

## **SECURE TENURE: A NORMATIVE FRAMEWORK**

### **Summary**

#### **ROLE OF LOCAL AUTHORITIES, OTHER PARTNERS AND RELEVANT UNITED NATIONS ORGANIZATIONS AND AGENCIES IN THE REVIEW AND APPRAISAL PROCESSES**

The Istanbul Declaration on Human Settlements and the Habitat Agenda recognized the worsening plight of the hundreds of millions of people living in appalling shelter conditions. The resolutions of the Commission on Human Settlements adopted at its sixteenth and seventeenth sessions and the new strategic vision of the United Nations Centre for Human Settlements (UNCHS) (Habitat) emphasize urgent initiatives needed to address these conditions. Globally, the urbanization of poverty continues to add to the deterioration in living conditions, particularly in developing countries, while continued and systematic discrimination against women compounds the trend. The Global Campaign for Secure Tenure provides an excellent opportunity to mobilize Governments and organs of civil society to take meaningful action. The present report tries to define and elaborate the normative framework for the Global Campaign for Secure Tenure and proposes a consultation process that will lead to the adoption of a declaration for promoting secure tenure.

The preamble provides important references from the Istanbul Declaration and the Habitat Agenda on secure tenure. The first chapter of the report elaborates the concept and context of secure tenure and the reasons why it is so important for the urban poor, and summarizes the objectives of the Global Campaign for Secure Tenure. The second chapter proposes guidelines for action and tasks to be undertaken at different levels for the accomplishment of secure tenure and in that regard identifies important partner groups with which UNCHS (Habitat) can work together. This chapter also stresses the importance of defining norms for the accomplishment of secure tenure. The third chapter proposes the first draft of a declaration. The fourth chapter summarizes a time-frame for the adoption of the draft declaration within the framework of the Campaign.

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## **Preamble**

1. The goal of adequate shelter for all is elaborated in the Habitat Agenda as: “improving living and working conditions on an equitable and sustainable basis, so that everyone will have adequate shelter that is healthy, safe, secure, accessible and affordable and that includes basic services, facilities and amenities, and will enjoy freedom from discrimination in housing and legal security of tenure”.
2. The Habitat Agenda records the commitments of national and local governments and partner groups to promote an enabling environment to improve the shelter conditions of the world’s poorest people. While placing this objective within a human rights framework, the Habitat Agenda is also very careful not to create expectations that are neither realistic nor enforceable. Whereas paragraph 61 refers to the “progressive realization of the right to adequate housing” this cannot be read as a requirement on the State to satisfy directly all housing needs. The Habitat Agenda does, however, create an obligation on Governments to create conditions in terms of which this objective can realistically be achieved.
3. At its seventeenth session, the Commission on Human Settlements endorsed the report of the Executive Director which outlined a new strategic vision for the implementation of the Habitat Agenda. It also proposed, *inter alia*, promoting the granting of secure tenure as a fundamental component of the enabling environment, which can provide the basis for a new partnership between Governments and the urban poor in their cities.
4. This strategic approach is based on paragraph 40 (b) of the Habitat Agenda: “Providing legal security of tenure and equal access to land to all people, including women and those living in poverty; and undertaking legislative and administrative reforms to give women full and equal access to economic resources, including the right to inheritance and to ownership of land and other property...”
5. The Global Campaign for Secure Tenure emanates from the new approach endorsed at the seventeenth session of the Commission on Human Settlements, and is designed to spearhead the efforts of UNCHS (Habitat) and its partners in injecting vitality and purpose into national and local attempts to tackle inadequate shelter conditions.
6. Thus secure tenure has been highlighted as but one of the fundamental elements of a package of housing rights. Within the overall framework of the Campaign, Habitat will run a housing rights programme in conjunction with the Office of the High Commission for Human Rights in Geneva.

## **I. CONTEXT AND OBJECTIVES OF THE GLOBAL CAMPAIGN FOR SECURE TENURE**

### **A. WHAT IS SECURE TENURE?**

7. Security of tenure describes an agreement involving an individual or group to land and residential property, which is governed and regulated by a legal and administrative framework. The security derives from the fact that the right of access to and use of the land and property is underwritten by a known set of rules and that this right is justiciable. The tenure can be effected in a variety of ways, depending on legal frameworks, social norms, cultural values and, to some extent, individual preference.

8. In summary, a person or household can be said to have secure tenure when they are protected from involuntary removal from their land or residence, except in exceptional circumstances, and then only by means of a known and agreed legal procedure, which must itself be objective, equally applicable, contestable and independent. Such exceptional circumstances might include situations where the very physical safety of life and property is threatened, or where the persons to be evicted have themselves taken occupation of the property by force or intimidation.

9. Secure tenure can be effected in a variety of forms. While individual freehold or private ownership is often cited as a preferred option, the reality is that the majority of urban poor are in informal rental relationships. One of the key messages of the Campaign will be that the strength of the security is more significant than the precise form of the tenure.

10. The Global Campaign for Secure Tenure unambiguously promotes the centrality of women in the provision of shelter, and in development more generally. A major initiative that will be undertaken within the Campaign will be a programme to remove all discriminatory legislation against women in respect of access to property title as well as inheritance rights.

#### **B. Why secure tenure?**

11. While the granting of secure tenure will not, in and of itself, lead to the resolution of the world's housing crisis, the certainty that it conveys is a necessary precondition for a sustainable shelter strategy. The granting of secure tenure, the acknowledgement of the permanence of the urban poor are absolutely vital to create conditions which enable people to exercise their rights and discharge their obligations as urban citizens

12. Most of the countries faced with burgeoning informal settlements and slum conditions do not have the resources to provide for the shelter needs of their citizens. Yet the urban poor are already providing for their shelter requirements, albeit imperfectly, often ignored or actively opposed by public authorities. The Global Campaign for Secure Tenure will demonstrate that existing resources are being trapped by this insecurity and illegality, and that progress in providing shelter can be made at minimal cost to the fiscus.

#### **C. Objectives of the Global Campaign For Secure Tenure**

13. The Global Campaign for Secure Tenure must be seen as a long-term initiative, contributing to implementing the objectives that were mandated at the second United Nations Conference on Human Settlements. In launching the Campaign in 2000, UNCHS (Habitat) intends to achieve **“demonstrated progress towards adequate shelter for all with secure tenure and access to essential services in every community by 2015”**.

14. To reach this objective, the Campaign will, *inter alia*, aim at:
- (a) Promoting global guidelines, norms and standard rules for the accomplishment of secure tenure;
  - (b) Establishing a framework to provide voice and support to the urban poor and the organizations which represent their interests;
  - (c) Providing affordable and implementable policy options to national and city governments;
  - (d) Promoting a programme for the removal of all discriminatory legislation against women in respect of property and inheritance rights;
  - (e) Establishing mechanisms for information and experience exchange;
  - (f) Ensuring compliance with international legal instruments related to secure tenure.

15. In short, the Campaign should be measured by results that improve access to adequate shelter for the urban poor. This requires UNCHS (Habitat) to move beyond the traditional measurement of work-programme output, towards the quantification of impact.

16. One of the primary objectives of the Campaign is also its preferred method of operation: to empower partner organizations, leverage their involvement and genuinely share overall responsibility for the success of the Campaign. This will entail establishing new and more responsive relationships with organizations which represent the urban poor directly, and further ensuring the active involvement, and indeed, the leadership of women.

17. One of the prerequisites to the successful implementation of the Campaign will be the establishment of a set of global norms and standards, culminating in their eventual adoption in the form of an international convention of housing rights. A significant first step in this regard is the draft declaration contained in the present report, which will be elaborated for consideration by the General Assembly in June 2001, at its special session for an overall review and appraisal of the implementation of the Habitat Agenda.

## **II. GUIDELINES FOR ACTION TO PROMOTE SECURE TENURE**

### **A. National and local levels**

18. National governments have a specific responsibility to ensure the creation of an overall enabling policy and legislative framework, and to ensure the allocation of the requisite resources for implementation. Of particular importance is the need to review all existing legislation and administrative procedures to systematically remove all discrimination against women in respect of their access to property title and inheritance rights.

19. From the perspective of the Campaign, the most important stakeholder groups at the national and local levels are community based organizations which organize and represent the interests of the inadequately housed and the homeless. These organizations also fulfill extensive advocacy functions and can provide a vital control mechanism regarding violations of housing rights such as forced evictions.

20. It will be the goal of the Campaign to encourage such organizations and national and city governments to work together in extending security of tenure, promoting housing rights and tackling unacceptable living conditions generally.

21. National and local-level actions will mainly address the promotion of appropriate legislative frameworks and reforms, the establishment of appropriate institutional arrangements and cadastral systems as part of an enabling environment to promote improved shelter delivery and the overall realization of housing rights.

22. Of additional importance will be steps taken at national and local levels to ensure the systematic release of developable land, which, if not carried out would significantly contribute to the proliferation of informal settlements and the improper use of land.

23. Promoting access to land, affordable credit and other elements of housing development, regularizing squatter settlements and upgrading programmes and projects are examples of actions to be taken in the context of housing delivery and improvement processes as well as better utilization of the existing housing stock.

24. The legislative framework should also be geared to preventing forced evictions, regulating the relationship between tenants and landlords and establishing procedures for transactions of land and property within an open and transparent land market.

25. Many countries particularly in the developing regions need to undertake legislative reforms to raise and improve existing laws and/or facilitate the enactment of essential legal tools for the promotion of secure tenure, and ensure that there is adequate administrative capacity to implement such procedures. In this regard, forms of interim tenure may assist overcome institutional and administrative weaknesses.

#### **B. Identifying norms for secure tenure: formulation of a declaration**

26. As indicated earlier, the promotion of secure tenure requires thorough consultation with appropriate partners in the establishment of global norms and standards, and the monitoring of compliance with international legal instruments.

27. The preparation of a declaration on secure tenure is a practical approach to facilitating this consultative process, and should be seen as the first significant step towards an international convention on housing rights. The special session of the General Assembly to be held in June 2001, will provide an ideal platform for the adoption of such a declaration. A first outline is provided below, which will form the basis of consultations with partners after the first session of the Preparatory Committee.

### **III. DRAFT DECLARATION ON THE NORMS OF SECURE TENURE**

#### **Proposed text for the draft declaration**

28. We, organizations representing the urban poor, central and local governments and other stakeholder groups having roles and responsibilities in promoting secure tenure for all,

Concerned by the deterioration of shelter conditions of the urban poor globally and particularly in the developing countries,

Recalling the goals and principles, commitments and recommendations of the global plan of action: strategies for implementation of the Habitat Agenda on adequate shelter for all,

Acknowledging the need to take full account of previous initiatives and declarations on access to land, security of tenure, including those issued in the context of the preparatory process for the second United Nations Conference on Human Settlements,

Stressing the fundamental role of security of tenure in the improvement of living and shelter conditions of the poor and vulnerable groups in human settlements,

Believing that sustainable shelter policies will benefit from the direct involvement and leadership of women,

Further stressing the need to mobilize global support to promote secure tenure as a principle means for achieving more sustainable human development,

Having agreed that:

(a) The provision of secure tenure is an essential element in the promotion of housing rights, in terms of which men, women and children will be afforded the opportunity to access shelter based on principles of dignity, safety and privacy;

(b) The articulation of the housing needs and aspirations of the urban poor through well organized networks significantly improves the potential for the design and implementation of sustainable shelter strategies;

(c) The provision of secure tenure is a fundamental prerequisite for the better management and governance of our urban areas, especially insofar as it recognizes the right of the poor to a full and meaningful urban citizenship, and acknowledges their right to be fully involved in the design and management of policies that affect their living conditions;

Commit ourselves to realizing the norms of secure tenure as described in the articles below:

#### Article 1: Gender equality

Central to the success of policy is the recognition of the equality of men and women, and thus their equal treatment in respect of access to property title, credit as well as inheritance rights; Article 2: Preventing all forms of discrimination

Steps should be taken to ensure that the right to adequate housing and secure tenure can be exercised in an environment free from any form of discrimination based on the level of income, sex, disability, race, ethnicity, age, family status, religion, receipt of welfare or public assistance, political opinion, etc. All persons should have access to judicial or other effective means of enforcing laws prohibiting all forms of

discrimination. These means should focus in particular on protecting vulnerable groups such as refugees, children, internally displaced persons, persons with disabilities, older persons, etc.

Article 3: Preventing forced evictions

There should be a clear commitment by all levels of government to prevent forced evictions. In such cases where evictions may be unavoidable, such as due to compelling public interest, or threats to life and property, the norms would include requirements for consultation, and exceptional conditions under which evictions might be taken. The norms should also include guidelines for dealing with development-based displacements;

Article 4: Squatter settlements regularization and/or upgrading

National and local authorities in most developing regions need to undertake large-scale regularization and/or upgrading of programmes and projects. These processes should aim at integrating informal settlements with the formal sectors of the city and contribute to the accomplishment of the global goal of cities for all.

Article 5: Appropriate legislative frameworks

Promoting security of tenure requires at the outset legal provisions to ensure that human rights are recognized, respected, protected and fulfilled. National level legislative reviews and reforms on laws related to housing and other relevant legal instruments will be necessary to facilitate the framework for the promotion of security of tenure and sound shelter policy;

Article 6: Effective and efficient institutions:

The implementation of a comprehensive shelter strategy requires effectively and efficiently functioning institutions. It is the responsibility of central and local-level governments to establish and sustain the operations of these institutions or offices, which should function according to the norms and principles set forth for good urban governance. Many countries, particularly in the developing regions, lack the institutional capacity to adequately implement policies and strategies on shelter development in general and promote security of tenure in particular.

Article 7: Open land markets and information

Keeping appropriate records of land and property title is the basis of economic and social order in any society. Public, private and other types of tenure and transactions on land and property can best be facilitated by appropriately located and transparent cadastral systems, with open access to the appropriate information.

Article 8: Enabling access to land, services, credit and other elements of shelter development

The provision of secure tenure is an essential yet insufficient condition for a sustainable shelter strategy. Other elements, such as access to, and treatment of water, as well as appropriate and affordable forms of credit, are necessary to allow people to meet their basic requirements and rights.

#### IV. THE WAY FORWARD

##### A. Negotiation process

29. The process of negotiating the draft declaration will commence at the first session of the Preparatory Committee, where all delegates and partners will be asked to comment, amend and endorse the document as the basis for further consultations. The draft declaration will then be widely circulated as part of a consultation process that will culminate in its submission to the special session of the General Assembly of June 2001, for adoption.

##### B. Institutional arrangements

30. The Global Campaign for Secure Tenure will be undertaken by UNCHS (Habitat) in as close collaboration as possible with its partners, particularly those that represent directly the interests of the inadequately housed and the homeless. Together with representatives from the Office of the High Commissioner for Human Rights, UNCHS (Habitat) will create a campaign management group, which, it is hoped, will comprise representatives of regional structures responsible for the Campaign in different parts of the world. These structures will all be created in terms of a founding agreement, which will regulate aims, objectives, rights and responsibilities, while providing for regional differentiation as appropriate.

31. The representative structures will be supported by partner organizations such as academic institutions, research networks and non-governmental organizations carrying out specific work related to the Campaign in the field. It is envisaged that UNCHS (Habitat) will enter into a memorandum of understanding with each of these organizations, which will address the institutional dimensions of the relationship.