "exploitation colonies" or "colonies of occupation," the European "settlers" consisted of a relatively small but powerful group of white planters concerned mainly with managing and supervising the exploitation of resources, as well as safeguarding the geopolitical interests of the metropolitan state. Those colonies seldom remained after the end of their mission.

The majority of the non-European world was colonized under the fictitious and now discredited Doctrine of Discovery in international law and practice. Under this legal principle, European countries claimed superior rights over Indigenous nations. The international trusteeship system was established by the UN Charter. [\[Arabic\]](#) Affirming the principle of self-determination, the Charter describes the responsibility of States for

territories under their administration as “a sacred trust” in which the interests of their inhabitants are paramount. As the process of decolonization continued to advance, the General Assembly adopted the [Declaration on the Granting of Independence to Colonial Countries and Peoples](#) (General Assembly resolution 1514 (XV), 14 December 1960) [[Arabic](#)]. That Declaration affirmed the right of all people to self-determination and proclaimed that colonialism should be brought to a speedy and unconditional end.

**Slum:** a contiguous human settlement where the inhabitants are characterized as having inadequate housing and basic services. A slum is often not recognized and addressed by the public authorities as an integral or equal part of the city and includes any combination of the following elements:

- Insecure residential status;
- Inadequate access to safe water;
- Inadequate access to sanitation and other infrastructure;
- Poor structural quality of housing;
- Overcrowding.<sup>101</sup>

**Social cohesion** Social cohesion is the capacity of a society to ensure the well-being of all its members, minimizing disparities and avoiding marginalization.

**Social capital:** the collective value of social networks of an individual, community or society that facilitates individual and collective action. (For more information, click [here](#).)

**Social function:** in theory, a social function is "the contribution made by any phenomenon to a larger system of which the phenomenon is a part."<sup>102</sup> In practice, the social function of a thing is its use or application to the benefit of the greater society, in particular, prioritizing those with the greatest need. Thus, the social function of a property, good, resource or service is realized when it is applied to satisfy a general social need or the unmet need of a segment of society.

The 1988 Brazilian Constitution explicitly recognizes the right to decent housing, and provides that property, whether urban or rural, “shall fulfill its social function” (Article 5, §XXIII). Unoccupied buildings or unproductive land, thus, became more susceptible to expropriation in the social interest. The Egyptian Constitutions also explicitly recognizes the social function of property (Articles 30 and 32). Islamic philosophy, prophetic authority and law recognize ownership, but reserve water, pasture and fire as common entitlement of the people with a social function,<sup>103</sup> restricting their privatization.<sup>104</sup>

**Social housing:** is an umbrella term for government-assisted accommodation with the objective of attaining and sustaining household and community well-being. Social

<sup>101</sup> “Defining Slums and Secure Tenure,” Expert Group Meeting, Nairobi, November 2002.

<sup>102</sup> Thomas Ford Hout, *Dictionary of Modern Sociology* (Totowa NJ: Littlefield Adams 1969), p. 139.

<sup>103</sup> “O you who believe! Verily, there are many of the (Jewish) rabbis and the (Christian) monks who devour the wealth of mankind in falsehood, and hinder (them) from the Way of Allâh (i.e., Allâh's Religion of Islâmic Monotheism). And those who hoard up gold and silver [*al-Kanz*: the money, the *Zakât* of which has not been paid], and spend it not in the Way of Allâh, -announce unto them a painful torment. 35. On the Day when that (*al-Kanz*: money, gold and silver, etc., the *Zakât* of which has not been paid) will be heated in the Fire of Hell and with it will be branded their foreheads, their flanks, and their backs, (and it will be said unto them):- “This is the treasure which you hoarded for yourselves. Now taste of what you used to hoard.” *Surat al-Tawba* 9.

<sup>104</sup> The Prophet Muhammad (PBUH) famously enjoined: “Muslims are to share in these three things: water, pasture, and fire.” 15. Hadith related by Abu-Dawud, Ibn Majah, and al-Khallal. See *Islamset*, at: <http://www.islamset.com/env/contenv.html>].

housing could include—although not uniquely—not-for-profit housing that government and community managers provide with the purpose to ensure for reasons of household affordability and appropriateness. Social housing has developed in response to inability of the housing market to respond to the general need and demand for housing. Usually, it is rental housing that may be owned and managed by the State, by not-for-profit organizations, or by a combination of the two. However, some social housing schemes involve also private-sector investment partners.

“Social housing is housing where the access is controlled by the existence of allocation rules favouring households that have difficulties in finding accommodation in the market.”<sup>105</sup> While recognizing that the types of tenure, target groups/beneficiaries and further interpretation of social housing are subject to variation by country, circumstance and over time, social housing involves at least the following characteristics:

- Allocation and access: State or the regional or local authorities determine the target groups and criteria for allocation and access, including such criteria as income ceilings, affirmative action/positive discrimination, or other priorities;
- Affordability: A low price or low level of rent to ensure that low income groups can gain and sustain access to social housing;
- Security of tenure: Secured and long-term lease on rented sector and securitization on social owner occupation sector. (See also “**Public housing**” above.)

**Social movement:** the term originated around 1850 by German sociologist Lorenz von Stein,<sup>106</sup> in its contemporary usage, commonly refers to collective action, involving an informal grouping of individuals and organizations focused on common political or social goals and manifesting a visible and recognizable force in the public arena.

A social movement is a major vehicle for ordinary people's participation in public politics through a series of contentious performances, displays and campaigns by which ordinary people make collective claims on others. Charles Tilly ascribes social movements as having any of three major elements to social movements:

1. campaigns: a sustained, organized public effort making collective claims on target authorities;
2. social movement repertoire: employment of combinations from among the following forms of political action: creation of special-purpose associations and coalitions, public meetings, solemn processions, vigils, rallies, demonstrations, petition drives, statements to and in public media, and pamphleteering; and
3. participants' concerted public representation displays **worthiness, unity, numbers, and commitments** on the part of themselves and/or their constituencies.<sup>107</sup>

Sydney Tarrow distinguishes social movements from political parties and interest groups, describing a social movement as collective challenges [to elites, authorities, other groups or cultural codes] by people with common purposes and solidarity in sustained interactions with elites, opponents and authorities.<sup>108</sup> (For more information, log onto to [HIC-HLRN website](http://www.hlrn.org): at [www.hlrn.org](http://www.hlrn.org).)

**Social production of habitat:** all nonmarket processes carried out under inhabitants'

<sup>105</sup> The European Liaison Committee for Social Housing (CECODHAS) proposed this definition of social housing to the European Commission in 1998 to define Social Housing by a single, Europe-wide criterion under the 6<sup>th</sup> European directive on value-added tax (VAT), which allows the European Union Member States to apply a low rate of VAT on social housing.

<sup>106</sup> Lorenz von Stein, *Geschichte der sozialen Bewegung in Frankreich von 1789 bis auf unsre Tage*, 3 vols. (Leipzig: 1850); *History of the French Social Movement from 1789 to 1850* (transl. by Kaethe Mengelberg) (New York: Bedminster Press, 1964).

<sup>107</sup> Charles Tilly, *Social Movements, 1768–2004* (Boulder CO, Paradigm Publishers, 2004).

<sup>108</sup> Sidney Tarrow, *Power in Movement: Collective Action, Social Movements and Politics* (Cambridge and London: Cambridge University Press, 1994).

initiative, management and control that generate and/or improve adequate living spaces, housing and other elements of physical and social development, preferably without—and often despite—impediments posed by the State or other formal structure or authority. (For more information and cases, go to [HIC general website](#) and [HIC-HLRN website](#).)

**Squat:** [noun] a place (land or structure) occupied by persons claiming it for their residence or other use without holding legal title to it.

**Squat:** [verb] to occupy a place unlawfully for the purpose of residence therein.

**Squatter:** a person who engages, or is engaged in claiming possession of a property (land or structure) without holding legal title or tenure to it; one who squats.

See also “**Adverse possession**” above.)

**Statutory rights:** (See [civil rights](#) or [legal rights](#).)

**Strike** is a work stoppage caused by the mass refusal of employees to perform work. and usually takes place in response to employee grievances. The use of the English word "strike" first appeared in 1768, when sailors, in support of demonstrations in London, "struck" or removed the topgallant sails of merchant ships at port, thus crippling the ships. Strikes are sometimes used to put pressure on governments to change policies. Occasionally, strikes destabilize the rule of a particular political party. The Strike Action is the weapon of the workers most associated with industrial disputes, and certainly among the most powerful. In most countries, strikes are legal under a circumscribed set of conditions

**Temporary protection** (TP), alternatively “provisional protection”: is the most recently emerging norm of State practice at finding refugee solutions. Along with the obligation of non-refoulement (no sending back) and the nonobligatory protection of political asylum, TP also constitutes an international law norm by which States treat as refugees those persons fleeing a major crisis in their home State, although they may not be covered explicitly by the 1951 Refugees Convention’s criteria. TP applies to diverse migrants, or putative refugees, including, but not limited to those escaping armed conflict, civil strife or individual persecution. As developed, the multiple forms of TP implementation across the world share some common elements:

1. The host-State grants TP to specific groups or individuals for a defined period;
2. The State grants TP with the expectation of providing a solution for a defined period, after which the individual or group would return home, if s/he prefers, or should seek resettlement in a third State offering more-permanent status;
3. TP is a discretionary practice on the part of States and, thus,
4. May guarantee fewer rights than to refugees under the 1951 Convention.

**Tenure:** the holding of a thing, such as a position or a property. (See “secure tenure.”) Land and housing tenure comes in various forms, including freehold (ownership), leasehold (rental), or other legal forms, and could be held singly (private tenure), jointly or collectively.

**Transitional justice:** When considering restitution and reparation processes, we find



that, historically, juridical strategies have provided remarkably fewer reparations than the administrative processes have done. These administrative remedies have involved a variety of institutions and methods, ranging from corporations paying compensation to institutions in the name of holocaust victims,<sup>109</sup> and including the UN's Iraq Conciliation Commission, paying out directly to affected parties. Some processes have been local and focused on reconciling the pain, suffering, loss and costs to victims in a single country, such as the South African Truth and Reconciliation Commission and the Moroccan Equity and Reconciliation Commission (Instance Équité et Réconciliation [IER]), even though that has not delivered "reparations" in the legal sense. Cumulative experience has developed five principle transitional justice mechanisms (trials, truth commissions, amnesty, lustrations, or reparations).

Theoretically, transitional justice complete involves five processes, although in no rigidly prescribed order:

1. **Remembrance, documentation and acknowledgement** of the pain, suffering, loss, motivations, etc., in order to reconstruct the broken past to determine the duties and violations (including breaches and crimes), especially with an eye to procedures and standards of evidence sufficient for adjudication;
2. **Dialogue and reconciliation** between and among parties involved in an effort to uphold the other efforts of transitional justice;
3. **Prosecution** of the duty holders to ascertain personal liability, state obligation, state liability, state responsibility, war crimes, crimes against humanity, etc.;
4. **Reform** of abusive institutions;
5. **Reparation**, according to the seven elements defined in the corresponding UN General Assembly resolution.<sup>110</sup>

**Traveler:** a person forming part of a traditionally nomadic group found globally, but concentrated in Ireland. They often face severe persecution and denial of rights in their countries of residence, in particular, housing and land rights violations in the form of forced eviction, dispossession, destruction, marginalization, denial of access to services and other forms of discrimination. Travelers also are associated with Roma, because of their nomadic life style, although they do not share the same Romani ethnic origins or composition.

**Unit of housing:** A structure, or part of a structure, that serves as the undivided dwelling place for habitation of one or more persons constituting a single nuclear family. A housing unit is a house, an apartment, a hut, a mobile home, a tent, a shanty, a group of rooms, or a single room that is occupied (or if vacant, is intended for occupancy) as separate living quarters. Separate living quarters are those in which the occupants live and eat separately from any other persons in the building and that have direct access from the outside of the building or through a common hall. For example, a building with six apartments counts as six housing units.

<sup>109</sup> C.f.: Norman Finkelstein, *The Holocaust Industry: Reflections on the Exploitation of Jewish Suffering* (London: Verso Books, 2000).

<sup>110</sup> "Basic Principles and Guidelines," op cit.

**Violation**: the failure of a duty holder (primarily the State) to fulfill its obligations to respect, protect and fulfill a human right. Violations may be by commission (a wrongful act, such as forced eviction, or discrimination), or by omission (the State's failure to act in protecting or fulfilling the right) "to take steps, individually and through international assistance and cooperation...to the maximum of its available resources, with a view to achieving progressively the full realization of the right[ to adequate housing] by all appropriate means, including particularly the adoption of legislative measures"<sup>111</sup> in such a way as to ensure the continuous improvement of living conditions."<sup>112</sup>

**War Crime** According to the Rome Statute, war crime is (a) grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

- (i) Wilful killing;
  - (ii) Torture or inhuman treatment, including biological experiments;
  - (iii) Wilfully causing great suffering, or serious injury to body or health;
  - (iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
  - (v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;
  - (vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;
  - (vii) Unlawful deportation or transfer or unlawful confinement;
  - (viii) Taking of hostages.
- (b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:
- (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
  - (ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;
  - (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
  - (iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;
  - (v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;
  - (vi) Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;
  - (vii) Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;
  - (viii) The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;
  - (ix) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
  - (x) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or

<sup>111</sup> International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 2.1  
<sup>112</sup> ICESCR, Article 11.1

seriously endanger the health of such person or persons;

- (xi) Killing or wounding treacherously individuals belonging to the hostile nation or army;
- (xii) Declaring that no quarter will be given;
- (xiii) Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;
- (xiv) Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;
- (xv) Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;
- (xvi) Pillaging a town or place, even when taken by assault;
- (xvii) Employing poison or poisoned weapons;
- (xviii) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
- (xix) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;
- (xx) Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to this Statute, by an amendment in accordance with the relevant provisions set forth in articles 121 and 123;
- (xxi) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
- (xxii) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;
- (xxiii) Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;
- (xxiv) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
- (xxv) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions;
- (xxvi) Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.

(c) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause:

- (i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
- (iii) Taking of hostages;
- (iv) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.

(d) Paragraph 2 (c) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.

(e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:

- (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
- (ii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel

using the distinctive emblems of the Geneva Conventions in conformity with international law;

- (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
- (iv) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
- (v) Pillaging a town or place, even when taken by assault;
- (vi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions;
- (vii) Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;
- (viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;
- (ix) Killing or wounding treacherously a combatant adversary;
- (x) Declaring that no quarter will be given;
- (xi) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
- (xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict;

(f) Paragraph 2 (e) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups.

3. Nothing in paragraph 2 (c) and (e) shall affect the responsibility of a Government to maintain or re-establish law and order in the State or to defend the unity and territorial integrity of the State, by all legitimate means.

---

**Habitat International Coalition  
General Secretariat:**

P.O. Box 41-T, 75000 Santiago, Chile  
Tel/Fax +56 (0)2 8482512 • E-mail: [gs@hic-net.org](mailto:gs@hic-net.org) • Website: [www.hic-net.org](http://www.hic-net.org)

---

**Housing and Land Rights Network (HLRN):**

*South Asia Office:*

A-1 Nizamuddin East, ground floor  
New Delhi 110 013, INDIA  
Tel:/FAX: +91 (0)11 2435-8492  
E-mail: [info@hic-sarp.org](mailto:info@hic-sarp.org)

*Coordination Office:*

11 Tiba Street, 2<sup>nd</sup> Floor  
Muhandisin • Cairo, EGYPT  
Tel/ FAX: +20 (0)23 760-0755  
E-mail: [hlrn@hlrn.org](mailto:hlrn@hlrn.org);  
[hic-mena@hic-mena.org](mailto:hic-mena@hic-mena.org)

*UN Liaison Office:*

8, rue Gustave Moynier  
1202 Geneva, SWITZERLAND  
Tel:/FAX: +41 (0)22 738-8167  
E-mail: [hic-hrc@iprolink.ch](mailto:hic-hrc@iprolink.ch)

Web: [www.hlrn.org](http://www.hlrn.org); [www.hic-mena.org](http://www.hic-mena.org); [www.hic-sarp.org](http://www.hic-sarp.org); [www.hic-net.org](http://www.hic-net.org)