

URBAN POVERTY AND THE RIGHT TO A DECENT HABITAT AS ESTABLISHED BY INTERNATIONAL HUMAN RIGHTS LAW

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John Payne's contribution to the development of a right to affordable housing in New Jersey, and his broader interest in creating legal strategies to alleviate urban poverty, are among the enduring legacies which he bequeathed to the legal profession. We think this paper would have been of interest to him. It is offered now as a tribute to his legal scholarship and activism on behalf of the poor.

The Right to a Decent Habitat (“Habitat Right”) is a term devised for purposes of this paper to denote a bundle of different, but interrelated, “universal” rights which, collectively, constitute this right. All of these component rights are clearly grounded in International Human Rights Law (“IHRL”) treaties and elaborated in important, albeit non-binding, international law instruments. We group these rights together and label the combination as the Habitat Right because promotion and protection of them, in tandem, should be a central objective of governmental policies designed to alleviate conditions of urban poverty in all countries.

However, our focus here is on “Third World” countries because the conditions of urban poverty are particularly deplorable in many of them and because the numbers of the poor in these cities are growing exponentially.

We acknowledge, readily, our debt to those who have previously explored this subject from various perspectives—too many to cite here without discrimination. We do believe this piece adds some important perspectives on the nature and scope of the Habitat Right and the problems of enforcing it.

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Thus, it may be useful to provide a map of what follows. Part I identifies some of the harsh conditions of urban poverty in Third World countries—thus underscoring the importance of the Habitat Right. Part II discusses the most important sources of IHRL, which establish and elaborate the Habitat Right. This part is included for the benefit of readers less familiar with IHRL. Experts in this field may wish to skip it. Part III discusses the *content* of the many component rights, which, in combination, constitute the Habitat Right. Part IV discusses the different modes of “enforcing”—or promoting “the progressive realization” of—these rights, including discussion of the roles that courts have begun to play in these processes. Part V examines the legal, political, and economic obstacles to the realization of the Habitat Right. Part VI discusses the future prospects for implementation of the Habitat Right. Appendix I discusses the secondary sources of IHRL that were not mentioned in Part II, yet are important in giving form to the Habitat Right.

I. THE CONDITIONS OF URBAN POVERTY IN THIRD WORLD CITIES

In 2002 it was estimated that 750 million people lived in urban poverty¹ in Third World countries.² The conditions that characterize

1. See Gillian MacNaughton & Diane F. Frey, *Decent Work, Human Rights, and the Millennium Development Goals*, 7 HASTINGS RACE & POVERTY L. J. 303, 307-309 (2010). There are many definitions of the word “poverty.” The World Bank, for example, allows for three very different definitions of poverty. Aline Coudouel, Jesko S. Hentschel, & Quentin T. Wodon, *Poverty Measurement and Analysis*, in A SOURCEBOOK FOR POVERTY REDUCTION STRATEGIES 27, 29 (Jeni Klugman ed., 2002). The first definition of poverty is based on whether a household possesses resources sufficient to meet its current needs. *Id.* at 29. This definition looks at a household’s income, consumption, education, and compares it to a pre-defined threshold below which reside the “poor.” *Id.* The second definition considers inequality in the distribution of income and consumption. *Id.* This definition believes that the relative position of a household in society is by itself the summary indicator of the household’s affluence. *Id.* The third definition looks at the probability of or falling into “poverty” at some point in the future. *Id.*; see also, U.N. Office of the High Comm’r for Human Rights, Human Dev. Rep., Principles and Guidelines for a Human Rights Approach to Poverty Reduction Strategies, ¶¶ 29-36, U.N. Doc. HR/PUB/06/12 (2006) [hereinafter OHCHR *Principles and Guidelines*] (creating a human rights based method to identify the poor).

2. JUDY L. BAKER, URBAN POVERTY: A GLOBAL VIEW 3 (The Int’l Bank for Reconstruction and Dev. & The World Bank, eds., 2008). The World Bank report, which defines poverty as living on less than two dollars a day, notes that in Third World countries, a third of urban dwellers live below the poverty line, and that proportion rises as high as eighty percent in India. If instead, we define urban poverty as the number of people living in slums, the ranks of the urban poor would swell to one billion. *Linking Population, Poverty and Development*, UNFPA (May 2007), <http://www.unfpa.org/pds/urbanization.htm>.

and entrench this kind of poverty have been well documented.³ They include:

Housing: Housing is often overcrowded, unsafe, or unsanitary. In some cities many of the poor are forced, by extreme poverty or simply lack of available housing, to live on streets in illegal makeshift shelters. For them the risk of sudden, summary, illegal eviction is ever-present as, indeed, it is for all of the urban poor.⁴

Lack of Access to Nutritional Food and Safe Water: Hunger and malnutrition, especially in regards to children, are all too often, parts of the poverty scene in Third World countries.⁵ Often markets for food are not within easy reach of the urban poor, nor is nutritional food always affordable.⁶ Knowledge of nutrition is lacking because governments fail to provide it through appropriate health education programs.⁷

Further, many governments have licensed private utility firms to control the development and distribution of safe water.⁸ The fees charged by these utilities for access to water have forced many families to use alternative and unsafe sources.⁹

Health Care: Clinics to provide “primary health care” (including knowledge of hygiene, reproduction, and child care) are often scarce.¹⁰ So too is enforcement of regulations to protect communities

3. See, e.g., Deniz Baharoglu & Christine Kessides, *Urban Poverty*, in SOURCEBOOK, *supra* note 1, at 124-31; United Nations Development Programme (UNDP), Human Development Report 2010 – 20th Anniversary Edition, *The Real Wealth of Nations: Pathways to Human Development* (2010).

4. See BAKER, *supra* note 2, at 6.

5. See, e.g., WORLD HEALTH ORGANIZATION, *HIDDEN CITIES: UNMASKING AND OVERCOMING HEALTH INEQUITIES IN URBAN SETTINGS* 24 (2010) [hereinafter URBAN HEALTH]; Armida Fernandez, *Neonatal Health in Urban Slums*, 19 J. NEONATOLOGY 50, 50 (2005); Nita Bhandari et al., *Pathways to Infant Mortality in Urban Slums of Delhi, India: Implications for Improving the Quality of Community and Hospital-based Programmes*, 20 J. HEALTH POPULATION AND NUTRITION, 148, 148-55 (2002).

6. See BAKER, *supra* note 2, at 9; URBAN HEALTH, *supra* note 5, at 24.

7. Barbara Smith & Suttalak Smitasiri, *A Framework for Nutrition Education Programmes*, FOOD & AGRIC. ORG., <http://www.fao.org/docrep/w3733e/w3733e03.htm> (last visited Apr. 1, 2011).

8. See Leticia K. Nkonya, *Realizing the Human Right to Water in Tanzania*, 17 HUM. RTS. BRIEF 25, 28 (2010).

9. See *id.* at 29. USAID estimates that 1.2 billion people worldwide and a quarter of people in the LDCs require access to an improved water supply. UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT [“USAID”], *SAFEGUARDING THE WORLD’S WATER: 2008 REPORT ON USAID WATER SECTOR ACTIVITIES 2* (2009). 450 million people in thirty countries face serious freshwater shortages with the number expected to rise to 2.8 billion in forty-eight countries by 2025. *Id.* Furthermore, global demand is expected to double every twenty years. *Id.*

10. See, e.g., Comm. on Econ., Soc. and Cultural Rights [“CESCR”], *Consideration of Reports Submitted by States Parties under Articles 16 and 17 of the Covenant: Philippines: Concluding Observations of the Committee on Economic, Social and*

from dangerous, unsanitary conditions, such as open sewers.¹¹

Crime: Crime is an ever-present threat to persons and property.¹²

The Police: The police fail to provide protection from crime and are often the source of additional threats to persons and property in the forms of physical abuse, systematic extortion, and bribery.¹³ Indeed, it is notorious that, in many Third World countries, the police are regarded with fear and loathing by the poor.¹⁴

Corruption: Corruption is widely practiced by those officials on whom the poor must rely for services such as the issuance of essential ID cards and licenses to work in the informal economy (for example, by peddling goods or providing personal services such as human-powered transportation).¹⁵ In some countries the practice of corruption at higher levels of government, and by powerful businessmen, results in the disappearance of large percentages of the funding of relevant development programs, such as affordable housing.¹⁶

Workers: Workers are economically exploited and many workplaces are unsafe and unsanitary.¹⁷ Attempts to form associations to protest these conditions are often ruthlessly repressed

Cultural Rights, ¶ 17, U.N. Doc. E/C.12/PHL/CO/4 (Dec. 1, 2008) [hereinafter Philippines CESCR Report]; Comm. on Econ., Soc. and Cultural Rights [CESCR], Consideration of Reports Submitted by States Parties under Articles 16 and 17 of the Covenant: Concluding Observations of the Committee on Economic, Social and Cultural Rights: Cambodia, ¶¶ 27-28, 32, U.N. Doc. E/C.12/KHM/CO/1 (June 12, 2009) [hereinafter Cambodia CESCR Report].

11. See ECONOMIC POLICY REFORM: THE SECOND STAGE 264-65 (Anne O. Krueger ed., 2d ed. 2000).

12. BAKER, *supra* note 2, at 10; Gary Haugen & Victor Boutros, *And Justice for All: Enforcing Human Rights for the World's Poor*, 59 FOREIGN AFFAIRS 51 (2010).

13. *E.g.*, United Nations Development Programme ["UNDP"], Human Development Report 2002: Deepening Democracy in a Fragmented World 66 (2002) [hereinafter *HDR 2002*]; ARVIND GANESAN, POLICE ABUSE AND KILLINGS OF STREET CHILDREN IN INDIA (Human Rights Watch ed., 1996); Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, ¶ 33, U.N. Doc. A/HRC/14/24/6 (May 28, 2010).

14. DEEPA NARAYAN, ROBERT CHAMBERS, MEERA K. SHAH & PATTI PETESCH, VOICES OF THE POOR: CRYING OUT FOR CHANGE, 182 (2000); COMMISSION ON LEGAL EMPOWERMENT OF THE POOR, MAKING THE LAW WORK FOR EVERYONE: VOLUME II, WORKING GROUP REPORTS 47 (2008) [hereinafter MAKING THE LAW WORK FOR EVERYONE].

15. *E.g.*, Nita Bhalla, *Q&A: India's Poor Most Subjected to Corruption - Transparency International*, REUTERS (July 1, 2010), <http://in.reuters.com/article/idINIndia-49807320100701>.

16. James Thuo Gathii, *Defining the Relationship Between Human Rights and Corruption*, 31 U. PA. J. INT'L L. 125, 126 (2009).

17. See BAKER, *supra* note 2, at 5.

because petty bribes paid by employers to relevant authorities ensure that regulations designed to protect workers go unenforced.

Illegal Evictions: Illegal evictions are often practiced on a large scale—and all too many by governments that cooperate with private firms to promote “urban renewal” projects designed to build profitable middle-class housing or commercial facilities.¹⁸ These often result in massive displacements.

Access to Justice: It has finally been recognized by international development agencies (“IDA”) that a combination of conditions, such as lack of “legal resources”¹⁹ and capacities to form sustainable civil society organizations to seek legal or political redress of grievances, are major obstacles to the alleviation of urban poverty.²⁰ “Empowerment” of the poor has now become a major, new “buzzword” in development discourse, but effective strategies to produce a “rule of law” and “political voice” for the poor are far more difficult to create than many commentators seem to assume.²¹

Lack of Access to Education: Education needs to be provided not only for children. The programs need to provide functional civic and human rights education, skills training, and literacy for adults. Such programs are usually lacking in slums.²²

Women and Children: Women and children are especially the victims of all of these conditions. Not only are systemic discriminations against women openly practiced,²³ but so is violent physical abuse, enforced prostitution, and sexual slavery.²⁴ The lives of street children are (to paraphrase Hobbes) “nasty, brutish” and, all too often, “short.”²⁵

18. See generally BAKER, *supra* note 2, at 10; Cambodia CESCR Report, *supra* note 10, ¶ 30-31 (for a recent country report).

19. See Bureau of Dev. Policy, U.N. Dev. Program, *Envisioning Empowerment: A Portfolio of Initiatives for Achieving Inclusion and Development*, v-vi (2009) [hereinafter *Envisioning Empowerment*].

20. U.N. Secretary-General, Legal Empowerment of the Poor and Eradication of Poverty: Report of the Secretary-General, delivered to the General Assembly, ¶ 4 U.N. Doc. A/64/133 (July 13, 2009).

21. See *id.* ¶¶ 1, 3-5.

22. Baharoglu & Kessides, *supra* note 3, at 125, 128, 132, 136.

23. Comm. on Econ., Soc. and Cultural Rights [CESCR], Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant: Concluding Observations of the Committee on Economic, Social and Cultural Rights: India, ¶¶ 16-18, 25-26, U.N. Doc. E/C.12/IND/CO/5 (Aug. 8, 2008) [hereinafter India CESCR Report].

24. *Id.* ¶ 27; see also Philippines CESCR Report, *supra* note 10, ¶¶ 26-27. Some 400-800 women and children per month are trafficked for sex in Cambodia. Cambodia CESCR Report, *supra* note 10, ¶ 26.

25. THOMAS HOBBS, LEVIATHAN: OR THE MATTER, FORME & POWER OF A COMMONWEALTH ECCLESIASTICALL AND CIVILL 84 (A.R. Waller ed., Cambridge Univ. Press 1904).

II. THE SOURCES OF THE HABITAT RIGHT

The duty to respect the “worth” and “dignity” of all persons is proclaimed in the Charter of the United Nations.²⁶ It is the basis for the Charter’s mandate prescribing, in effect, the development of IHRL as a fundamental objective of the U.N.²⁷—and one which is linked to its two other basic goals: the maintenance and development of peaceful relations between states²⁸ and the improvement of the conditions of life for all persons.²⁹

IHRL has now become a sufficiently complex branch of international law that it is taught in most universities throughout the world as a distinct international law subject.³⁰ It has also spawned an immense, interdisciplinary literature and the establishment of many different kinds of nongovernmental organizations (“NGOs”) throughout the world.

The U.N. Charter: The Charter, adopted in 1945, declared that a fundamental purpose of the organization is to promote the respect for “human rights” in all member states, and it calls on states to cooperate to realize this objective.³¹

The Universal Declaration of Human Rights (“UDHR”): The UDHR, adopted in 1948,³² was the first step towards the development of an IHRL.³³ The Declaration identifies rights, which are said to be “universal;” but it does not claim to be a treaty nor a statement of customary international law.³⁴ Rather, it explicitly is an instrument setting “standards” to be achieved over time.³⁵

Today, the authority of the UDHR as a basic source of “universal” human rights has been reaffirmed by the U.N. General Assembly (“GA”) in every later human rights instrument

26. U.N. Charter, pmbl.

27. *Id.* at art. 1, para 3, art. 55, 56.

28. *Id.* at art. 1, paras. 1, 2.

29. *Id.* at art. 1, para. 3.

30. *See, e.g.*, Larry Catá Backer, *Human Rights and Legal Education in the Western Hemisphere: Legal Parochialism and Hollow Universalism*, 21 PENN ST. INT’L L. REV. 115, 147-49 (2002) (noting the inclusion of IHLR, directly or indirectly, in courses taught in Chile, Brazil, and New Zealand).

31. U.N. Charter art. 1, para. 3.

32. Universal Declaration of Human Rights, G.A. Res. 217A, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810 (Dec. 10, 1948) [hereinafter UDHR].

33. Despite the positive and negative scholarly appraisal of the UDHR, “[i]n general, the Declaration [is] synonymous with the turn to individual rights in international law.” Jochen von Bernstorff, *The Changing Fortunes of the Universal Declaration of Human Rights: Genesis and Symbolic Dimensions of the Turn to Rights in International Law*, 19 EUR. J. INT’L L. 903, 924 (2008).

34. UDHR, *supra* note 32.

35. JOHANNES MORSINK, *THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: ORIGINS DRAFTING AND INTENT* 325 (Bert B. Lockwood, Jr., ed., 2000).

promulgated by that body (and there are many).³⁶ Its authority has also been affirmed by all of the “Declarations” of World Conferences on Development and Human Rights convened in the 1990s³⁷ and the Declaration of the 2000 Millennium Summit.³⁸ Most importantly, the UDHR provided the foundation for the two International Human Rights Covenants,³⁹ which were explicitly drafted (after deliberations over many years) to elaborate the content of each article of the UDHR and convert each into binding international law.

*The Two Covenants*⁴⁰ (*International Covenant on Economic, Social and Cultural Rights and International Covenant on Civil and Political Rights*): The Two Covenants, International Covenant on Economic, Social and Cultural Rights⁴¹ (“ICESCR”) and International Covenant on Civil and Political Rights⁴² (“ICCPR”) were created to make the norms of the UDHR obligatory.⁴³ The tension between the Communist Bloc and the Western powers resulted in the covenants being split into two, “one to contain civil and political rights and the

36. See, e.g., Declaration on the Right to Development, G.A. Res. 41/128, art. 8, para. 1, U.N. DOC. A/RES/41/128 (Dec. 4, 1986); Declaration on Social Progress and Development, G.A. Res. 2542 (XXIV), at 50, U.N. DOC. A/RES/24/2542 (Dec. 11, 1969); Declaration on the Rights of Mentally Retarded Persons, G.A. Res. 2856 (XXVI), ¶2, U.N. DOC. A/RES/26/2856 (Dec. 20, 1971); Declaration on the Rights of Disabled Persons, G.A. Res. 3447 (XXX), para. 6, U.N. DOC. A/RES/30/3447 (Dec. 9, 1975); Declaration on the Protection of All Persons from Enforced Disappearance, G.A. Res. 47/133, U.N. DOC. A/RES/47/133 (Dec. 18, 1992).

37. See, e.g., World Conference on Human Rights, June 14-25, 1993, Vienna Declaration and Programme of Action, ¶ 47, U.N. Doc A/CONF. 157/23 (June 25, 1993) [hereinafter Vienna Declaration]; Fourth World Conference on Women, Sept. 4-15, 1995, Beijing Platform for Action, Chapter IV. I. Human Rights of Women, Annex I, ¶ 8, U.N. Doc A/CONF. 177/20/Rev.1 (Sept. 15, 1995).

38. United Nations Millennium Declaration, G.A. Res. 55/2, U.N. Doc. A/Res/55/2 (Sept. 18, 2000).

39. See *infra* text accompanying notes 40-48.

40. The genesis of both the Covenants and the UDHR lies in the “Declaration on the Essential Rights of Man” which was proposed at the 1945 San Francisco Conference. U.N. Office of the High Comm’r for Human Rights, Fact Sheet No. 2 (Rev. 1), The International Bill of Human Rights (June 1996), <http://www.unhcr.org/refworld/docid/479477480.html> [hereinafter Fact Sheet No. 2].

41. International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR].

42. International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

43. While the UDHR, adopted on December 10, 1948, set out general principles of human rights, the Covenants were intended to set out binding and concrete commitments, were not adopted till much later. Fact Sheet No. 2, *supra* note 40. The delay resulted from the significant differences between the Communist bloc and Western Europe and U.S. regarding the relative importance of civil and political rights versus economic, social, and cultural rights. See PAUL SIEGHART, THE INTERNATIONAL LAW OF HUMAN RIGHTS 25 (1983).

other to contain economic, social and cultural rights.”⁴⁴ The former became the ICCPR, while the latter the ICESCR.⁴⁵ The Two Covenants have now been ratified by substantial majorities of member states of the U.N.⁴⁶ Because of all this history and because of the Declaration’s symbiotic relationship to the U.N. Charter, some commentators now assert that the UDHR has become a statement of customary international law.⁴⁷ In any event, it is widely agreed that it is a unique and extremely influential international instrument that is the foundation of IHRL.⁴⁸

The Instruments Promulgated by World Conferences, Including the Millennium Summits: During the 1990s, a number of “World Conferences” were convened regarding human rights and development.⁴⁹ In 2000 and 2005, the heads of state or government of all U.N. member states met in New York and collectively issued instruments setting out “the Millennium Development Goals”⁵⁰

44. G.A. Res. 543 (VI), U.N. GAOR, 6th Sess., Supp. No. 20, at B6, U.N. Doc. A/2119 (Feb. 5, 1952).

45. The draft covenants were finally presented to the General Assembly in 1954 and adopted, twelve years later, in 1966. International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights and Optional Protocol to the International Covenant on Civil and Political Rights, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, at 49, U.N. Doc. A/6316 (Dec. 16, 1966). See generally UNITED NATIONS AUDIOVISUAL LIBRARY OF INTERNATIONAL LAW, INTERNATIONAL COVENANT ON ECONOMIC SOCIAL AND CULTURAL RIGHTS AND INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (2008).

46. The ICESCR has sixty-nine signatories and 160 parties as of September 9, 2010. United Nations Treaty Collection, International Covenant on Economic, Social and Cultural Rights, available at http://treaties.un.org/Pages/ViewDetails.aspx?chapter=4&lang=en&mtdsg_no=IV-3&src=TREATY. The ICCPR in turn, has seventy-two signatories and 166 parties as of September 9, 2010. United Nations Treaty Collection, International Covenant on Civil and Political Rights, available at http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en.

47. See, e.g., Bernstorff, *supra* note 33, at 913.

48. See *id.* at 924 (stating that the “Declaration became synonymous with the turn to individual rights in international law”).

49. To name a few, the U.N. convened: World Summit for Children, New York, 1990; World Conference on Education for All: Meeting Basic Learning Needs, Jomtien, Thailand, 1990; United Nations Conference on Environment and Development, Rio de Janeiro, Brazil, 1992; International Conference on Nutrition, Rome, 1992; World Conference on Human Rights, Vienna, 1993; International Conference on Population and Development, Cairo, 1994; Fourth World Conference on Women, Beijing, 1995; World Summit for Social Development, Copenhagen, 1995; World Food Summit, Rome, 1996; and the United Nations Conference on Human Settlements (Habitat II), Istanbul, 1996.

50. The first convention occurred from September 6th to 8th, 2000, in New York. United Nations Millennium Declaration, G.A. Res. 55/2, ¶ 1, U.N. Doc. A/RES/55/2 (Sept. 18, 2000). The second plenary meeting took place from September 6th to 8th, 2005, in New York. 2005 World Summit Outcome, G.A. Res. 60/1, ¶1, U.N. Doc.

(“MDGs”), which not only pledged international cooperation to achieve specific poverty reduction goals but also the realization of all universal human rights in all states and sustainable systems of democratic governance by them.⁵¹ The World Conferences also issued “Declarations” and “Programs of Action” (“PAs”), which may best be characterized as “political pledges.”⁵² However, significant provisions of these Conference instruments were only adopted after considerable, sometimes prolonged, debates between “north” and “south” governments in the several meetings of the “Preparatory Committees” (“PCs”), which eventually drew up the final drafts of the documents ultimately submitted to the Conferences for unanimous adoption.⁵³

Cynics have noted problems with the World Conferences resulting from a “lack of clarity, consensus and explicitness [of] the participants’ goals.”⁵⁴ Certainly many provisions resulting from the World Conferences have passed into obscurity, but total dismissal of the value of the human rights pledges made by each Conference Declaration seems unwarranted in view of the extensive deliberations before a consensus on their content was reached, and in view of their reaffirmation in subsequent Conferences. Indeed, some World Conference Declarations, such as the carefully formulated Article 4 of the 1993 Vienna Conference on Human Rights, have been cited many times as authoritative.⁵⁵ Further, some of the Vienna PAs have also been implemented (e.g., the article calling upon “the U.N. General Assembly to establish the “office of [the] High Commissioner for Human Rights” discussed below).⁵⁶ Also of interest for this Article are the instruments adopted by the 1996 Istanbul Conference on “Human Settlements,” which was noted above.⁵⁷

A/RES/60/1 (Oct. 24, 2005). See also JEFFREY D. SACHS, UN MILLENNIUM PROJECT 2005, *INVESTING IN DEVELOPMENT: A PRACTICAL GUIDE TO ACHIEVE THE MILLENNIUM DEVELOPMENT GOALS XVIII* (2005).

51. Gillian MacNaughton & Diane F. Frey, *Decent Work, Human Rights, and the Millennium Development Goals*, 7 *HASTINGS RACE & POVERTY L. J.* 303, 349-50 (2010).

52. Mona Zulficar, *From Human Rights to Program Reality: Vienna, Cairo, and Beijing in Perspective*, 44 *AM. U. L. REV.* 1017, 1029-32 (1995).

53. See Johannes van Aggelenm, *Implementation of Article 28 of the Universal Declaration of Human Rights by the U.N. Conferences in the 1990s*, 30 *HAMLIN J. PUB. L. & POL’Y* 1, 15-19 (2008).

54. See Michael G. Schechter, *Implementation and Effectiveness of United Nations - Sponsored World Conferences*, 91 *AM. SOC’Y INT’L L. PROC.* 308, 308 (1997).

55. See Michael O’Flaherty, *The Concluding Observations of United Nations Human Rights Treaty Bodies*, 6 *HUM. RTS. L. REV.* 27, 30 (2006) (discussing new treaties that follow the models set by the Human Rights Committee).

56. Michael Posner, *Reflection on the Vienna Conference on Human Rights*, 91 *AM. SOC’Y INT’L L. PROC.* 317, 318 (1997).

57. See *supra* note 49.

The Millennium Summit Instruments may represent “customary international law” since they were signed by heads of state or governments and pledged the expenditure of allegedly specific targets by each country.

III. THE CONTENT OF THE HABITAT RIGHT

It was once contended—and still is in U.S. government circles—that there is a distinction between political/civil and economic and social rights.⁵⁸ The former were said to be “negative” rights: their content is well known; they can, and have been, easily enforced by courts at little public expense.⁵⁹ The latter are said to be “affirmative rights:” they are vaguely defined, have no historical legal basis, and can only be realized by an extensive, but uncertain amount, of public funding over uncertain periods of time; and, most important, they are not “justiciable.”⁶⁰ Thus, they are not “legal” rights, only unenforceable promises.

This dichotomy is now rejected by most scholars and numerous international instruments. For example, the Declaration of the 1993 Vienna World Conference declared that *all* universal rights are “indivisible and interdependent and interrelated.”⁶¹ The proof of this often-cited proposition has rarely been spelled out, but reflection on the text below (Part IV) should make it self-evident. In any event it seems more useful to develop *functional* categories of IHRL rights and to spell out the human rights content of each of these general categories of rights. Thus, the Habitat Right consists of:

Security Rights: Security rights encompass the rights to enjoy governmental protection from violations of all universal rights by others⁶²—notably police protection against crimes that violate rights to life, physical security of the person, property, and privacy, as well as rights to exercise other basic rights.⁶³ Conversely, “security rights”

58. Ruth Gavison, *On the Relationships Between Civil and Political Rights, and Social and Economic Rights*, in *THE GLOBALIZATION OF HUMAN RIGHTS* 23 (Jean-Marc Coicaud et al., eds., 2003).

59. See Michael J. Gerhardt, *The Ripple Effects of Slaughter-House: A Critique of a Negative Rights View of the Constitution*, 43 *VAND. L. REV.* 409, 410 (1990).

60. Charles Fried explained the difference between positive and negative rights as: A positive right is a claim to something—a share of material goods, or some particular good like the attention of a lawyer or a doctor, or perhaps the claim to a result like health or enlightenment—while a negative right is a right that something not be done to one, that some particular imposition be withheld.

CHARLES FRIED, *RIGHT AND WRONG* 110 (1978).

61. Vienna Declaration, *supra* note 37, at Part I ¶ 5.

62. OHCHR Principles and Guidelines, *supra* note 1, at ¶ 197.

63. See Ninth U.N. Congress on the Prevention of Crime and the Treatment of Offenders, G.A. Res. 50/145, U.N. Doc. A/RES/50/145 (Dec. 21, 1995), G.A. Res. 46/152,

also entail rights to protection from governmental violations of universal rights—notably by the police and corrupt officials.⁶⁴

Participation Rights: Participation Rights are essential to demand protections against, or “realization” of, all other universal rights.⁶⁵ Included in this broad, vital category are: rights to freedom of speech and the press;⁶⁶ rights to form associations and to mobilize peaceful public assemblies and public protests and strikes;⁶⁷ rights to participate directly or indirectly (e.g. through “fair” elections) in all “public affairs,” notably in other forms of governance; and, for these purposes,⁶⁸ rights of access to information and transparency in governmental decision making which affect the rights of an individual, or distinct groups.⁶⁹

Education Rights: Education rights includes a compulsory right of access to primary level schools and a general availability of secondary and higher education.⁷⁰ They also include rights to enjoy adult educational programs, such as functional skills training and other basic instructions.⁷¹ All educational programs must be “directed towards” establishing awareness of “the dignity of the human person,”⁷² and, to that end, education must also be directed

U.N. DOC. A/RES/46/152 (Dec. 18, 1991) (creating an effective United Nations crime prevention and criminal justice programme); G.A. Res. 47/91, ¶ 5, U.N. Doc. A/RES/47/91 (Dec. 16, 1992) (recalling the need to prevent crime in urban areas).

64. See Declaration on the Protection of All Persons from Enforced Disappearance, G.A. Res. 47/133, U.N. Doc. A/RES/47/133 (Dec. 18, 1992) (protecting people from abduction by law enforcement or by others encouraged to abduct by the government); Code of Conduct for Law Enforcement Officials, G.A. Res. 34/169, pmbl., art. 2, U.N. Doc. A/RES/34/169 (Dec. 17, 1979) (noting the potential of abuse which the exercise of police duties entails and that, in the performance of their duties, law enforcement shall respect and protect human dignity).

65. OHCHR *Principles and Guidelines*, *supra* note 1, ¶ 64 (noting that active and informed participation by the poor is required by the human rights-based approach).

66. ICCPR, *supra* note 42, art. 19.

67. *See id.* art. 21.

68. *Id.* art. 25.

69. OHCHR *Principles and Guidelines*, *supra* note 1, ¶ 70.

70. ICESCR, *supra* note 41, at art. 13; G.A. Res. 49/184, U.N. Doc A/RES/49/184 (Dec. 23, 1994) (establishing the decade of education, and appealing to governments to eradicate illiteracy and instill education as a way to develop the human personality, such as to strengthen respect for human rights and freedoms); G.A. Res. 57/254, U.N. Doc. A/RES/57/254 (Dec. 20, 2002) (setting goal of primary education for all children regardless of gender by 2015); Vienna Declaration, *supra* note 37, ¶ 47 (finding that states should provide access to education for children).

71. *See* OHCHR *Principles and Guidelines*, *supra* note 1, ¶¶ 190-93.

72. U.N. Econ. & Soc. Council [ECOSOC], Comm. On Econ. Soc. & Cultural Rts. [CESCR], Implementation of the International Covenant on Economic, Social and Cultural Rights, General Comment No. 13, n. 19, U.N. Doc. E/C.12/1999/10 (Dec. 8, 1999); G.A. Res. 48/127, U.N. Doc. A/RES/48/127 (Dec. 20, 1993) (realizing that education is a right required for the development of a person).

towards knowledge of all universal rights and how to secure them.⁷³

Housing Rights: A universal right to “adequate housing”⁷⁴ has been established in general terms by the UDHR,⁷⁵ the CERD,⁷⁶ and the ICESCR,⁷⁷ and a GC issued by the CESCR has spelled out its content in detail.⁷⁸ Thus, “housing rights” include rights of access to affordable, safe, and sanitary dwellings; rights to protection from exploitation by landlords; and—very important in light of experience in many countries—rights to protection from illegal evictions.⁷⁹

Health Care Rights: These rights are guaranteed in general terms by the UDHR⁸⁰ and elaborated by the ICESCR,⁸¹ the CRC,⁸² and, still further, the ICESCR.⁸³ They include: rights to the “highest attainable standard of physical and mental health” and, to that end, rights to the “healthy development of the child,” healthy workplaces, the prevention of “endemic” diseases, and provision for accessible health care services, including “medical attention in the event of sickness”⁸⁴ and provisions of knowledge of nutrition⁸⁵ and reproduction—a right especially important to women.⁸⁶

73. U.N. Secretary-General, United Nations Decade for Human Rights Education (1995-2004) and Public Information Activities in the Field of Human Rights: Guidelines for National Plans of Action for Human Rights Education, ¶ 11, U.N. GAOR, 52nd Sess., U.N. Doc. A/52/469/Add.1 (Oct. 20, 1997).

74. “The right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one's head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity.” U.N. Econ. & Soc. Council [ECOSOC], General Comment 4: The Right to Adequate Housing, ¶ 7 U.N. Doc E/1992/23, annex III (Dec. 13, 1991).

75. UDHR, *supra* note 32, at art. 25.

76. U.N. Convention on the Elimination of All Forms of Racial Discrimination, adopted Dec. 21, 1965, 660 U.N.T.S. 195, art. 5(e)(iii) [hereinafter CERD].

77. ICESCR, *supra* note 41, art. 11.

78. U.N. Econ. & Soc. Council [ECOSOC], General Comment 4: The Right to Adequate Housing, U.N. Doc E/1992/23, annex III (Dec. 13, 1991).

79. *Id.* ¶ 8; *see also* United Nations Conference on Human Settlements, May 31-June 11, 1976, The Vancouver Declaration on Human Settlements, Part III ¶ 8, U.N. Doc A/CONF.70/15 (June 11, 1976).

80. UDHR, *supra* note 32, art. 25.

81. U.N. Econ. & Soc. Council [ECOSOC], Comm. on Econ., Soc. & Cultural Rights [CESCR], General Comment 14: The Right to the Highest Attainable Standard of Health, U.N. Doc. E/C.12/2000/4 (July 4, 2000).

82. U.N. Convention on the Rights of the Child, adopted Nov. 20, 1989, art. 24, 1577 U.N.T.S. 3 [hereinafter CRC].

83. ICESCR, *supra* note 41, art. 12.

84. *Id.*

85. *Id.* at art. 11.

86. U.N. Convention on the Elimination of All Forms of Discrimination Against Women, adopted Dec. 18, 1979, 1249 U.N.T.S. 13, art. 10 [hereinafter CEDAW].

*Access to Adequate Food⁸⁷ and Safe Water:*⁸⁸ The UDHR declares that “everyone” has a right to “adequate food.”⁸⁹ This fundamental right includes rights of access to markets and education regarding the “principles of nutrition.”⁹⁰ The right to access safe water is not explicitly declared in the UDHR or the ICESCR. But, as noted by the CESCR⁹¹ and scholars,⁹² it must be recognized as an essential corollary to the rights to life, health and food, and, it is of particular importance in many urban poverty areas.⁹³

*Work and Workplace Rights:*⁹⁴ The right to work includes rights to “fair” remuneration, reasonable working hours, and paid holidays;⁹⁵ rights to “form trade unions,” bargain collectively, and “strike” (in conformity with appropriate state legislation);⁹⁶ and also very important, in light of experience, rights to “safe and healthy working conditions.”⁹⁷

87. See U.N. Econ. & Soc. Council [ECOSOC], Comm. on Econ., Soc. and Cultural [CESCR] Rights, Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights: General Comment 12, The Right to Adequate Food, U.N. Doc. E/C.12/1999/5 (May 12, 1999) (defining the right to food as realized when “every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement”).

88. See generally U.N. Econ. & Soc. Council [ECOSOC], Comm. on Econ., Soc., and Cultural Rights [CESCR], Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights: General Comment 15, The Right to Water, U.N. Doc. E/C.12/2002/11 (Jan. 20, 2003) [hereinafter CESCR GC 15].

89. UDHR, *supra* note 32, art. 25(1).

90. ICESCR, *supra* note 41, art. 11(2)(a).

91. CESCR GC 15, *supra* note 88, ¶ 3.

92. See, e.g., Stephen C. McCaffrey & Kate J. Neville, *Small Capacity and Big Responsibilities: Financial and Legal Implications of a Human Right to Water for Developing Countries*, 21 GEO. INT'L ENVTL. L. REV. 679, 681 (2009) (stating that because human beings require water to live, it is a human right despite not being explicitly recognized as such in UDHR and the Covenants); Vrinda Narain, *Water as a Fundamental Right: A Perspective From India*, 34 VT. L. REV. 917, 919 (2010) (noting that though the right to water is not explicitly recognized as an international right, there is “gathering momentum to do so”).

93. United Nations Conference on Environment and Development, Rio de Janeiro, Braz., June 3-14, 1992, Protection Of The Quality And Supply Of Freshwater Resources: Application Of Integrated Approaches To The Development, Management And Use Of Water Resources, ¶47-55, U.N. Doc A/CONF.151/26 (Vol. I) (June 1992) (finding increased access to safe drinking water to be vital to improving health and alleviating poverty).

94. See generally United Nations, Econ. & Soc. Council [ECOSOC], Comm. on Econ., Soc. & Cultural Rights [CESCR], *The Right to Work*, U.N. Doc. E/C 12/GC/18 (Feb. 6, 2006) [hereinafter CESCR GC 18].

95. ICESCR, *supra* note 41, art. 7.

96. *Id.* art 8.

97. *Id.* art 7(b).

*Equality Rights:*⁹⁸ The UDHR declares: “All human beings are born free and equal in dignity and rights,”⁹⁹ and “everyone” is entitled to enjoy all universal rights “without distinction of any kind” based on “sex, race, religion, or other status.”¹⁰⁰ CERD provides a broad definition of “race” to include “race, colour, descent, or national or ethnic origin.”¹⁰¹ The CERD¹⁰² and the CEDAW¹⁰³ have spelled out the many “forms” of discrimination which must be “eliminated”—thus enabling U.N. organs, IDAs, and NGOs to closely monitor state compliance with these conventions, and to expose the serious, harmful economic and social consequence of failures to do so.

However, the right to not be discriminated against on the basis of “social status” has not been spelled out.¹⁰⁴ Presumably, this right includes non-discrimination in the allocation of resources between the poor and the affluent, or between rural and urban areas, or between slums and wealthier urban communities. While it is often clear that such discriminations exist, it would seem difficult to prove the extent of violations of this right and to redress them through damage awards.

*Remedy Rights:*¹⁰⁵ The existence of a legal right requires the existence of an adequate legal remedy to enforce the right.¹⁰⁶ Some have relied on this axiom to state that ICESCR rights are not legal rights because they are not “justiciable” and because there exists no other adequate legal means of enforcing them.¹⁰⁷ However, a detailed

98. See generally Int’l Covenant on Civil & Political Rights, Human Rights Comm., General Comment 18: Non-discrimination, U.N. Doc. HRI/GEN/1/Rev.1 (Nov. 10, 1989) [hereinafter HRC GC 18].

99. UDHR, *supra* note 32, art. 1.

100. *Id.* art. 2.

101. CERD, *supra* note 76, art. 1.

102. See, e.g., *id.* arts. 2-4.

103. See CEDAW, *supra* note 86, art. 14.

104. However, there are certain constitutions granting this right. See, e.g., Nihonkoku Kenpō [Constitution] Nov. 3, 1946, art. 14 (Japan); Daehanminkuk Hunbeob [Constitution] Oct. 29, 1987, art. 11, § 1 (S. Kor.).

105. See 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, G.A. Res. 60/147, U.N. Doc. A/RES/60/147 (Mar. 21, 2006).

106. The right to a remedy is famously coined in the phrase *ubi jus ubi remedium* (for every right there is a remedy). “[I]t is a settled and invariable principle in the laws of England, that every right, when withheld, must have a remedy, and every injury its proper redress.” *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 147 (1803).

107. Some commentators have stated the “so-called economic rights . . . cannot be guaranteed by governments unless they are totalitarian.” Human Rights and U.S. Foreign Policy: Hearings Before the House Subcomm. on International Organizations of the Comm. on Foreign Affairs, 96th Cong., 1st Sess. 219, 221 (1979) (written statement of E. Lefever). Others have taken a relatively more subdued approach,

analysis of steps necessary to implement economic and social rights reveals this proposition to be inaccurate—at least in some respects, and problematic in others.

IV. MEANS OF IMPLEMENTING THE HABITAT RIGHTS

The Habitat Right includes both “civil/political” and “economic and social” rights.¹⁰⁸ The ICCPR requires states to take immediate steps to provide for “enforcement” of the rights it guarantees by empowering the courts to do so.¹⁰⁹ Presumably, this mandate also applies to the many “civil/political” rights embodied in the CEDAW and the other U.N. Conventions.¹¹⁰ It is generally assumed that these “steps” (to empower the courts) can be quickly taken—if, indeed, new steps are needed.¹¹¹ But this assumption may be inaccurate in some, perhaps many, countries where it may be necessary to enact reforms to provide for effective judicial enforcement.¹¹² For example, it may be necessary to allocate jurisdiction to enforce treaty rights; it may also be necessary to establish procedural reforms to enable the poor to gain access to the courts—for example: provision for class actions, legal assistance, reduction of transaction costs and (in many

stating that a right to a remedy confers competence upon a court to compel governmental action. *See, e.g.,* E.W. Vierdag, *The Legal Nature of Rights Granted by the International Covenant on Economic, Social and Cultural Rights*, 9 NETH. Y.B. INT’L L. 69, 92-93 (1968). Vierdag argues that vesting such competence on courts nullifies the separation of powers because it forces the judiciary to address political questions. *Id.* at 93.

108. *See supra* Part III.

109. ICCPR, *supra* note 42, art. 2(3)(c).

110. For example, the constitutions of many African countries contain provisions that can be used to enforce CEDAW and other U.N. conventions. *See* Elizabeth A. Oji, *Fighting Discrimination in Africa Through CEDAW: Hard Fights! Easy Fights!*, 16 NEW ENG. J. INT’L & COMP. L. 89, 91-92 (2010).

111. For example, the Ghana Constitution states that: “The rights, duties, declarations and guarantees relating to the fundamental human rights and freedoms specifically mentioned in this Chapter shall not be regarded as excluding others not specifically mentioned which are considered to be inherent in a democracy and intended to secure the freedom and dignity of man.” THE CONSTITUTION OF THE REPUBLIC OF GHANA 1992, May 8, 1992, ch. 5, art. 33(5). Similarly, the South African Constitution states that “[t]he Bill of Rights does not deny the existence of any other rights or freedoms that are recognized or conferred by common law, customary law or legislation.” S. AFR. CONST., ch. 2, art. 39(3) 1996. The Czech Constitution in turn provides that: “Promulgated international agreements, the ratification of which has been approved by the Parliament and which are binding on the Czech Republic, shall constitute a part of the legal order; should an international treaty make provision contrary to a law, the international agreement shall be applied.” CONSTITUTION OF THE CZECH REPUBLIC DEC. 16, 1992, ch. 1, art. 10. The amendment to Article 10 of the Czech Constitution provides that international agreements trump domestic law. *Id.*

112. *See generally* LOUIS HENKIN, CONSTITUTIONALISM, DEMOCRACY, AND FOREIGN AFFAIRS 45-92 (1990).

countries) reduction of the interminable delays due to clogged dockets.¹¹³ Further, if courts are to provide effective measures to redress some kinds of systemic violations of “civil/political rights” they must be empowered to: reform the governance of the police¹¹⁴ and create “affirmative action” programs to implement CEDAW rights and monitor compliance with these orders.¹¹⁵

Further, the assumption that courts cannot enforce “economic and social” rights is also inaccurate. There are at least four steps that states can take, quickly and at relatively little cost, to provide various kinds of legal remedies to enforce “economic and social” rights.

(1) *Administrative Reforms*:¹¹⁶ At relatively little cost immediate steps can be undertaken to require and enable relevant government organs (e.g. local governments, ministries of health, education, housing and labor) to provide fair hearings to groups of the urban poor alleging violations of the rights which the agency should be required to protect.¹¹⁷ For example, group claims alleging a particular violation of health rights in a particular community, can be lodged against the Ministry of Health; claims for violations of worker rights can be lodged against the Ministry of Labor, and, where proven, the violations must be redressed.

It is also possible, and relatively cost-free, for governments to initiate immediate steps to require all relevant government agencies, working together, to establish joint efforts to achieve the progressive realization of the Habitat Rights. Presumably these steps should include: *assessments* of conditions of poverty in different urban communities;¹¹⁸ *identification and prioritization* of measures to be

113. See *Envisioning Empowerment*, *supra* note 19, at v-vii.

114. See, e.g., *Singh v. Union of India*, (2006) 8 S.C.C. 1. In *Prakash Singh* the Indian Supreme Court limited the ability of state politicians to control police operations for political reasons. The Court required the division of work for police officers engaged in criminal investigations from those engaged in other law enforcement responsible activities. The Court also required that an independent Police Complaints Authorities be created to adjudicate complaints of police misconduct. *Id.* at 8-9.

115. See LEE WALDORF, U.N. DEV. FUND FOR WOMEN, *PATHWAY TO GENDER EQUALITY: CEDAW, BEIJING AND THE MDGs 24* (2004).

116. Administrative remedies are adequate if citizens of a state have a legitimate expectation that all administrative authorities will honor and enforce ICESCR requirements. Thus, all “such administrative remedies should be accessible, affordable, timely and effective.” U.N. Econ. & Soc. Council [ECOSOC], Comm. on Econ., Soc. & Cultural Rights [CESCR], General Comment No. 9, ¶ 9, U.N. Doc. E/C.12/1998/24 (Dec. 3, 1998) [hereinafter CESCR, GC 9].

117. See *Envisioning Empowerment*, *supra* note 19, at 35-36.

118. U.N. Comm. on Econ., Soc. & Cultural Rights, *The Right to Adequate Housing*, General Comment No. 4, ¶ 13, U.N. Doc. E/1992/23. (Dec. 31, 1991) [hereinafter CESCR, GC 4].

undertaken,¹¹⁹ and *allocation of responsibility* to designated government agencies to formulate programs;¹²⁰ setting *benchmarks* to be achieved over specific periods of time, *monitoring* the progress made, and imposing *accountability*;¹²¹ enlisting private support and IDA resources (technical and monetary) at the outset,¹²² and *budgeting* the costs of each remedial program.¹²³ Further, by adopting the MDGs, all governments have pledged to devise specific programs to achieve specific poverty reduction targets.¹²⁴

(2) *Participation Rights*: Abundant IDA critiques (notably those produced by the World Bank) of the outcomes of poverty-reduction development projects have demonstrated the need for independent and effective participation of both intended beneficiaries and other “stakeholders” if the project is to succeed.¹²⁵ For example, the design and management of housing rehabilitation projects requires cooperative “self help” measures by intended beneficiaries; projects to provide accessible and safe water require local participatory management of the machinery installed and for maintaining the systems.¹²⁶ Wholly apart from policies calling for participation it must be recognized that the robust exercise of these rights by the poor is a universal right, and exercise of them is an effective way of enforcing their social and economic rights.¹²⁷

Historically the development of early democratic systems of government—and then the extension of suffrage, equality rights and then the creation of welfare rights—grew out of the exercise of participation rights;¹²⁸ and no democratic system of governance can be sustainable where these rights are repressed.¹²⁹ So, too, the development of sustainable programs to achieve realization of economic and social rights of the poor depends on vigorous

119. See Global Strategy for Shelter to the Year 2000, Annex 1 ¶ 10-12, U.N. Doc. A/RES/43/181 (Dec. 20, 1988) [hereinafter Shelter Strategy 2000].

120. *Id.* at annex 1 ¶ 6,8.

121. See *id.* at annex 1 ¶ 14.

122. U.N. Comm. on Econ., Soc. & Cultural Rights, General Comment No. 3, ¶ 13, U.N. Doc. E/1991/23 (Dec. 14, 1990) [hereinafter CESCR, GC 3].

123. Shelter Strategy 2000, *supra* note 119, at Annex 1 ¶ 10.

124. See U.N. MILLENNIUM PROJECT, INVESTING IN DEVELOPMENT: A PRACTICAL PLAN TO ACHIEVE THE MILLENNIUM DEVELOPMENT GOALS 64-65 (2005).

125. MARIA AYCRIGG, SOCIAL DEVELOPMENT PAPERS, PARTICIPATION AND THE WORLD BANK: SUCCESS, CONSTRAINTS, AND RESPONSES 4-5 (1998).

126. CITIES ALLIANCE: CITIES WITHOUT SLUMS, 2009 REPORT: BUILDING CITIES AND CITIZENSHIP 10-11 (2009) [hereinafter CITIES ALLIANCE 2009 REPORT].

127. See CESCR, GC 4, *supra* note 118, ¶ 12.

128. R.K. SINCLAIR, DEMOCRACY AND PARTICIPATION IN ATHENS 23 (1988).

129. As noted by Nelson Mandela: “Democracy and human rights are inseparable. We cannot have the one without the other.” Nelson Mandela, Keynote Address at Soochow University, Taiwan Graduation Ceremony (Aug. 1 1993).

participation rights that can mobilize and maintain political pressure on their governments.

(3) *National Human Rights Institutions*: In 1993, the U.N. GA recommended that member states adopt legislation to establish a National Human Rights Institution (NHRI) ¹³⁰ empowered to promote and protect human rights by: *Monitoring progress* in the realization of all human rights;¹³¹ *Advising* relevant governmental agencies of their responsibilities;¹³² *Providing training* programs;¹³³ *Hearing complaints* brought by groups or individuals alleging violations;¹³⁴ *Recommending, or ordering appropriate remedies* where systemic violations are proven;¹³⁵ *Operating independent of government control* and being “pluralistic” in composition.¹³⁶

Many governments, notably in Africa, have established an NHRI, but surveys and critiques suggest that most are not well funded, well staffed, easily accessible, or adequately empowered to perform their functions because their mandates lack specificity.¹³⁷ However, if these failings were addressed, and if the workings of an NHRI were made more transparent, the institution could play significant roles, notably monitoring and pressing governments to “take steps” to “achieve realization” of economic and social rights.¹³⁸

(4) *Judicial Enforcement*: Courts may “enforce” some ICESCR rights without abusing doctrines of “justiciability” and “separation of powers.”¹³⁹ Courts may enforce ICESCR rights by granting various remedies. They may issue declarations and injunctions, or invalidate laws.¹⁴⁰ They may even, in certain instances, order compensation and

130. National Institutions for the Promotion and Protection of Human Rights, G.A. Res. 48/134, ¶ 3, U.N. Doc. A/RES/48/134 (Dec. 20, 1993).

131. *See id.* § A(3)(d).

132. *Id.* § A(3)(a).

133. *Id.* § A(3)(f).

134. *Id.* § D(4).

135. *Id.* § A(3)(d)(iv); *see* C. Raj Kumar, *National Human Rights Institutions: Toward Institutionalization and Developmentalization of Human Rights*, 28 HUM. RTS. Q. 755 (2006).

136. National Institutions for the Promotion and Protection of Human Rights, G.A. Res. 48/134, § B(2), U.N. Doc. A/RES/48/134 (Dec. 20, 1993).

137. *See* Linda C. Reif, *Building Democratic Institutions: The Role of National Human Rights Institutions in Good Governance and Human Rights Protection*, 13 HARV. HUM. RTS. J. 1, 64, 68 (2000).

138. *See id.* at 2-3.

139. Malcolm Langford, *The Justiciability of Social Rights: From Practice to Theory*, in SOCIAL RIGHTS JURISPRUDENCE: EMERGING TRENDS IN INTERNATIONAL AND COMPARATIVE LAW 3, 29-37 (Malcolm Langford ed. 2008) [hereinafter SOCIAL RIGHTS JURISPRUDENCE].

140. Kent Roach, *The Challenges of Crafting Remedies for Violations of Socio-economic Rights*, in SOCIAL RIGHTS JURISPRUDENCE, *supra* note 139, at 46, 52-56.

restitution.¹⁴¹ Courts may also order a state to initiate an appropriate remedial program where a government's persistent failure to do so has produced a clear and present threat to life¹⁴² or the essential means of subsistence¹⁴³ or loss of property.¹⁴⁴ Indeed, the distinction between economic and social rights and civil/political rights becomes blurred where a violation of the former category can also constitute a violation of the latter category.¹⁴⁵

In fact, courts in many countries have become increasingly active in enforcing (or attempting to enforce) economic or social rights. A few examples of these developments are instructive.

South Africa: The Constitution of South Africa, in effect, incorporates many ICESCR rights. It provides that "the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of"¹⁴⁶ "the right to have access to:"¹⁴⁷

- "adequate housing"¹⁴⁸
- "health care services"¹⁴⁹
- "sufficient food and water"¹⁵⁰

In the much discussed Grootboom case,¹⁵¹ the Constitutional Court of South Africa noted that because the state was required by the Constitution "to respect, protect, promote and fulfil [sic]"¹⁵² these rights, a claim that the state had failed to do enough to discharge

141. *Id.* at 56-57.

142. "Life" need not be restricted to mere existence between conception and death. *Zia v. WAPDA*, (1994) 693 PLD. (SC) 712-15 (Pak.), available at <http://www.elaw.org/node/1342>. It is often interpreted widely to enable a person not only to sustain life, but also to enjoy it. *Id.*

143. In the Dehra Dun case, the Indian Supreme Court ordered limestone quarries to be shut owing to the environmental devastation caused by them. Shyami Fernando Puvimanasinghe, *Towards a Jurisprudence of Sustainable Development in South Asia: Litigation in the Public Interest*, 10 SUSTAINABLE DEV. L. & POL'Y 41, 42-43 (2009) (citing *Rural Litig. & Entitlement Kendra, Dehra Dun v. State of Uttar Pradesh*, A.I.R., 1985 S.C. 652 (India)). Yet, the Indian Supreme Court, proactively ordered the displaced employees of the quarries to be employed in the reforestation and soil conservation program. *Id.*

144. *South Africa v. Modderklip Boerdery (Pty) Ltd.* 2004 (6) SA 40 (CC) at ¶¶ 58-60, 68 (S. Afr.).

145. As echoed in the preamble of the ICESCR, "want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights." ICESCR, *supra* note 41, at pmb1.

146. S. AFR. CONST., ch. 2 art. 27(2) 1996.

147. *Id.* at art. 27(1).

148. *Id.* at art. 26(1).

149. *Id.* at art. 27(1)(a).

150. *Id.* at art. 27(1)(b).

151. *Gov't of the Republic of S. Afr. v. Grootboom* 2001(1) SA 46 (CC) (S. Afr.).

152. *Id.* ¶ 20.

that duty should always be “justiciable.”¹⁵³ Further, if the evidence supported the claim, the real issue should be: What can the court do to provide some sort of remedy?¹⁵⁴ In *Grootboom* the court entered an order declaring that the government had failed to “make reasonable provision,” within its “available resources,” for the care of the homeless plaintiffs who had long been “living in intolerable conditions.”¹⁵⁵

In a later case,¹⁵⁶ the same court addressed the refusal of the South African government to distribute an antiretroviral drug, nevirapine, for use by HIV-positive mothers.¹⁵⁷ The court found, inter alia, that the cost of the drug was not an issue as it was provided free of cost by the manufacturer;¹⁵⁸ that research had proved that it was safe and effective;¹⁵⁹ that hospital programs to provide “counseling” to mothers could be established.¹⁶⁰

The court then found that the government’s policy was violating the plaintiffs’ rights to “health care services,”¹⁶¹ and rejected its contention that the court’s only power (if it sustained the plaintiffs’ claims) was to issue a “declaratory order,” not a mandatory order.¹⁶² Citing *Brown v. Board of Education of Topeka*,¹⁶³ among many other foreign cases, the court held that it had the power to issue a “structural injunction,”¹⁶⁴ and “ordered [the government] without delay” to “[r]emove the restrictions” regarding distribution of nevirapane, and establish a program (prescribed in some detail by the court) to take immediate steps to make the drug available in hospitals and to train counselors and make their services available to advise infected mothers regarding use of the drug.¹⁶⁵

India: The bill of rights of the Constitution of India does not guarantee many economic and social rights.¹⁶⁶ Rather, it contains a series of “Directive Principles” urging the state to adopt policies to provide health care, education and other benefits to all citizens.¹⁶⁷

153. *Id.*

154. *Id.*

155. *Id.* ¶ 99.

156. *Minister of Health v. Treatment Action Campaign*, 2002 (10) BCLR 1033 (CC).

157. *Id.* ¶ 2.

158. *Id.* ¶ 48.

159. *Id.* ¶ 72.

160. *Id.* ¶ 135.

161. *See id.* ¶ 122.

162. *Id.* ¶ 99.

163. 347 U.S. 483 (1954).

164. *Treatment Action Campaign*, (10) BCLR at ¶¶ 106-07.

165. *Id.* ¶ 135.

166. INDIA CONST. art. 12-35.

167. *Id.* art. 36-51.

Yet, the Indian Constitution says that the Directive Principles “shall not be enforceable by any court.”¹⁶⁸

Despite this apparent jurisdictional limitation, the Indian Supreme Court, invoking the constitutional guarantee of the “right to life,” has ordered relevant governmental agencies to provide adequate housing for street dwellers in Bombay;¹⁶⁹ to monitor programs to provide food for destitute people in all parts of the country;¹⁷⁰ and to create programs for bonded laborers to educate them in their rights and benefits and to ensure that owners provide safe working conditions for their workers.¹⁷¹

United States: Of interest, too, are some decisions of state courts¹⁷² as well as federal courts¹⁷³ (though those have been far less sweeping)¹⁷⁴ in the United States enforcing economic and social rights found in state constitutions.¹⁷⁵ For example, the New York constitution provides that the legislature must “provide for the maintenance and support of a system of free common schools, wherein all the children . . . may be educated.”¹⁷⁶ In a case brought on behalf of children in New York City, the Court of Appeals held that the judiciary could enforce this guarantee and that the New York constitution required “[s]uch an education consist of the basic literacy, calculating, and verbal skills necessary to enable children to eventually function productively as civic participants.”¹⁷⁷ After a review of the evidence, the court ordered the state legislature to appropriate \$1.93 billion (an amount recommended by a special state task force) to enable the state and city to comply with this constitutional mandate.¹⁷⁸

These kinds of cases have provoked much scholarly comment. Skeptics have noted the obvious difficulties of enforcing at least some of the kinds of orders that the Indian courts have issued; evidence suggests that many of those orders were very broad, and required the expenditure of considerable but uncertain amounts of public funds

168. *Id.* art. 37.

169. *Olga Tellis v. Bombay Mun. Corp.*, 1986 S.C. 180 (India).

170. *Peoples Union for Civil Liberties (PUCL) v. Union of India & Ors.* W.P. (Civil) No. 196 / 2001.

171. *Bandhua Mukti Morcha v. Union of India*, 1984 S.C. 802 (India).

172. Cathy Albisa & Jessica Schultz, *The United States: A Ragged Patchwork*, in *SOC. RTS. JURISPRUDENCE* 230, 240-46 (2008).

173. *Id.* at 234-39.

174. This is largely because the U.S. Supreme Court has not developed the Constitution into an instrument to protect economic and social rights. *Id.* at 239.

175. *Id.* at 239-40.

176. N.Y. CONST. art. XI § 1.

177. *Campaign for Fiscal Equity, Inc. v. New York*, 655 N.E.2d 661, 666 (N.Y. 1995).

178. Albisa & Schultz, *supra* note 172, at 243.

and were, at best, difficult for a court to monitor, let alone enforce.¹⁷⁹ However, scholars have also noted the many positive implications of such judicial interventions as: bringing social issues to legislative attention; creating changes in law and policy; and creating benchmarks for economic and social rights.¹⁸⁰

If the jurisdiction and remedial powers of courts are carefully defined, courts can, to some degree, enforce economic and social rights. Further, there are other means to enforce these rights, which, if established in good faith by governments, can provide an adequate remedy to secure the “progressive realization” of many of these rights. The real problem is not whether a government can take immediate steps to “enforce,” or order the implementation of the ICESCR, but whether it can mobilize the political will to do so.¹⁸¹

V. OBSTACLES TO IMPLEMENTATION OF THE HABITAT RIGHTS

Indeed, the “political will” to enforce these rights seems to be lacking in many countries. There is considerable evidence that indicates little has been done to alleviate conditions of urban poverty; indeed it is growing as populations grow.¹⁸² A combination of factors explains this situation: (1) the legal systems; (2) institutions of governance; and (3) the “political economy of development.”

(1) *Legal Systems*: While most Third World countries have ratified most of the IHRL treaties, it is probable that few governments have addressed the legal implications of that action. The treaties require state parties to reform their domestic legal systems.¹⁸³ In effect, they must create an “environment” of domestic

179. See, e.g., Lavanya Rajamani, *Public Interest Environmental Litigation in India: Exploring Issues of Access, Participation, Equity, Effectiveness and Sustainability*, 19 J. ENVTL. L. 293, 309-14 (2007) (finding the supreme court’s order requiring conversion of the Delhi Transportation Corporation fleet of buses to cleaner-burning compressed natural gas to be the “high cost option” and ineffective given the rise in unregulated private vehicles).

180. Albisa & Schultz, *supra* note 172, at 117-18.

181. CITIES ALLIANCE 2009 REPORT, *supra* note 126, at 24; CITIES ALLIANCE FOR CITIES WITHOUT SLUMS, ACTION PLAN FOR MOVING SLUM: UPGRADING TO SCALE 1 (2009) [hereinafter ACTION PLAN FOR MOVING SLUM].

182. The urban population is expected to grow by three billion by midcentury. CITIES ALLIANCE 2009 REPORT, *supra* note 126, at 3. Slums, where hundreds of millions of people live in squalid, unsafe environments and face many threats to their health and security, are “projected to double in 25 years.” ACTION PLAN FOR MOVING SLUM, *supra* note 181, at 1.

183. One of the clearest examples of this is enshrined in article 2 of the ICCPR, which makes it abundantly clear that legal measures are required. See ICCPR, *supra* note 42, at art. 2. While the ICESCR is not worded as strongly as the ICCPR, it too states that each state party should achieve “the full realization of the rights . . . in the . . . Covenant by all appropriate means, including particularly the adoption of legislative measures.” ICESCR, *supra* note 41, art. 2, ¶ 1.

law and administration that “enables” the promotion and protection of each right guaranteed by each treaty.¹⁸⁴

As the U.N. Declaration on the Right to Development (“DRD”) puts it: development must be a participatory process in which all human rights can be fully realized;¹⁸⁵ and to that end, it is the duty of all states “to eliminate all [civil and political] obstacles to achieve that goal.”¹⁸⁶ This duty to eliminate obstacles is important. For example, the promotion and protection of participation rights, in many countries, will require the “elimination” of broadly worded criminal laws that empower the government to “license” the formation of associations of the poor, and their public assemblies and demonstrations. These laws are often vaguely defined as “sedition” or “libel” of public officials and enforced to protect the “public order.”¹⁸⁷ Second, states must enact legislation to facilitate robust exercise of participation rights, including those of women and workers.¹⁸⁸ This can be done, for example, by promoting: functional human rights education;¹⁸⁹ effective access to relevant government agencies¹⁹⁰ and the courts;¹⁹¹ freedom of speech for the press;¹⁹² and access to information.¹⁹³

184. Legislation alone, as enunciated by the ICESCR, is not enough. What is required is to make the provisions of IHRL conventions “effective in law and in fact. . . . Full conformity of the law with the requirements of the Convention is therefore essential, but taken alone is not enough.” INT’L LABOR ORG. REPORT OF THE COMMISSION APPOINTED UNDER ARTICLE 26 OF THE CONSTITUTION OF THE INTERNATIONAL LABOUR ORGANISATION TO EXAMINE THE COMPLAINT FILED BY THE GOVERNMENT OF GHANA CONCERNING THE OBSERVANCE BY THE GOVERNMENT OF PORTUGAL OF THE ABOLITION OF FORCED LABOUR CONVENTION, 1957 (NO. 105), Vol. XLV, No. 2, ¶ 716, at 230-31 (Supp. II Apr. 1962).

185. Declaration on the Right to Dev., G.A. Res. 41/128, U.N. Doc. A/RES/41/128, at art. 1, ¶ 1 (Dec. 4, 1986).

186. *Id.* at art 6, ¶ 3.

187. For example, though the Constitution of Zimbabwe guarantees freedom of association, it does not “confer on any person a right to exercise his freedom of assembly or association in or on any road, street, lane, path, pavement, side-walk, thoroughfare or similar place which exists for the free passage of persons or vehicles.” CONST. OF ZIM., Sept. 14, 2005, ch. III, §§ 21, 20(6). The government has suppressed pro-democracy groups through this section, as well as through the Public Order and Security Act and the Criminal Law Reform and Codification Act. Otto Saki, *Special Section: Sub-Saharan Africa Country Reports, Zimbabwe*, 12 INT’L J. NOT-FOR-PROFIT L. 89, 90-91 (2010).

188. See, e.g., CITIES ALLIANCE 2009 REPORT, *supra* note 126, at 22.

189. Bertrand G. Ramcharan, *The National Responsibility to Protect Human Rights*, 39 H. K. L. J. 361, 395 (2009).

190. See *Envisioning Empowerment*, *supra* note 19, at 35-36.

191. See *id.*

192. DEEPA NARAYAN ET AL., WORLD BANK, POVERTY GROUP, CAN ANYONE HEAR US?: VOICES FROM 47 COUNTRIES 11 (1999).

193. See *Envisioning Empowerment*, *supra* note 19, at 64.

Another major challenge is the enforcement of legislation not only to eliminate entrenched patterns of discrimination against women, but also to take affirmative action to promote their inclusion in politics and governance at all levels.¹⁹⁴ So, too, states must take immediate steps to realize economic and social rights.¹⁹⁵

(2) *Government Institutions*: There is a large amount of literature on the pathologies afflicting bureaucracies in Third World government. Indeed, three Asian countries—India, Indonesia, and the Philippines—were found to have the worst bureaucracies in that region.¹⁹⁶ Many African governments are also unable to render key services effectively to the poor.¹⁹⁷ A combination of at least some conditions are said to characterize these civil services:

- Top-down leadership coupled with an absence of clear delegations of powers and responsibilities;¹⁹⁸
- Low pay at basic levels¹⁹⁹ and an absence of merit-based criteria for promotions²⁰⁰—conditions that encourage a lack of incentive to adopt new policies;²⁰¹
- Social gaps—sometimes hostilities—between officials and

194. See generally LEE WALDORF, U.N. DEV. FUND FOR WOMEN, *PATHWAY TO GENDER EQUALITY: CEDAW, BEIJING AND THE MDGs* 17, 33 (2004).

195. See, e.g., Comm. on Econ., Soc. and Cultural Rights (“CESCR”), *Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant: Concluding Observations of the Committee on Economic, Social and Cultural Rights: India*, §§ 45, 71, U.N. Doc. E/C.12/IND/CO/5 (Aug. 8, 2008); CESCR, *Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant: Concluding Observations of the Committee on Economic, Social and Cultural: People’s Republic of China (including Hong Kong and Macao)*, §§ 53, 59, 61, U.N. Doc. E/C.12/1/Add.107 (May 13, 2005); CESCR, *Consideration of Reports Submitted by States Parties under Articles 16 and 17 of the Covenant : Concluding Observations of the Committee on Economic, Social and Cultural Rights: Egypt*, § 36, U.N. Doc. E/C.12/1/Add.44 (May 23, 2000).

196. Sreeram Chaulia, *Byzantine Bureaucracy*, FIN. EXPRESS, June 10, 2010, available at <http://www.financialexpress.com/news/byzantine-bureaucracy/631640>; Chris Morris, *India’s Bureaucracy is “the Most Stifling in the World,”* BBC NEWS (June 3, 2010), <http://www.bbc.co.uk/news/10227680>.

197. *Bureaucracy, Inefficiency May Plague African Development*, FORBES (Apr. 4, 2009), <http://www.forbes.com/2009/04/03/africa-cdf-government-business-oxford-analytica.html>.

198. S.R. Maheshwari, *Major Issues and Challenges of Public Administration in the Third World—An Overview*, in ADMINISTRATIVE SYSTEMS OF DEVELOPING SOCIETIES 17, 21 (R.D. Sharma ed., 2000); see CITIES ALLIANCE 2009 REPORT, *supra* note 126, at 10-11.

199. SALVATORE SCHIAVO-CAMPO ET AL., WORLD BANK, *GOVERNMENT EMPLOYMENT AND PAY IN GLOBAL PERSPECTIVE: A SELECTIVE SYNTHESIS OF INTERNATIONAL FACTS, POLICIES AND EXPERIENCE* xi (1997).

200. See R.B. Jain, *Bureaucracies in the Third World*, in ADMINISTRATIVE SYSTEMS OF DEVELOPING SOCIETIES 25, 28-29 (R.D. Sharma ed., 2000).

201. SCHIAVO-CAMPO ET AL., *supra* note 199, at xi.

the poor, who are supposed to be served by these officials;²⁰²

- Entrenched corruption;²⁰³
- Police abuse;²⁰⁴ and
- Lack of effective ombudsmen institutions, or parliamentary investigative or judicial review processes to expose bureaucratic failures and impose accountability on those responsible for them.²⁰⁵

Reforms to address these conditions may be no easy task, especially those requiring governments to confront sensitive political issues.²⁰⁶

(3) *The Political Economy of Development*: Five centuries ago Machiavelli observed:

[N]othing [is] more difficult to carry out . . . than to initiate a new order of things. For the reformer has enemies in all those who profit by the old [existing] order, and only lukewarm defenders in all those who would profit by the new order, this lukewarmness arising partly from fear of their adversaries, who have the laws in their favour; and partly from the incredulity of mankind, who do not truly believe in anything new until they have had the experience of it.²⁰⁷

As a result of globalization and technological changes, the initiation of pro-poor, poverty-alleviation development policies will indeed require establishment of “a new order of things” in many countries. Countries experiencing dynamic growth have witnessed a growth of affluent and middle classes producing both new centers of political power and an increasing gap in the distribution of income between the rich and poor.²⁰⁸

As one development expert has recently written: “Political economy is alive and well among those who seek to explain policy

202. CITIES ALLIANCE 2009 REPORT, *supra* note 126, at 6.

203. INT’L COUNCIL ON HUMAN RIGHTS POLICY & TRANSPARENCY INT’L, CORRUPTION AND HUMAN RIGHTS: MAKING THE CONNECTION 23 (2009).

204. *See supra* text accompanying note 13; *HDR 2002 supra* note 13, at 86-95.

205. *Envisioning Empowerment, supra* note 19, at 35-36; *see HDR 2002, supra* note 13, at 90.

206. *See* CITIES ALLIANCE 2009 REPORT, *supra* note 126, at 24.

207. NICCOLO MACHIAVELLI, THE PRINCE AND THE DISCOURSES 21 (Random House Modern Library ed. 1950).

208. For example, China’s Gini coefficient—an index of inequality where “0” represents complete equality and “1” represents complete inequality—is more than .5 when factoring in hidden income of \$1.5 trillion. Didi Kirsten Tatlow, *Cost of Living Increasingly a Struggle for China’s Poor*, N.Y. TIMES (Dec. 9, 2010), <http://www.nytimes.com/2010/12/10/world/asia/10iht-letter.html>. This means that China’s Gini index is equivalent to that of many South American countries, and rising. *Id.*

decision making in developing and transitional countries. . . . We have extensive evidence about how powerful economic interests develop around policies and the ways in which they resist reductions in the benefits they [now] receive from these [existing] policies.”²⁰⁹

These policies emphasize strategies encouraging private and foreign investment; increasing the export of lower-priced technological services and products; low taxation and cheap labor and government collaboration in the acquisition of increasingly expensive urban land for development of middle-class housing or commerce.²¹⁰

The UNDP Human Development Report 2002 begins: “This report is about politics” and goes on to emphasize the need to mobilize the potential political power of the poor to demand realization of their rights, and to realize “human development.”²¹¹ The report then examines differing systems of Third World countries. In “true democracies” like India, and usually the Philippines, where elections are fair and competitive and the courts are independent, the poor still lack the influence they should have by virtue of their superior numbers.²¹² Even in these “true democracies,” elites, moneyed interests, and sometimes, ethnic groups, dominate political parties.²¹³

“Thin democracies” are dominated by de facto one-party systems, which practice “patron-client” politics²¹⁴ and, increasingly, repress the free exercise of participation rights of opposition groups.²¹⁵ Indeed, an increasing number of countries, notably in Africa, are slipping back towards “autocratic systems” where governments are openly hostile to all human rights discourse.²¹⁶ Of course, these general observations are subject to the obvious caveat that political, economic, and social conditions vary among countries and regions, in terms of, for example, resources, political stability, entrepreneurial

209. Merilee S. Grindle, *In Quest of the Political: The Political Economy of Development Policy Making* 1 (Ctr. for Int'l Dev. at Harvard Univ., Working Paper No. 17, 1999), available at <http://ideas.repec.org/p/wop/cidhav/17.html>.

210. See, e.g., PUBLIC-PRIVATE INFRASTRUCTURE ADVISORY FACILITY & WORLD BANK, PRIVATE SOLUTIONS FOR INFRASTRUCTURE: OPPORTUNITIES FOR THE PHILIPPINES 5 (2000) (finding that, inter alia, privatization, foreign investment, tax policy, labor markets, and loosening export controls are important policy considerations needed for the economic development of the Philippines).

211. *HDR 2002*, *supra* note 13, at 1-9.

212. See *id.* at 65-68.

213. See *id.*

214. Jain, *supra* note 200, at 32.

215. Thomas Carothers, *The End of the Transition Paradigm*, 13 J. DEMOCRACY 1, 11-14 (2002).

216. See *id.* at 12-13.

elites, education, and ethnic inclusivity or diversity.²¹⁷ Some countries are experiencing growth as well as increasing restrictions of human rights, while others are stagnant.²¹⁸

VI. THE FUTURE

Despite the above, there are reasons for hope that in some—perhaps many—countries that greater funds and more energy will be spent to improve conditions of life for the urban poor. In the first place, political stability may, at least in some countries, require changes favoring the poor. As Alejandro Toledo, former President of Peru, recently noted:

Even before the global financial crisis, Latin America was already the world's most inequality-beset region. . . . [V]ast swaths of perfectly licit economic activity take place 'informally,' a circumstance that disrupts what could otherwise be a larger flow of revenue to governments and back again . . . to the governed in the form of public services. . . . In the streets of Latin America, one can hear the sound of 185 million poor and excluded women and men. . . . They are demanding jobs with decent pay, access to potable water and modern sanitation, quality healthcare and education . . . and equal access to justice.²¹⁹

The eight Millennium Development Goals ("MDGs") adopted in 2000 (along with twenty-one supporting targets and sixty benchmarks)²²⁰ are generally thought to create binding obligations on all countries.²²¹ However, it is difficult in many countries to measure progress in achieving the goals due to the absence of sufficient statistics to establish a baseline,²²² such as determining how many new jobs it will take to meet goal number one by cutting in half the number of poor living on less than one dollar per day of income.

Another important problem is the absence of incorporation of human rights into the goals or targets to measure the social change

217. *See id.*

218. *Id.*

219. Alejandro Toledo, *Latin America: Democracy with Development*, 21 J. DEMOCRACY 5, 5, 7 (2010).

220. U.N., THE MILLENNIUM DEVELOPMENT GOALS REPORT 74 (2010) [hereinafter MDG REPORT 2010].

221. 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*, 27 HUM. RTS. Q. 755, 774 (2005) (stating that the eighth goal of the MDG is the least likely to be accepted as a statement of customary international law); Gobind Nankani et al., *Human Rights and Poverty Reduction Strategies: Moving Towards Convergence?*, in HUMAN RIGHTS AND DEVELOPMENT: TOWARDS MUTUAL REINFORCEMENT 475, 478 (Philip Alston & Mary Robinson eds., 2005) (finding the MDGs to be an articulation of positive international law endorsed by 191 countries).

222. MDG REPORT 2010, *supra* note 220, at 74.

that, presumably, achieving the MDG goals will establish. Although the declaration preceding the MDG promised to realize the eight goals,²²³ and asserted a commitment of states to strengthen democracy and human rights,²²⁴ nowhere is this proposition explicitly incorporated into the goals themselves or the targets used to measure their achievement. For example, the target for the MDG to “promote gender equality and empower women” simply promises to “[e]liminate gender disparity in primary and secondary education, preferably by 2005, and in all levels of education no later than 2015;”²²⁵ nowhere does it add the fact that this goal seeks to secure the “human right” of full empowerment of women or seeks full participation by women in setting targets, or even contains anything imposing accountability on the State to recognize the ramifications of this important right.

The U.N. human rights-based approach (“HRBA”) to development was officially established in 2003.²²⁶ The document explaining this approach first asserts that:

1. All programmes of development co-operation, policies and technical assistance should further the realisation of human rights
2. Human rights standards [should] guide all development cooperation and programming in all sectors and in all phases of the programming process.
3. Development cooperation contributes to . . . the capacity of ‘duty-bearers’ to meet their obligations and/or of ‘rights-holders’ to claim their rights.”²²⁷

The U.N. HRBA then spells out elements of rights-based planning, such as: country “assessments” of the existing human rights situation and the present “capacities” of people to assert their rights; “monitoring” progress “guided by human rights standards”; and programs “informed by the recommendations of international human rights bodies.”²²⁸

It should be obvious that while these HRBA goals are laudable, they do not provide much concrete guidance on how to develop and apply HRBA standards to particular countries, notably those

223. U.N. Millennium Declaration, G.A. Res. 55/2, ¶¶ 15, 19-20, 23 U.N. Doc. A/RES/55/2 (Sept. 18, 2000).

224. *Id.* ¶¶ 24-25.

225. MDG REPORT 2010, *supra* note 220, at 20.

226. U.N., *The Human Rights Based Approach to Development Cooperation Towards a Common Understanding Among U.N. Agencies*, at 1 (2003) [hereinafter U.N. *HRBA to Development*].

227. *Id.*

228. *Id.* at 3.

currently lacking human rights policies and hostile to international interference. Thus, it remains to be seen how U.N. agencies can, by further adaptation, apply the HRBA in difficult situations.

The World Bank (“Bank”) participated in the U.N. agency discussions leading to adoption of its 2003 HRBA policies, but did not join in the conclusions. In fact, the Bank’s view of the relationship between “development” and “human rights” is unclear.²²⁹ Its present practice is simply to support the “strengthening of institutions,” but without any reference to the achievement of rights.²³⁰ As a result, some human-rights advocates have strongly criticized the Bank.²³¹ Whether there can be a movement toward convergence of policies between the Bank and its human rights adversaries is uncertain at this point.

The future of IHRM in development is thus a bit uncertain. However, a recent exhaustive research report concludes that IHRM rights have gained traction and are invoked by groups in those countries that adopted the key treaties with awareness of their implications.²³² The situation is far less clear in other countries that ratified the treaties without careful study of their implications. In countries that adhered to the treaties simply to look good, there is no evidence to show how the treaties have influenced domestic policies.

The existence of international human rights rests on moral grounds—the Charter’s and UDHR’s stated belief that all states should assure respect for the dignity of all persons within their territories.²³³ Progress has been slow in reaching an international consensus on the particular rights that should be protected. It was not until the Vienna World Conference of 1993 that sustained agreement was reached on all of the particular duties of states,

229. World Bank institutional thinking on human rights was dominated by the concept that civil and political liberties come from sustained economic growth. Joseph K. Ingram & David Freestone, Editorial, *Human Rights and Development*, DEV. OUTREACH, Oct. 2006, at 3. The World Bank’s actions in political and civil rights were further constrained by a long-held interpretation of its Articles of Agreement. *Id.* The World Bank is now reviewing that interpretation, but as yet, has not adopted an HRBA. *See id.*

230. The World Bank prefers a Poverty Reduction Strategy (“PRS”) with an objective “[t]o achieve the overarching goal of poverty reduction” by “assist[ing] low-income countries in developing and implementing more effective strategies to fight poverty.” WORLD BANK OPERATIONS EVALUATION DEPARTMENT, THE POVERTY REDUCTION STRATEGY INITIATIVE: AN INDEPENDENT EVALUATION OF THE WORLD BANK’S SUPPORT THROUGH 2003 2 (2004).

231. *See generally* Ingram & Freestone, *supra* note 229, at 4 (summarizing some of the scholarly criticisms leveled at the World Bank for not taking an HRBA to poverty reduction and economic growth).

232. BETH A. SIMMONS, MOBILIZING FOR HUMAN RIGHTS: INTERNATIONAL LAW IN DOMESTIC POLITICS 12-17 (2009).

233. U.N. Charter pmb.; UDHR, *supra* note 32, at pmb.

collectively as well as individually, to promote universal human rights as they are set out in the UDHR;²³⁴ not until 2003 did all the U.N. agencies concerned with aiding development reach an agreement on the meaning of a HRBA.²³⁵

China and its admirers, plus a few countries presently mired in autocracy, will not soon be interested in any sort of HRBA; other states may wait and see—or simply pay lip service to the achievement of rights goals. The many remaining countries will probably achieve varying degrees of future success in realizing human rights, development, and sustainable forms of democratic governance. The hope is that over time, habitat rights will be implemented in more and more counties, and that this will ultimately influence most, if not all, of the rest of the Third World.

APPENDIX I

There are several sources of law for the Habitat Right in addition those mentioned in Part II above. These sources are noted here in this Appendix for the readers who wish to further enhance their knowledge of this subject.

The Two Optional Protocols to the Two Covenants: The Optional Protocols to the Two Covenants establish new means of enforcing them—that is, the power of the relevant treaty monitoring committee to determine claimed rights of individuals where there are no means of doing so in the national law of the alleged offending state.²³⁶ The protocol to the ICESCR is of recent origin. Although the Vienna Conference of 1993 recommended its establishment,²³⁷ the General Assembly did not adopt a draft resolution opening a protocol for adoption until December 2008.²³⁸ As of September 2010, thirty-five

234. See generally Vienna Declaration, *supra* note 37.

235. UN *HRBA to Development*, *supra* note 226, at 1.

236. Both the ICCPR and the ICESCR have optional protocols. The ICCPR has two optional protocols with the first optional protocol establishing an individual complaint mechanism for violations of the protocol. Optional Protocol to the International Covenant on Civil and Political Rights, March 23, 1976, 999 U.N.T.S. 302. The second optional protocol to the ICCPR in turn abolishes the death penalty. Second Optional Protocol to the International Covenant on Civil and Political Rights, adopted Dec. 15, 1989, 1642 U.N.T.S. 414. The ICESCR has one optional protocol that allows the Committee on Economic Social and Cultural Rights, the body that monitors implementation of the ICESCR by its state parties, to consider complaints made by individuals against their states. Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, G.A. Res. 63/117, U.N. Doc. A/RES/63/117 (Dec. 10, 2008); see also Press Release, New Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and 'Rotterdam Rules,' U.N. Doc. L/T/4418 (Sept. 30, 2009), <http://www.un.org/News/Press/docs/2009/Lt4418.doc.htm>.

237. World Conference on Human Rights, June 14-25, 1993 Vienna Declaration and Programme of Action, ¶ 75, U.N. Doc A/CONF. 157/23 (adopted June 25, 1993).

238. G.A. Res. 63/117, U.N. Doc. A/RES/63/117 (Dec. 10, 2008).

states have signed it and three states have ratified it.²³⁹

The Other Four IHRL Treaties: The Convention on the Elimination of All Forms of Racial Discrimination (“CERD”),²⁴⁰ the Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”),²⁴¹ the Convention on the Rights of the Child (“CRC”),²⁴² and the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”)²⁴³ are said to be based on the UDHR and have been ratified by very considerable majorities of U.N. member states.²⁴⁴

The Regional Human Rights Treaties: The European²⁴⁵ and American²⁴⁶ Conventions on Human Rights clearly incorporate all of the habitat rights discussed in Part III below (and others as well), and they establish tribunals to enforce them. The African Charter also appears to incorporate all habitat rights and also adds some new ones of relevance, such as the U.N. GA Declaration on the “[Human] Right to Development.”²⁴⁷ It also establishes a rather ponderous process, similar to the optional protocols, enabling individuals and

239. Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, United Nations Treaty Collection, Dec. 10, 2008, *available at* http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3-a&chapter=4&lang=en.

240. CERD, *supra* note 76.

241. CEDAW, *supra* note 86.

242. CRC, *supra* note 82.

243. U.N. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 113 [hereinafter CAT].

244. As of April 1, 2011, the number of signatories and parties for each treaty are, CERD – 85 signatories and 174 parties, CEDAW – 98 signatories and 186 parties, CRC – 140 signatories and 193 parties, and CAT - 77 signatories and 147 parties. International Convention on the Elimination of All Forms of Racial Discrimination, entry into force Jan. 4, 1969, 660 U.N.T.S. 195, *available at* http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&lang=en; Convention on the Elimination of All Forms of Discrimination against Women, entry into force Sep. 3, 1981, 1249 U.N.T.S. 13, *available at* http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en; Convention on the Rights of the Child, entry into force Sep. 2, 1990, 1577 U.N.T.S. 3, *available at* http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, entry into force June 26, 1987, 1465 U.N.T.S. 85, *available at* http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&lang=en.

245. Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 221.

246. American Convention on Human Rights: “Pact of San José, Costa Rica” art. 22, Nov. 22, 1969, 1144 U.N.T.S. 123.

247. African (Banjul) Charter on Human and Peoples’ Rights art. 22, June 27, 1981, 1520 U.N.T.S. 217, 250.

groups to seek redress for violations of the rights it proclaims.²⁴⁸

Thus, these three treaties reinforce the authority of the Habitat Right in different regions of the world, but here our focus will be on the Habitat Right as it is established by IHRL as opposed to regional law.

Resolutions and Declarations of the U.N. General Assembly: While these instruments, sometimes called “soft law,”²⁴⁹ do not constitute binding international law, the U.N. Charter provides that the GA should play an important role in “encouraging the progressive development of international law” and in the realization of “human rights and fundamental freedoms.”²⁵⁰ The GA has carried out this mandate by adopting numerous human rights instruments and creating other U.N. organs (noted below) to promote respect for universal rights. Some GA instruments—notably those labeled “Declarations” to emphasize their importance—were only adopted after a long process of drafting and deliberation before adoption. Thus, they are deemed to reflect the considered judgment of the international community, and this is particularly so when the authority of the instrument has often been reaffirmed in subsequent GA (and other international) instruments.²⁵¹

Instruments of the “Treaty Monitoring Committees”: Each of the covenants and the U.N. conventions established an international committee²⁵² empowered to issue “General Comments” (“GCs”) to spell out specific steps that state parties must take to enforce each of the particular rights guaranteed by the treaties.²⁵³ These treaties also require state parties to submit (to the relevant committee) periodic reports that recite the specific steps undertaken to implement the rights protected by the treaty.²⁵⁴

These “Treaty Monitoring” committees are supposed to be composed of “independent experts” (rather than political appointees) chosen collectively from a slate of nominees with one nominee for the slate being proposed by each state party.²⁵⁵ To a surprising extent

248. *See id.* at arts. 47-59.

249. Some scholars have challenged the notion of “soft law,” stating that “[i]f a rule meets the criteria for law, then it should be called ‘law.’ If, however, the rule is not binding—as soft law has been described to be—then it should not have law anywhere in its name.” ANTHONY CLARK AREND, *LEGAL RULES AND INTERNATIONAL SOCIETY* 25 (1999).

250. U.N. Charter art. 13, paras. (a)-(b).

251. LORI FISLER DAMROSCH ET AL., *INTERNATIONAL LAW: CASES AND MATERIALS* 266 (5th ed. 2009).

252. *See, e.g.*, ICCPR, *supra* note 42, at art. 28.

253. *See* O’Flaherty, *supra* note 55, at 30.

254. *See, e.g.*, ICCPR, *supra* note 42, at art. 40.

255. For example, the ICCPR requires each state party to nominate up to two

this mandate (calling for a committee composed of independent experts) has been respected, and the GCs of each committee have, with few exceptions, been unanimously adopted after public hearings in which NGOs, “Specialized Agencies of the UN” (such as the UNDP, WHO, and UNICEF), as well as state parties have participated.²⁵⁶ Thus, they have been cited as authoritative while not binding.²⁵⁷

Of particular interest to this Article are the GCs issued by the CESCR, the committee that monitors the implementation of ICESCR.²⁵⁸ CESCR elaborates the content of each right established by that covenant.²⁵⁹ CESCR’s critiques of state party reports reflect its increasing impatience with the failure of many governments to take serious steps to promote realization of duties set out by that covenant.²⁶⁰ While very important contributions, the GCs and its critiques of state reports do not constitute binding law; but, with few exceptions, state parties have never raised objections to them.²⁶¹

people of “high moral character” who are prominent in the field of human rights. *Id.* at arts. 28-29.

256. *See* O’Flaherty, *supra* note 55, at 31-32.

257. *See id.* at 35.

258. The text of ICESCR assigns the responsibility to oversee its implementation to the Economic and Social Council (“ECOSOC”). ICESCR, *supra* note 41, at arts. 16-22. However, in 1985, ECOSOC created and then delegated to CESCR its powers to ensure states’ compliance with the requirements of ICESCR. Review of the Composition, Organization and Administrative Arrangements of the Sessional Working Group of Governmental Experts on the Implementation of the International Covenant on Economic, Social and Cultural Rights, U.N. ECOSOC Res. 1985/17 (May 28, 1985).

259. CESCR adopted GCs “with a view to assisting the States parties in fulfilling their reporting obligations.” U.N. ECOSOC, Rep. on the Twentieth and Twenty-First Sessions, Spp. No. 2, ¶ 49, U.N. Doc. E/C.12/1999/11 (Jan. 1, 2000).

260. For example, CESCR noted its frustration at the progress on the right to housing when it said that “[d]espite the fact that the international community has frequently reaffirmed the importance of full respect for the right to adequate housing, there remains a disturbingly large gap between the standards set in article 11 (1) of the Covenant and the situation prevailing in many parts of the world.” CESCR, GC 4, *supra* note 118, ¶ 4.

261. The most notable objection was that raised to the Human Rights Committee’s (“HRC”) General Comment Number 24, which states that the HRC had the power to review the validity of reservations to the ICCPR and to sever reservations it found contrary to the object and purpose of the Covenant. Human Rights Comm., 52nd Sess., General Comment 24: Issues Relating to Reservations Made upon Ratification or Accession to the Covenant or the Optional Protocols thereto, or in Relation to Declarations under Article 41 of the Covenant, ¶ 8, U.N. Doc. CCPR/C/21/Rev.1/Add.6 (Nov. 4, 1994). The United States Senate, through the Foreign Relations Authorization Act for 1996 and 1997, attempted to stop funding the United States’ obligations under the ICCPR, unless the GC 24 was revoked. Elena A. Baylis, *General Comment 24: Confronting the Problem of Reservations to Human Rights Treaties*, 17 BERKELEY J. INT’L L. 277, 318 (1999). Although passed by Congress, President Clinton vetoed the

The Economic and Social Council ("ECOSOC"): This organ of the U.N. was created by the Charter²⁶² and is composed of fifty-four representatives of U.N. member states elected by the GA.²⁶³ ECOSOC is empowered, inter alia, to make "recommendations" regarding human rights issues,²⁶⁴ "propose draft [human rights] conventions" to the GA,²⁶⁵ call for international conferences [e.g. on human rights and "development" subjects], and "set up commissions . . . for the promotion of human rights."²⁶⁶ In 1946, ECOSOC established the U.N. Commission (now Council on Human Rights),²⁶⁷ which was first chaired by Eleanor Roosevelt in 1948, when it drew up the UDHR.²⁶⁸

Thematic Reports: The Council on Human Rights has, in recent decades, commissioned rapporteurs to create reports that focus on the progress made and obstacles confronting the implementation of various ICESCR rights. The rapporteurs chosen are recognized scholars, and their reports are often impressive. Examples of thematic reports particularly relevant here are those concerned with rights to education, violence against women, and housing.²⁶⁹

bill, and the House was unable to override the veto. *Id.* at 318-19. Nonetheless, the United States, France, and the United Kingdom lodged official objections to the General Comment. See HRC, Observations by the United Kingdom on General Comment No. 24, Annex No. VI(B), U.N. Doc. A/50/40 (Oct. 3, 1995); HRC, Observations by the United States of America on General Comment No. 24, Annex No. VI(A), U.N. Doc. A/50/40 (Oct. 3, 1995); HRC, Observations by France on General Comment No. 24 on Reservations to the ICCPR, Annex No. VI, U.N. Doc. A/51/40 (Apr. 13, 1997).

262. U.N. Charter art. 7, para. 4.

263. *Id.* art. 61.

264. *Id.* art. 62, para. 2.

265. *Id.* art. 62, para. 3.

266. *Id.* art. 68.

267. ECOSOC Res. 5(1), ¶5, U.N. Doc. E/20 (Feb. 15, 1946), available at <http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/041/47/IMG/NR004147.pdf?OpenElement>.

268. Natasha Fain, *Human Rights within in the United States: The Erosion of Confidence*, 21 BERKELEY J. INT'L L. 607, 608 (2003).

269. See, e.g., Special Rapporteur on Promoting the Realization of the Right to Adequate Housing, *The Right to Adequate Housing: Progress Report Submitted by Mr. Rajindar Sachar, Special Rapporteur Appointed Pursuant to Resolution 1992/26 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities and Decision 1993/103 of the Commission on Human Rights*, U.N. Doc. E/CN.4/Sub.2/1993/15 (June 22, 1993) (prepared by Mr. Rajindar Sachar); Special Rapporteur on Violence Against Women, *Further Promotion and Encouragement of Human Rights and Fundamental Freedoms, Including the Question of the Programme and Methods of Work of the Commission Alternative Approaches and Ways and Means within the United Nations System for Improving the Effective Enjoyment of Human Rights and Fundamental Freedoms: Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, Submitted in Accordance with Commission on Human Rights Resolution 1995/85*, U.N. Doc.

The Office of High Commissioner of Human Rights (“OCHR”): The U.N. GA created this position in 1993 in response to the recommendation adopted by the 1993 Vienna Conference on Human Rights.²⁷⁰ Most tasks assigned to the Commissioner were stated in extraordinarily vague terms,²⁷¹ and scholars have disagreed on whether the OCHR should play an “activist” role in denouncing patent abuses of human rights in particular countries,²⁷² or a less visible “diplomatic” role by entering into “dialogues” with offending governments.²⁷³ The OCHR is also empowered to issue “educational”²⁷⁴ and “technical”²⁷⁵ materials on human rights subjects, and as indicated, a number of these²⁷⁶ are valuable contributions, which spell out “steps” state parties should take to achieve these rights. Another important role of the OCHR is to press U.N. Specialized Agencies and other IDAs—notably the World Bank—to adopt a common “Human Rights Based Approach” (“HRBA”)²⁷⁷ to “development.”²⁷⁸

E/CN.4/1996/53 (Feb. 5, 1996) (prepared by Ms. Radhika Coomaraswamy); ECOSOC, Comm'n on Human Rights, Girls' Right to Education, Report Submitted by the Special Rapporteur on the Right to Education, U.N. Doc. E/CN.4/2006/45 (Feb. 8, 2006) (prepared by Mr. V. Muñoz Villalobos).

270. Posner, *supra* note 56, at 318.

271. See High Commissioner for the Promotion and Protection of all Human Rights, G.A. Res. 48/141, ¶ 4, U.N. Doc. A/RES/48/141 (Dec. 20, 1994) [hereinafter OCHR Resolution].

272. BERTRAN G. RAMCHARAN, THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS: THE CHALLENGES OF INTERNATIONAL PROTECTION 217 (2002) (arguing for the High Commissioner to directly protect human rights by making public statements and engaging in fact finding activities).

273. ROGER STENSON CLARK, A UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS 158 (1972) (arguing for the High Commissioner taking a quiet approach to enforcing Human rights treaties).

274. OCHR Resolution, *supra* note 271, ¶ 4(e).

275. *Id.* ¶ 4(d).

276. See, e.g., Office of the High Comm'r for Human Rights, Fact Sheet No. 21 (Rev. 1) The Human Right to Adequate Housing (2009).

277. See discussion *infra* Part VI.

278. See OCHR Resolution, *supra* note 271, ¶ 4(f).