

URBAN MANAGEMENT SERIES FOR SOUTHERN SUDAN

**Tools for Strengthening Leadership and
Governance**

Volume 6:

**Enhancing Training in
Land, Housing and Town Planning**



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Urban Management Series for Southern Sudan

Tools for Strengthening Leadership and Governance

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Joan Clos
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PREFACE

Welcome to the Urban Management Series for Southern Sudan. The Series is intended to give direction and guidance on a wide range of urban management topics, but without saying exactly what to do – so it is not a manual. It aims to point Urban Managers in the right direction, by describing the factors and issues that need to be considered, and suggesting possible solutions in line with basic principles.

In this manner it provides a consistent background for all Urban Managers to approach their work. But it is fundamental that each reader decides what initiatives and actions are appropriate given the local circumstances and conditions, rather than just following a set formula.

How to use the Series

This is not a document that needs to be read from start to finish – it is to be used like a reference book or encyclopaedia. It is fine to dip into it to read sections that are of interest. As the reader becomes more familiar with the structure and content, s/he will discover new topics of interest. And as topics arise in work, s/he can search out the relevant sections, and discover new areas of interest.

It is a document that is to be kept close at hand, on the desk or an open shelf in the office – not locked away in a drawer or cupboard. Copies should also be distributed widely among professional and technical staff, and not restricted only to senior staff.

Regular Updating

These volumes have been prepared in 2011 – but the situation in Southern Sudan is constantly changing. It follows that they will need to be reviewed regularly, and updated to reflect actual current urban management priorities as well as changing political, institutional and social circumstances.

Overview of the Urban Management Series

This volume is one of a three-volume series produced by UNHABITAT for use by urban managers in Southern Sudan.

Current titles of this series, at the time of publication, include:

Volume 1: Urban Management Guidelines

Volume 2: Leadership for Urban Management

Volume 3: Enhancing Training in Land, Housing and Town Planning

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Chapter 3: Town Planning

Training in Town Planning and Strategic Management in Southern Sudan.

Background issues to ToT Training.

- Accelerated pace of urbanization in Southern Sudan.
- Towns and cities increasingly recognized as engines of economic growth and opportunity
- The GoSS seeks to improve Governance and Quality of life (improved livelihoods) through Decentralization.
- Decentralization policies seek to empower state level and Local Government
- States and Local Governments to manage growth and development of urbanizing centres across the region
- GoSS goal is to build the capacity of local leaders and stakeholders
- Drafting of the South Sudan Local Government Act
- Establishment of state planning and development committees
- Increasing urbanization
- Growing population of Returnees, Refugees, IDPs
- Gaps in urban design and Development Control
- Strategic Planning/Development

UN-Habitat's Support to Urban Planning in Southern Sudan.

- **To ensure:**
 - Sustainable Urbanization
 - Improve Urban Governance
 - Reduce Urban Poverty and promote inclusion
- Promotes Urban Planning/Design to reconcile and integrate spatial, social, economic, cultural and environmental concerns in cities (City Development Strategies)
- Promote planning as a powerful tool

Key Issues

- Partnerships between civil society and sub-national governments – underway on pilot basis
- Establishment of local government development funds
- Provision of Technical Assistance to States and Countries

to resolve conflicts at various levels (Allocative function of planning is fraught with pitfalls and:

- Helps balance competing interests
- Helps the poor to determine their own needs
- Empower people
- Reinforce local democracy
- Provide for a more dynamic local economy
- To promote participatory engagement, strategic thinking, vision building and territorial coordination
- Planning contributes to the good coordination of initiatives from public and private sectors (Strategic Territorial Development)
- Social inclusion and slum prevention through upgrading and prevention of slums as core attributes of quality planning (Responsive Planning)
- Planning critical in Post-disaster, Post-conflict contexts as a tool of reconstruction of both the Physical, Economic and Cultural aspects of S.Sudan

Objectives of Training In Urban Planning

Overall Objective

- To strengthen the skills and knowledge of GOSS officials in Urban
- Management (Town Planning and

Strategic Management in particular)

- To build and strengthen a pool of trainers in 10 states of S.Sudan
- To train Local Government leaders and officials in Urban Management

Specific Objective: Key areas in Town planning

- Development planning
- Zoning
- Development control
- Strategic planning

Specific Objective: Key areas in strategic Management

- To deepen understanding of state specific urban concerns/challenges in Town Planning and Strategic Management
- To develop strategies for addressing state specific urban development issues including:
 - Different methods of identifying needs
 - Developing and enforcing appropriate standards for planning
 - Assessing financial resources
 - Marketing requirements

Definition of Planning

- The general activity of making an orderly sequence of action intended to lead to the achievement of a stated goal/s.

Its main techniques include:

- Written statements
- Statistical projections
- Mathematical representations
- Relationship diagrams
- Physical blueprints of objects

Town (Urban) Planning

- Refers to planning with a SPATIAL (geographic) component (PLAN)
- Objective is to provide a spatial structure of activities (Land uses). A more desirable state of affairs than having none at all

Also known as Physical Planning or Spatial planning

- Town planning is a special case of general planning that includes plan making/representation (map)
- Physical development is the final output of this process
- Planning is concerned with:
 - Spatial Impact of many different kinds of problems
 - Spatial Coordination

The Purpose of Plan Making

- A plan consists of a policy statement in the form of text. Maps and graphics used to guide public and private actions that affect the future
- A plan provides INFORMATION on which decisions (participatory)

can be made (informed decisions) affecting the long-range social, economic and physical growth of a town/city/community

Plans may be used in the following contexts:

- i. To identify housing needs and recommend a programme to meet these needs
- ii. To identify transportation needs and propose alternative systems and modes to meet them
- iii. To identify open space preservation areas and provide mechanisms to protect these areas permanently
- iv. To identify priority investment areas and recommend programmes to stimulate growth
- v. To identify strategies for a specific area-such as downtown urban renewal, slum upgrading, etc

Some Specific functions of Plans

- Provide residents with a broad overview of development trends and opportunities in their state, city, town or neighbourhood
- Forms the basis for enacting local government regulations such as zoning, subdivision, environmental management, development control, etc

Serves as the basis for making budget allocations for capital investments such as

parks, street lighting, road works, etc
Provide the basis for a whole range of public programmes relating to:

- Growth management/urban development
- Historic preservation
- Economic development
- Transportation systems
- Open space
- Housing development
- Land administration

Plan Legitimacy (Legal Framework)

Plans may be required by law in most jurisdictions.

What is the Sudanese legal framework? (Participants should attempt a discussion of the Southern Sudanese legal and policy frameworks as an exercise.....)

Types/Typology of Plans

There are many ways to design durable and satisfying cities/towns/neighbourhoods/regions. Different plans may be used/made depending on the objectives, subject and scale;

Here below are types of plans that may be used:

- Comprehensive plans – integrates physical, social and economic aspects
- Urban design plans
- Regional plans
- Neighbourhood plans

- Transportation plans
- Housing plans
- Economic development plans
- Parks and open space plans
- Special purpose plans
- Advisory plans
- Strategic plans

Objectives Of Planning (What does it seek to achieve?)

- The objectives are both simple and complex
- Economic growth
- Fair distribution of income
- Social cohesion
- Reduction of psychological stress
Social cohesion and stability
- Aesthetics/beautiful environment
- The control of human processes- this requires that we work with laws
- Multi-dimensional/Multi-objective
- Reconciliation of competing land use and needs

Determinants of Planning

Factors influencing

- Not a mundane land use allocation
- Political visions and values
- Economic development
- Sustainable Environment
- Cultural Considerations

Land use planning

- Mainstay of town planning
- Core in urban planning practice
- Key to guiding urban development
- A Land use is an expression of a community's intention as to the pattern off use of land in future

Physical planning and urban design

- Land-use planning
- Real Estate development
- Public infrastructure
- Environmental planning
- Urban transportation planning
- Housing
- Historic preservation
- Technology planning

Planning Issues – Sudan

- Poverty reduction
- Rising crime and insecurity
- Environmental Degradation
- Spatial segregation
- Functional urban entities for the Poor and the Rich alike

Context of Town Planning and Strategic Development in S. Sudan

Proper urban planning is key to:

- Bridging the divide between the rich

and poor

- Ensuring sustainability of cities
- Review of contemporary Sudanese planning approaches and standards
- Checklist

Participants to identify:

- Planning issues in S.Sudan
- Strategic Development issues in S.Sudan

Central Place of Town Planning/ Strategic Management in Urban Development

- Justifying town planning as a critical ingredient in urban development and management

Why Plan?

- To provide an overall framework for efficient/sustainable use of scarce resources
- To improve governance
- Framework for delivery of basic service delivery systems
- To allow for local level Action Planning and Budgeting
- To promote and facilitate prudent urban management in S.Sudan
- To provide a framework for sustainable urbanization in SS at all levels particularly in towns (Local Government)
- Planning as tool for efficient/

effective land management (Land Use Planning)

- Environment management
- Infrastructure development and investment
- Housing development

Context and Key Planning Issues

Situation Analysis

- Describe the situation in Sudan; the Political, Economic, Social, Environmental
- Background Climate, Geography, Population, Urbanization, etc

Key Planning Issues

- Planning for urban renewal
- Settlement upgrading/ slums formation (Returnees)
- Planning to accommodate returnees
- Planning for infrastructure investments
- Planning new towns
- Development control – new slums, etc
- Low capacity for planning in GOSS and Local Government

Participatory Situational Analysis

- (Participants, with guidance from the planning expert to complete the Situational Analysis, with contribution from their own specific regions. National level officials

expected to help the workshop appreciate the challenges at that level).

What are the key weaknesses in the management of planning in S. Sudan?

- Inadequate professional capacity
- Inadequate technical capacity
- Inadequacy in appropriate skills
- Inadequate ground coverage by planning services
- (Participants to list what specific areas they consider need strengthening within their states, countries and towns in Town Planning)

Typical Training needs of a town planning Department

- Development control
- Strategic planning
- Geographic Information Systems (GIS)
- Records management
- Squatter settlement upgrading
- Ethics and leadership
- Urban management/Urban Governance
- Report writing
- Traditional Drafting Skills

Participatory Planning

- The concept – Universal
- Rationale for it – Universal
- Advantages of it – Universal

- Examples
- Participatory SWOT of concept
- Acknowledgement of the various stakeholders in Town Planning
- The Sudanese context in S.Sudan

Participation And Partnerships

- Recognition of current partnership initiatives in S.Sudan
- Factors contributing to increased participation of partners in initiatives taking place in S.Sudan are:
 - i. The drafting of the S.Sudan Local Government Act
 - ii. Establishment of state planning and development committees overseeing formulation of 78 annual plans in 78 countries
 - iii. The establishment of local government funds

Pilot partnerships between civil society and sub-national governments underway

Types Of Participation

- Passive participation: people are told by professionals and administrators what to expect from a project/plan
- Participation in Information Giving: Questionnaires, extractive researches, answering questions-people have no opportunity to influence proceedings, design, etc
- Participation by Consultation: people

are consulted, experts listen to them. Professional designs/solutions are modified by beneficiaries

- Participation for material incentives, work for food e.g cash. Very common in African contexts. No interest beyond the incentives
- Functional participation: Participation through groups to achieve a particular objective
- Interactive Participation: Joint analysis, action planning, focus group discussions, etc
- Self Mobilization: People take the initiative without undue influence from external sources. Participation seen as a right and people retain control of initiative
- Participation as a means versus participation as an end- facilitative vehicle for mobilization of resources, inclusive
- Participatory Development (superficial, top-down power relations) versus Participation in Development (genuine, bottom up power relations)

Participation in Planning/ Strategic Development

Role of Participation - Participation defined

A voluntary contribution by people in public programmes designed to promote development

- It includes people in decision making

- It involves people in the implementation programmes
- It includes people in sharing benefits of development programmes
- Role of Participation - Participation defined
- Offers opportunity for people to pool their efforts and resources to achieve their objectives
- It essentially has to do with political and economic relationships
- It allows them to identify needs, share in design, implement and evaluate their own participation

Advantages Of Participation

Now universally accepted as a key attribute of any people centred initiative/development. The major advantages are:

- **Efficiency:** effective use of available resources
- **Effectiveness:** peoples participation increases the effectiveness of the project as it allows them to contribute to its responsiveness to their needs
- **Self Reliance:** helps avert dependency by encouraging self reliance and pride of place in the process. It is a huge pitfall in most counties of the developing world and governments are overwhelmed
- **Coverage:** participation helps uplift weaker/neglected areas of society. Participation ensures equity in resource allocation with the poor getting opportunities to negotiate projects/development, etc to them

comers

- **Sustainability:** especially where donor funding is involved, participation in project ensures continued sustainability

Arguments Against Participation

- It often leads to delayed start, slow progress in projects
- Participation may increase costs of delivery initiatives due to the high numbers involved
- Participation can be amorphous and easily loose direction
- It increases the level of expectations in the community and this might itself be unrealistic
- It is an empowering activity and may not be regarded favourably by authorities

Obstacles to Peoples' Participation

The socio-economic basis/ context of participation-Some key factors:

- Structural obstacles: The elements of the political system that do not by design allow for participation. These are centralized political systems and are not people oriented, typified by Top-down approaches (mainly through amorphous programming-packaging)
- Administrative obstacles: control oriented guidelines, rules and blue-prints, little opportunity for beneficiary input – fait accompli

- Social obstacles: Social conditions and attitudes, low self esteem, dependency mentality, subservient cultural traits, domination by the local elite, gender inequality, poverty.

A Review (Participatory) Of The Sudanese Local Planning Context

- Current policy frameworks
- Legal framework
- Attributes of the planning practice
- Establishment of gaps/bottlenecks in the system through participant exercises, etc

Urban Design (Civic Design)

- It is a discipline between Architecture and Planning
- It gives 3 dimensions to physical form and policies described in the comprehensive plan
- Its form is designing in the public domain, created by public spaces and the buildings that define them
- Looks at space holistically and coordinates overall design bringing together a whole range of disciplines
- Compared with comprehensive plans, urban design has a short term and site specific approach

There are many ways to design durable and satisfying cities/ towns/ neighbourhoods/regions.

Different plans may be used/made depending on the objectives, subject and

scale; here below are types of plans that may be used:

Types of plans that may be used:

- Comprehensive plans – integrates physical, social and economic aspects
- Urban design plans
- Regional plans
- Neighbourhood plans
- Transportation plans
- Housing plans
- Economic development plans
- Parks and open space plans
- Special purpose plans
- Advisory plans
- Strategic plans

Appropriate Areas for Urban Design

- Down Towns(CBDs)
- Water fronts
- Campuses
- Neighbourhoods
- Corridors (long streets)
- Mixed use developments
- Special districts

Key issues to consider in Urban Design.

- Existing development, proposed development, open space, streets framework, open space frameworks, etc

- 2) Environmental frameworks
- 3) Urban design plans require interdisciplinary collaboration:
 - Urban designers
 - Architects
 - Landscape architects
 - Planners
 - Civil and environmental engineers

Key Elements of Urban Design Plan

- 1) The plan itself
- 2) Design guidelines for buildings (New and Remodelled)
- 3) Design of the public realm comprising of:
 - The open space
 - The streets
 - The side walks
- 4) The plazas between and around buildings (public is interested in massing, placement, sun-shadow and wind, etc)

Reasons/Justification for Urban Design Plan

- a) The design plan must respond to circumstances (goals of sponsors, political/social climate, financial and market realities, etc). Urban design undertaken to attract investment, coordinate discordant interests – in what is essentially a public interest project
- b) It involves mobilization of support from property owners, etc

- c) It involves some aspects of strategic planning
 - Visioning
 - Implementation plan (matrix) complete with assignment of actors for specific outputs
 - It defines both short and long term objectives
- d) Creates good locations – turning around compromised locations by adding value to sites with projects
- e) Marketing sites/areas – works to transform the area and create a new image for a blighted place, improves attraction
- f) Urban design plans often tie the products of disputes; A compromise of sorts for proposed new development of controversial sites; tool for uniting the diverse and conflicting interests of groups, communities

Development Control

- a) This is the evaluation and vetting of development applications to ensure compliance with the development plans, policies and programmes of Local Authorities
- b) Development means the making of any material changes in the use or density of any building or land or subdivision. It also relates to the erection of buildings or works and related building operations
- c) Development plan: is a framework prepared to guide socioeconomic and infrastructural development

activities in either urban or rural areas.

Rationale for Development Control

- To control the use and development of land and buildings in the interest of proper and orderly development of its area
- To control/prohibit the sub-division of land or existing plots into smaller areas in the interest of order and economy
- To consider and approve all development applications and grant all development permission
- To ensure the proper execution and implementation of approved development plans (see plan typology)
- To formulate by-laws to regulate zoning in respect of use and density of development
- To reserve and maintain all the land planned for open spaces, parks, urban forests and green belts as per approved development plans

Development Control Standards

Detailed to Cover:

- Density
- Coverage
- Retail development
- Shop facades
- Plot ratio

- Town centre commercial development
- Industrial/warehousing development
- Waterfront development
- Non-residential development
- Residential development
- Road widths
- Building heights
- Parking requirements
- Advertising
- Car parking layout
- Access for people with disabilities
- Cycle facilities
- Septic tanks
- Utilities and provision of services

Fiscal Planning And Budgeting

- Urban management decisions including planning are greatly determined by politics and finance
- Planners need to understand the political and financial contexts in which they work

Some key questions for participants.

Some key Questions:

- What are the prevailing urban economic and Fiscal conditions– Local Government, Central, State in Southern Sudan?.
- Need to integrate the planning

and finance functions in urban government (Local budgeting, Integrated Urban Development Plans)

- New directions with strategic planning? Strategic Development?
- Plans to provide the basis for allocating budgets to finance capital investments in terms of utilities, infrastructure, street, etc

Exercises For Participants

Areas of participants' Involvement (Exercises)

- Identifying Training Needs for strengthening town planning in S.Sudan at all planning levels
- Identifying the current existing levels/hierarchy of Town Planning in S.Sudan
- SWOT analysis of the existing situation with a view to improving it in the context of decentralization – Institutions, Staff, Equipment, etc
- Identifying all the planning initiatives currently underway in S.Sudan
- Identifying all the partnerships involved in Town Planning and Urban Management in S.Sudan and attempt to provide a framework to coordinate their activities
- Identify the policy and legal framework for town planning and urban management in S.Sudan at National, State and Local Government

level.

- Examine critically if this framework is appropriate in the context of Decentralization, rapid Urbanization, Urgent Needs of Returnees, IDPs and Refugees. Discuss its appropriateness in promoting culturally sensitive planning that promotes the economic development of Southern Cities and provides huge prospects for employment, etc
- Assess the current planning types in S.Sudan and suggest their SWOT and way forward in the context of emerging scenarios that have been discussed
- What would be the impact of urban design in improving the quality of life/cityscape in S.Sudan urban areas, cities, towns?
- What are the existing development control standards employed in S.Sudan?
- What is the legal framework provided for these to be effective?
- Are these regulations appropriate to the needs of local people culturally, IDPs, returnees and Refugees?



Chapter 4: Managing Urban Housing

Housing Indigenous Peoples in cities

The lack of recognition of the right of self-determination and the large-scale dispossession and degradation of their lands, resources and territories has had a devastating effect on indigenous peoples' livelihoods, cultures and overall socio-economic conditions. Widespread poverty and destitution flowing from this has had a significant impact on their housing. Indigenous peoples often lack security of tenure and live constantly with the threat of forced eviction from their homes and/or lands. In some countries, indigenous peoples are often found in over-crowded houses that are in poor condition and that often have neither schools nor hospitals nearby. Indigenous women and men face discrimination in most aspects of housing. Housing and development policies and programmes either discriminate against indigenous peoples directly or have discriminatory effects. The loss of traditional lands and housing contributes to the increased migration of indigenous peoples to urban centres where barriers to adequate housing (such as unemployment/poverty, discrimination, and lack of affordable and adequate housing) are particularly acute.

Indigenous women in particular often bear the brunt of these inadequate conditions. At the same time, they experience gender-specific problems, such as domestic violence, together with discrimination

and inequality as a result of institutional and cultural factors. These often curtail or prohibit women's access to, control over and the right to inherit land, property and housing. Indigenous peoples with disabilities, youth and children, elders and sexual minorities also experience greater adverse conditions in housing. These inadequate and discriminatory conditions prevail even in those countries where domestic laws and mechanisms are supposed to promote equality and protect against discrimination in housing and/or legislation recognizing land title rights for indigenous peoples. In many instances, States have also ratified international conventions or treaties that secure the housing and land rights of indigenous peoples, but these international legal obligations often appear to fall by the wayside in the face of international trade agreements and development interests.

In some countries and cities, though, indigenous communities, as well as national and local governments, public and private institutions are taking initiatives to improve the housing conditions of Indigenous peoples migrating to cities. This guide aims to learn from these initiatives and best practices.

The development and implementation of housing policies based on international human rights is essential to the improvement of the housing and living conditions of indigenous peoples across

the world. This policy guide is designed to assist with this challenge.

In many cases, indigenous communities whose ancestral lands lie in urban areas often find themselves confronted with the same difficulties as those who move in and settle as migrants from rural areas. These include lack of employment and income-generating activities; limited access to services; and, very importantly, inadequate housing. It happens frequently that the main underlying cause for persistent poverty among indigenous communities in urban areas is sheer disregard for a wide range of human rights and fundamental freedoms, including the right to adequate housing.

Indigenous peoples that have become urbanized through urban growth can be found in cities like Dakar (Senegal), Mexico City and provincial town such as Temuco in Chile.

The Lébou in Dakar, Senegal

With the expansion of Dakar during the colonial era, the villages of the Lébou people have been engulfed by the city. Since the 15th century, this indigenous people lived on the Cap Vert peninsula where Dakar is located. With the arrival of the first Europeans in the old Lébou settlement centre next to the current port in 1845, the notion of private property was introduced. Soon enough conflicts over land use erupted between the Lébou and the European settlers. The first forced evictions of Lébou families occurred in 1858, when the colonial authorities constructed a road through the territories

of two Lébou villages. Today, some ten such “traditional villages” can be found in the Dakar and Pikine-Guediawaye districts, which are part of the Dakar conurbation. These urban Lébou villages are characterized by the same inadequate housing conditions as the numerous unplanned settlements in Dakar.

Sources: Precht 2001; Precht 2004

In cities, some indigenous peoples suffer major disparities on all measurable counts such as lower wages; lack of employment, skills and education; poor health; poor housing conditions; and criminal convictions. Some of them experience extreme poverty, rampant discrimination and a loss of spiritual, cultural, community and family ties. This has a disparate impact on elders. Further, indigenous women – who are more likely to be single parents and poorest among the poor – and their children are unevenly affected in terms of economic and social conditions such as education, employment, housing, access to food, etc. Widespread discrimination and marginalization of indigenous communities in urban areas are most visible in their often-deplorable housing conditions.

With home ownership and rental housing prohibitively expensive, many live in informal settlements and slums, while others are left homeless. The distinct problems and needs of indigenous slum-dwellers and urban poor are seldom recognized (Source: International Indigenous Women’s Forum (FIMI)). Youth who migrate to urban areas often find themselves with inadequate support,

putting them in harm’s way in terms of drug and alcohol use as well as sexual exploitation, because they are even more vulnerable. Indigenous peoples with disabilities face increased barriers to accessible housing and related services, particularly transportation. Human trafficking is also a concern in both developed and underdeveloped countries, particularly for indigenous women and youth.

Indigenous Peoples’ Right to Adequate Housing

Whether they live in their ancestral territories and lands in rural areas or in urban centres, Indigenous peoples should enjoy the same human rights as any other citizens. This means, in general, that they should enjoy the right to adequate housing like everyone else.

Several international human rights instruments dealing with housing and indigenous peoples’ rights are relevant to the design and implementation of supportive policies, programmes and legislation. These instruments, including treaties such as covenants and conventions that are binding on governments, include the following:

- Universal Declaration on Human Rights
- UN Declaration on the Rights of Indigenous Peoples
- ILO Convention 169 concerning Indigenous and Tribal Peoples
- International Covenant on Economic, Social and Cultural Rights (ICESCR)

- Convention on the Elimination of All Forms of Racial Discrimination
- Convention on the Elimination of All Forms of Discrimination Against Women
- International Covenant on Civil and Political Rights

Governments through housing policies and programmes generally implement the right to adequate housing. Therefore, policy makers involved in housing and related issues must be familiar with the most relevant international human rights instruments, norms and standards.

Overview of Housing Conditions of Indigenous Peoples In Urban Areas

Under international human rights law, seven elements must be met in order for housing to be adequate. Below is an overview of these elements as defined in international law, followed by a description and examples of the realities and challenges in meeting these elements as they pertain to indigenous peoples’ right to adequate housing.

4.1 Indigenous peoples’ housing conditions with regard to their right to adequate housing

4.1.1. Legal security of tenure and forced eviction

“Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.” The right to self-determination, and rights related

to development, lands, resources and territories are relevant here too in so far as they relate to secure tenure.

CESCR, General Comment No. 4, para. 8 (a)

Indigenous families and communities in various regions of the world lack security of tenure for a number of reasons, such as:

- (i) land expropriation by the State for the unsustainable exploitation of resources;
- (ii) forcible displacement by the State and third party entities such as regional and international financial institutions, to make way for large infrastructure projects;
- (iii) implementation by private individuals of customs and traditions which dispossess widowed or divorced women of their homes and lands; and
- (iv) inadequate response to racist practices by landlords and other housing providers.

Forced eviction is a significant cause of insecure tenure for indigenous peoples. Under international human rights law, forced eviction refers to “the “permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy without the provision of, and access to, appropriate forms of legal or other protection.” (CESCR, General Comment No. 7, par. 4).

If the right to adequate housing,

particularly security of tenure, is to be enjoyed by indigenous individuals and peoples, the right of self-determination must be recognized and implemented, as must rights related to the land, resources and territories of indigenous peoples.

Dispossession of the land, territories and resources of indigenous peoples often occurs where a government gives precedence to third-party development interests over the rights of indigenous peoples “to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.” (UN DRIP Article 20). When traditional means of subsistence and sustainable development become unviable, this creates insecurity of tenure for indigenous peoples. In an urban setting, the forced eviction of indigenous peoples often occurs as a result of urban development projects. Because indigenous peoples often live in the most insecure housing – in slums or squatter settlements, on pavements, etc., - in urban areas, they are particularly vulnerable to forced eviction.

The short and long-term effects of forced evictions on indigenous families and communities are severe. Many indigenous peoples suffer spiritually, physically and economically from the dislocation from their homelands. Forced migration to urban areas destroys their ability to be economically self-sufficient, in the process lowering their living standards, causing social and health problems, and eroding tradition and culture. Forced evictions

particularly affect indigenous women, who play a central role in ensuring family well-being and who, because of their social and economic conditions generally, bear the brunt of the eviction.

In the urban context, many indigenous peoples also experience discrimination in housing at the hands of the State, private landlords and even families and individuals. Discrimination of this nature often forces indigenous peoples into the informal housing sector where they lack security of tenure and are more vulnerable to eviction.

KENYA

Indigenous and other women in Kenya often experience insecure tenure and eviction upon marriage dissolution or the death of their husband. Indigenous widows, such as the Maasai, can be stripped of their property upon the death of the husband. They may also be forced to engage in a ‘ritual cleansing’, which involves a widow having sex with a man of low social standing, upon the death of her husband. If the widow refuses, her own relatives may remove her from her home. Traditions pertaining to dowries can also result in the eviction of women from their homes upon marriage dissolution. For example, for the Maasai, the payment of dowry means that any property accumulated by the woman during the marriage actually belongs to her husband. As a result, upon separation women can be removed from their homes as the family home would not be considered their rightful property.

(Source: Human Rights Watch, 2003, pp.

16-18, 23).

4.1.2. Affordability

“Personal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised. Steps should be taken by State parties to ensure that the percentage of housing-related costs is, in general commensurate with income levels. States parties should establish housing subsidies for those unable to obtain affordable housing, as well as forms and levels of housing finance, which adequately reflect housing needs. Tenants should be protected by appropriate means against unreasonable rent levels or rent increases....” *General Comment No. 4, para. 8 (c)*

Indigenous communities experience a highly disproportionate degree of income disparity with the rest of the population. Poverty is one of the defining factors of the living conditions of indigenous peoples in almost every region of the world. Indigenous women, who experience multiple and intersecting forms of oppression – because they are indigenous and because they are women – experience disproportionate, extreme poverty. The higher incidences of inadequate housing and homelessness among indigenous peoples are clear manifestations of their relative degree of poverty. Indigenous poverty is interconnected with the dispossession of indigenous peoples from their lands. Without land, indigenous peoples have

no means to sustain themselves, gain a livelihood and provide adequate housing for themselves. As a result, indigenous women and men find that migration is the only alternative, often to cities and towns in search of a livelihood and adequate housing.

Housing in cities, where land is scarce, is becoming increasingly expensive, which makes owning or even renting prohibitive, especially for indigenous peoples who tend to be amongst the poorest in almost every society. Unless social housing is available, indigenous peoples have no choice but to either live in overpriced rental housing or to live in slums, informal settlements or on the streets.

“Poverty” must be defined in accordance with indigenous definitions, which reflect the centrality of indigenous peoples’ relationship to their lands and territories and sustainable development, as opposed to State-based definitions of poverty, which relate strictly to access and monetary gains.

AUSTRALIA

In Australia, 72 per cent of indigenous peoples are in the lowest or second lowest household income bracket. Home ownership and purchasing rates for indigenous persons in urban and rural areas are ‘well below’ those for other households, with only 13 per cent of indigenous households owning their home outright, compared with 40 per cent of non-indigenous households. Additionally indigenous households represent more than double the amount

of non-indigenous households living in rental accommodation, with 63 per cent renting accommodation, compared with 27 per cent of non-indigenous households. Rental relationships for indigenous people in the private housing market are often discriminatory, leaving them able only to secure short, fixed lease terms for housing of invariably poor quality. Furthermore, indigenous peoples represent 17 per cent of the population who use boarding houses and emergency shelters in Australia even though they only make up a total two per cent of the entire Australian population.

(Source: UN-HABITAT, Indigenous peoples’ right to adequate housing: A global overview, 2005, Case Study: Australia).

4.1.3. Habitability

Indigenous peoples often live in overcrowded conditions. Overcrowded housing tends to accelerate the deterioration of dwellings and increases the risks of disease transmission, domestic violence and other abuses and violations. Indigenous peoples often have to live in dwellings that do not protect them from the natural elements. There is a close link between poor housing conditions and ill health. Even in developed countries, environmental hazards (both in terms of housing construction and the surrounding environment) are often present and contribute to deteriorating public health.

MÉXICO

Statistics show that close to 60 per cent of dwelling units in rural and urban areas

occupied by indigenous peoples have no potable or piped water, compared with 15 per cent of the general population. Further, 35 per cent of indigenous households have no electricity, compared with 6.5 per cent of the general population.

(Source: UN-HABITAT, Indigenous peoples’ right to adequate housing: A global overview,

2005, Case Study: Mexico).

4.1.5. Accessibility

“Adequate housing must be accessible to those entitled to it. Disadvantaged groups must be accorded full and sustainable access to adequate housing resources.” Disadvantaged groups “should be ensured some degree of priority consideration in the housing sphere. Both law and policy should take fully into account the special housing needs of these groups. Within many States-parties, increasing access to land by landless or impoverished segments of society should constitute a central policy goal....” *General Comment 4, para. 8 (e.)*

Adequate housing is not always accessible to indigenous peoples, especially in urban areas, as a result of the discriminatory attitudes of housing providers, which creates barriers in the rental housing market. Indigenous women encounter further barriers in terms of housing access – as a result of gender-based discrimination in laws, customs and traditions (those of States and/or indigenous peoples) – which prevent indigenous women from owning, renting and/or inheriting land, property and housing, particularly upon marriage dissolution or upon the death of

a woman’s spouse.

CANADA

Over four per cent of Canada’s population is indigenous, with about half living in urban centres. It is generally accepted that discrimination in urban and off-reserve areas is a major systemic barrier to adequate housing for indigenous peoples. (Source: Indian and Northern Affairs Canada, Report of the Royal Commission on Aboriginal People, Gathering Strength, Vol.3, Chapter 4). This is reflected in the only case that has been heard to date in Canada with regard to housing discrimination experienced by indigenous peoples. In this case, the landlord rejected two women of Cree origins, who applied for housing, claiming: “I don’t rent to Indians. All you people are drunks. All you do is get drunk and pass out on the lawn.” With nowhere to go, the two women were forced to rent out a room in a motel and then moved into an inadequate basement apartment. *(Source: British Columbia Human Rights Tribunal, DesRosiers v. Kaur (2000)).*

In Canada, indigenous parents of children with disabilities face unique forms of discrimination, including forced urban migration and removal of their children from the home. For example, indigenous parents may be forced to move to a city to access services for their children simply because comparable on-reserve services are not available.

Removal of children with disabilities into foster care, as a means of receiving adequate healthcare and other services

is also a barrier for Indigenous parents to maintaining care of their children. Council of Canadians with Disabilities, Disability Task Force, First Nations, September 11, 1996, Consultation Report: First Nations, online at:

<http://www.ccdonline.ca/archives/disability-task-force/consultation-reports/first-nations.htm>.

INDIA

In India, “rampant discrimination” against indigenous peoples in large cities has been reported. Indigenous peoples from the Northeast are particularly targeted because they have distinct physical features marking them out as indigenous. Discriminatory barriers to adequate housing are one of the major hurdles to cross for an indigenous person who migrates to the city.

(Source: *Khetoho Enatoli Sema, EGM*).

4.1.6. Location

“Adequate housing must be in a location which allows access to employment options, healthcare services, schools, child-care centers and other social facilities. This is true both in large cities and in rural areas ... Similarly, housing should not be built on polluted sites nor in immediate proximity to pollution sources that threaten the right to health of the inhabitants.”

General Comment No. 4, para. 8(f)

Many indigenous peoples have no alternatives than to live in urban slums and informal settlements where access to employment options, affordable

healthcare, childcare and other services are lacking. Rural-urban migration disrupts community-based social safety nets that are commonly relied upon to make-up for gaps in services.

4.1.7. Cultural adequacy

“The way housing is constructed, the building materials used and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing. Activities geared toward development or modernization in the housing sphere should ensure that the cultural dimensions of housing are not sacrificed...” *General Comment No. 4, para.8(g)*

Many indigenous peoples are currently living in housing that are at odds with their cultural needs. For example, government-housing programmes often fail to accommodate indigenous cultures and to consult indigenous peoples to consider their housing needs. Many indigenous peoples in various regions have to give up traditional and culturally specific housing when they migrate to cities. It is also important to note that indigenous knowledge in terms of housing, building materials and construction technologies can contribute to mitigate and/ or adapt to the effects of climate change with alternative ways of building. (See for example: *William Langeveldt, Indigenous peoples in urban settings: The Challenge of Alienation in South Africa, EGM*.)

4.2. The housing conditions of specific indigenous populations in urban areas

4.2.1. Women’s housing conditions

The indivisibility of human rights is a core principle if we are to understand the complexity of indigenous women’s housing conditions. In particular, violations of indigenous peoples’ collective rights are detrimental to the individual rights of indigenous women, contributing to high rates of violence against them. Many forms of violence are detrimental to their right to adequate housing, including:

- Spiritual and economic violence (related to the exploitation of land, resources and territories of indigenous peoples, stripping them of viable, sustainable livelihoods);
- Violation of housing rights in the name of tradition;
- State violence (defined as “physical and structural violence perpetrated by
- States themselves against indigenous and other women on the basis of group membership”, which includes criminalization);
- Gender violence (commonly referred to as “domestic violence”);
- Violence in the context of armed conflict and militarization, and violence
- related to HIV/AIDS.

(Source: *Mairin Iwanka Raya: Indigenous Women Stand Against Violence*)

Gender-based violence has particular

effects on indigenous women; walking away on an abusive partner often requires an indigenous woman to leave her entire community, migrating to an urban area where cultural and spiritual ties are lost and gender-based discrimination is rampant. (Source: Mairin at 17) Poor and inadequate housing conditions (as characterized by overcrowding, lack of privacy, lack of sanitation and basic services) exacerbate women’s vulnerability to violence, including gender violence perpetrated by partners. Indigenous peoples are often relegated to intolerable living conditions, such as expanding urban slums, where women experience increasing degrees of gender as well as State violence in the form of economic marginalization and criminalization.

Inadequate housing can also lead to removal of indigenous women’s children from their care by child welfare agencies. (Source: UN Committee on Economic, Social and Cultural Rights, Review of Canada, 2006, par. 24). Many of these issues affecting indigenous women were raised at the Third Session of the United Nations Permanent Forum on Indigenous Issues. See: *The Report on the Third Session at: <http://daccessdds.un.org/doc/UNDOC/GEN/N04/384/66/PDF/N0438466.pdf?OpenElement>*

Indigenous women are often unable to acquire housing independently from men. In some circumstances, society ostracizes women who live on their own, be they divorcees, widows, single women, or married women who are separated from their husbands. Additionally, formal

or indigenous law or practice do not, in the name of traditions and culture, give women opportunities or possibilities to own, acquire, or inherit property.

Testimonies indicate that indigenous women are often forced to remain in abusive relationships or face forced separation from their children and/or homelessness and financial insecurity. This is demonstrated by the following Canadian example: Indigenous women experience exclusion from virtually all aspects of housing, including policy-making and housing design, an experience which can only be exacerbated for those with disabilities or for, elders, sexual minorities and youth.

A Canadian Aboriginal woman committed suicide after the authorities apprehended her children. The woman, who had five children, was forced to leave her reserve due to a chronic housing shortage. However, she could not find affordable housing outside the reserve. Due to her financial situation, she was forced to live in a rundown boarding house with five children. She sought assistance from the authorities to find affordable housing, but their response was to apprehend the children. At that point, the woman, sadly, lost all hope and took her own life¹.

1. Mavis A. Erickson, *Where are the Women? Report of the Special Representative on the Protection of First Nations Women's Rights (Hull: Indian and Northern Affairs Canada, 2001) at 65-66.*

facing indigenous women who migrate to urban areas often puts them at increased risk of violence from non-indigenous men and of involvement in the sex trade or human trafficking. This is made worse by insecure, unaffordable housing and discrimination (particularly gendered racism) in the housing sector aimed specifically at indigenous women. The UN Special Rapporteur on the right to adequate housing identifies this issue in a number of his reports. For example, in his 2005 report on women and adequate housing he notes that indigenous women in Brazil continue to face multiple forms of discrimination, which requires the particular attention of policy-makers. In the same report, mention was made of the connection between the eviction of indigenous peoples from their homes and land in Latin America and the resultant migration and trafficking of women and girls who are desperate to earn a livelihood for their families. (Source: UN Special Rapporteur on the right to adequate housing, *Women and Adequate Housing*, UN Doc. E/CN.4/2005/43.)

4.2.2. Elders

One commonly overlooked impact of colonization and dispossession of land, territories and resources of indigenous peoples is the disintegration of respect for the contribution of elders in indigenous society as "purveyors of cultural knowledge," leaving elders at greater risk of abuse (Source: *Mairin at 22*). In urban areas, elders often lack access to essential services in indigenous languages and to affordable housing that is culturally appropriate.

4.2.3. Children and youth

The specific impacts in urban areas of socio-economic marginalization on indigenous children and youth lead to increased risks of falling victims of gang activity (where youth are often exploited into performing criminal acts on behalf of older persons), sexual exploitation in the sex trade industry, drug and alcohol abuse, physical abuse and human trafficking (Source: *Anne-Marie Tupuola, EGM*). Furthermore, specific services, such as shelters for youth facing violence and health-related services and products (including sexual and reproductive health) are lacking. In some communities, like the urban centres of South Africa, indigenous teen suicides are on the rise as youth despair over the lack of a positive future in their home country (Source: *William Langeveldt, EGM*).

Many studies and reports indicate that rural-urban migration significantly erodes indigenous culture, leads to alienation, and often results in indigenous peoples having to relinquish their own languages and cultural practices. At the same time, in some regions like the Pacific, indigenous youth are beginning to engage and create their own indigenous cultures in the urban context. Youth-driven cultures can be helpful in exposing their experiences of rural-urban migration and, consequently, could be used to help inform the development of housing policies that are responsive to the needs of indigenous youth.

4.2.4. Persons with disabilities

Indigenous peoples with disabilities face increased barriers to adequate housing. In urban areas, social or government-subsidized housing is often unavailable, or not of sufficient quality, to meet specific disability needs. Furthermore, discrimination in the private sphere often creates barriers to securing housing in urban areas. While this is likely true for many people with disabilities, the barriers for indigenous peoples are compounded by their underprivileged indigenous origins.

How to Implement Effective Urban Housing Policy for Indigenous Peoples
Government officials, housing providers, indigenous peoples and civil society as a whole have a responsibility to ensure that housing policies and programmes recognize and address the current housing conditions of indigenous peoples in a manner that respects their cultures, histories and rights.

What can be done to ensure that the housing conditions of indigenous peoples are improved in an attempt to progressively realize their right to adequate housing?

5.1. Overriding principles

Several fundamental principles must inform the implementation of the right to adequate housing, if this right is going to be fully and equally effective for indigenous peoples.

Right to self-determination: The right to self-determination is essential to the survival, well-being and dignity of

indigenous peoples. Promoting this right will help in three ways: redressing historic wrongs; preserving indigenous cultures, traditions and identities; and improving the socio-economic status of indigenous people. Such promotion is also an essential element in the realization of other human rights, such as the right to adequate housing. Of critical importance in the area of housing is the promotion of the right to self-governance. This includes recognition of indigenous customs, traditions and land tenure systems, and of the right to determine and develop priorities and strategies in relation to exercising their right to development, including housing and other socioeconomic areas. Full participation and free, prior and informed consent of indigenous peoples in decision-making processes that impact them is also important.

Participation in decision-making processes: Governments must ensure that indigenous people living in urban areas are included as equal partners in all housing related decision-making processes, and in connection with all issues that are important to or may affect them. This includes the development and implementation of any legislation, policies or programmes that may have an impact on their housing conditions.

Participation and consultation of indigenous peoples should follow the principles of the UN DRIP. Experience has shown that the most successful housing programmes and projects are often those that have involved indigenous peoples in meaningful and diverse ways. All indigenous individuals – women, persons with disabilities, sexual minorities, youth and children, must equally enjoy

participation. This relates to all areas – from housing policy and programme areas to negotiations and decisions regarding development projects that will affect indigenous peoples. Indigenous voices must be heard, and demands and grievances must be met when major decisions are taken regarding development priorities and the allocation of resources.

Non-discrimination and equality: Housing policy and programmes must be founded on principles of non-discrimination and equality. Particular attention should be paid to the needs of indigenous women, persons with disabilities, elders, sexual minorities, youth and children. Governments and indigenous peoples should act to ensure full protection and guarantees against all forms of violence and discrimination (*See DRIP, Article 22(2)*).

The principles of non-discrimination and equality will only be meaningful for indigenous individuals and peoples if they are interpreted and implemented through policies and programmes in a manner that addresses their experiences of structural disadvantage and historical injustice. To determine whether laws and policies address the unequal conditions endured by indigenous individuals and peoples with respect to housing and land rights, governments must assess these laws, policies, and programmes in terms of their effects.

States should guarantee enforcement of the principle of non-discrimination

and the equal exercise and enjoyment of housing rights by indigenous women and men; they should do so through appropriate domestic laws (such as national constitutions and human rights legislation) as well as through the interpretation of customary and civil law and in the development and implementation of policies and programmes.

The application of the principles of non-discrimination and equality in connection with efforts to address violence against indigenous women must be regarded as the highest of priorities. In this regard, governments, non-governmental organizations (NGOs) and indigenous communities should ensure adequate provision of housing, services and alternative livelihoods, for those indigenous women walking away from gendered violence at home. It is imperative that these services are culturally appropriate. This includes ensuring that staff are indigenous, or are trained to work effectively with indigenous women.

Non-discrimination and equality must be recognized in relation to all human rights of indigenous peoples and must be foundational principles in the development, implementation and enforcement of housing laws, policies and programmes. Particular attention must be paid to the needs and rights of indigenous women, persons with disabilities elders, sexual minorities, youth and children.

5.2. Recommended actions for national and local governments

Specific actions must be taken at all levels of government to ensure indigenous people can exercise and enjoy the right to adequate housing. The following recommendations are offered as minimum requirements:

5.2.1. National level

- Ratify the main international treaties and covenants (as outlined in section 2 of this Guide), incorporating them into national law and jurisprudence, and ensure effective enforcement
- Give legal effect to all international principles, such as the UN DRIP. This includes fostering the development, or recognizing the existence, of those indigenous institutions addressing housing rights of indigenous peoples.
- Once ratified, implement broad-scope international human rights instruments and interpret the legal obligations therein in light of the specific needs and circumstances of indigenous peoples.
- Access the extent to which existing housing mechanisms to indigenous women and men, bearing in mind factors such as: lack of knowledge regarding mechanisms, expense, location, and cultural and linguistic barriers that may impede access. This must be measured in light of the fact that many indigenous peoples are not using judicial or quasi-judicial mechanisms to claim their rights. Addressing this problem may require restructuring existing mechanisms

or developing new ones. It will also require the establishment and management of such mechanisms by indigenous peoples themselves.

- Enact and implement laws, policies and programmes that legally protect the housing rights of all women, including indigenous women, upon marriage breakdown or death of husband/spouse. This should include laws ensuring that women, including indigenous women, can remain in their homes upon marriage dissolution or the death of a husband/spouse. Moreover, efforts must be made to ensure that customs, traditions and laws are interpreted in a manner that ensures women's equal right to inherit land, property and housing irrespective of marital or other status. Governments must make sure that indigenous women and their children have access to safe and secure housing.

5.2.2. Local level (or other government levels responsible for housing delivery) General:

- Ensure that adequate funding is available for the housing of indigenous peoples, taking into account that in many countries more than half of indigenous populations live in urban areas. These funds should be additional funds rather than being allocated at the expense of indigenous peoples in rural areas (Source: EGM, para. 30).
- Develop indigenous expertise in the full range of technical capabilities

for effective housing programme design, delivery and management.

- Adapt rental accommodation to meet the needs of indigenous urban dwellers.
- Support indigenous youth living in urban areas in their capacity as future leaders through capacity-building programmes and activities related to the development and affirmation of cultural identity, traditional knowledge and awareness-raising of social concerns that affect young people, including
- housing design (EGM, par. 35)

5.2.3. Recommended actions under the seven criteria of housing adequacy

In order for indigenous peoples to enjoy the right to adequate housing, governments could undertake actions in the following seven areas of housing adequacy:

a. Security of tenure:

- Provide indigenous peoples with legal security of tenure; this must include effective protection against forced eviction and might include the legalization of informal settlements. This is commonly achieved through the enactment and enforcement of legislation. Legal recourse should also be available and accessible to those indigenous peoples whose security of tenure is threatened.
- Recognize and promote self-determination and indigenous legal systems (in conformity with

international law). Indigenous peoples should not be displaced from their lands, territories and homes, for example, through development projects, extreme poverty, expansion of urban areas or armed conflict, without their free, prior and informed consent, or a justified threat to their lives and liberties. Under no circumstances should indigenous peoples be rendered homeless as a result of a forced eviction.

- Comply with the principle of free, prior and informed consent prior to planning and development projects affecting indigenous peoples and their right to adequate housing.
- When eviction and relocation is unavoidable (under exceptional circumstances), they must be undertaken in a manner that conforms to international human rights standards as set out in CESCR General Comment No. 7 and the United Nations comprehensive human rights guidelines on development-based displacement².

b. Affordability:

- Support alternative housing delivery and management arrangements, such as cooperatives, particularly by indigenous peoples themselves.
- Facilitate equal access for indigenous peoples to existing grants or loan schemes in support of housing renovation or upgrading.
- Undertake measures to provide housing assistance targeted

specifically at indigenous peoples who cannot afford market-housing prices because of their persistent underprivileged position in society. To achieve this, public authorities must ensure that there is an adequate supply of social or public housing designated specifically for indigenous peoples. Governments can also support and encourage self-built housing by indigenous people.

- Provide housing subsidies and shelter allowances to indigenous households living in poverty. These allowances should be attached to individuals (as opposed to specific housing units) and could help meet the costs of adequate housing units in the private rental market.
- Offer private sector developers incentives to build and provide affordable and culturally adequate housing units.

2. Véase UN Doc. E/CN.4/Sub.2/1997/7

c. Habitability:

- Provide targeted assistance to indigenous city-dwellers while upgrading living conditions in informal settlements as well as in other substandard urban housing.
- Ensure adequate participation by indigenous communities' in slum upgrading operations

d. Accessibility:

- Generate adequately desegregated data when researching human rights violations in the housing sector.

- Together with indigenous communities, ensure that custom and tradition are interpreted and evolve in a manner that ensures indigenous women's equal rights to own, rent, lease and access land and housing regardless of marital or other status.

- Raise awareness about what constitutes discrimination against indigenous peoples – including, specifically, indigenous women. These initiatives should be targeted at housing providers as well as the general public.

- Together with indigenous leaders, immediately address the discrimination and inequality experienced by indigenous individuals and peoples, including indigenous women, in the urban housing sector. This will require governments to repeal laws and policies that discriminate – either nominally or effectively – and to enact and enforce legislation that prohibits discrimination.

e. Location:

- Ensure that health, educational and other services accommodate and promote indigenous languages and cultures, are located in close proximity to indigenous communities, and are culturally adapted.

f. Availability of services:

- If indigenous people are to enjoy adequate housing, then basic

services must be made available, such as: sustained access - without cost - to potable water and sanitation, access to free primary education and to secondary schools, access to healthcare facilities within proximate distance to communities, as well as sustained and sufficient electricity for household use.

g. Cultural adequacy:

- Ensuring that housing is culturally adequate for indigenous peoples, and determining their specific housing needs based on cultural practice and location. This includes the way in which "poverty" is defined. Best practice, such as youth-driven cultures that have evolved in certain urban environments, should be shared.
- Include indigenous communities in the design, development and implementation of housing projects and programmes, and make use of their traditional knowledge with regard to building materials and construction technologies.

POLICY CHECKLIST

How to Protect and Promote the Right to Adequate Housing for Indigenous Peoples

General

1. Has the policy been reviewed, revised and developed in conjunction with indigenous peoples, and particular groups of indigenous peoples, such

as for example indigenous women and elders?

2. Was the policy reviewed, revised and/or developed in light of international law, including the human rights to self-determination for indigenous peoples, rights related to land, resources and territories, and the human rights to be free from discrimination and to equality?
3. Was the policy reviewed, revised and/or developed in light of best practice, including from other jurisdictions?

Adequate Housing

4. Has a coherent set of policies and programmes been developed that, together, protect and promote the right to adequate housing for indigenous peoples?

1. Security of Tenure:

- Does the policy undermine security of tenure for indigenous peoples, by forcing indigenous peoples to leave their land, territories, resources and/or homes?
- Was every alternative pursued to avoid the development and implementation of a policy that undermines security of tenure for indigenous peoples?
- If the policy relates to a development project, was the right to free, prior and informed consent upheld?
- If a forced eviction is deemed necessary and complies with

international human rights law and standards, what provisions have been made to ensure that the most vulnerable – indigenous women, elders, youth/children, people with disabilities and sexual minorities – are not disproportionately affected by the eviction.

2. Affordability:

- Has the policy/programme been assessed in terms of affordability for indigenous peoples? Has the policy/programme been developed to ensure that no financial barriers preclude indigenous peoples from benefiting from the policy/programme?

3. Habitability:

- Are policies and programmes being developed that are aimed at improving the physical housing conditions of indigenous peoples, including eliminating toxic pollutants?
- Have policies and programmes been developed that protect and promote indigenous women's right to live free from gendered household violence?

4. Availability of services, materials, facilities and infrastructure

- Are policies and programmes being developed to ensure that indigenous peoples – regardless of where they are living – have access to potable water, electricity and other essential services?

5. Accessibility:

- How does discrimination against indigenous peoples manifest with respect to housing in urban areas? Have any housing laws, policies or programmes any discriminatory effects creating barriers to housing for indigenous peoples?
- What measures are taken to overcome any such discriminatory laws, policies or programmes?
- Do housing providers use stereotypes and false assumptions to discriminate against indigenous peoples? What measures are taken to overcome private forms of discrimination?
- Do indigenous women experience discrimination with respect to their rights to own, rent/lease, and inherit land, property and housing? Similarly, do other vulnerable populations experience discrimination in these circumstances?
- Are any accessible mechanisms available to address discrimination against indigenous peoples with respect to housing, such as national or local human rights institutions, ombudspersons and local councils? Do indigenous peoples use these mechanisms? If not, what measures can be introduced to make these mechanisms more accessible, or to develop new more accessible mechanisms?

6. Location:

- Many indigenous peoples living in

urban areas have little alternative but to live in slums and squatter settlements. Can any current laws, policies and programmes ensure that residents of slums and squatter settlements – regardless of the legal status of these locations – have access to schools, employment opportunities, health care facilities, child care, etc.?

- When indigenous peoples are forcibly removed from their homes and lands, can any current laws, policies or programs ensure that they are relocated to sites that are safe and healthy (e.g., not on toxic

or contaminated sites) and within reasonable proximity to schools, employment opportunities, and accessible healthcare centres?

7. Cultural Adequacy:

- Are housing laws, policies and programs designed, developed and implemented in conjunction with indigenous peoples to ensure that housing meets their specific cultural needs? Indigenous systems related to housing should be promoted, in accordance with the rights to self-determination, equality and non-discrimination.

The Do's and Don'ts of Housing Policy Development for Indigenous Peoples

DO	DON'T
Develop meaningful relationships with diverse groups of indigenous peoples and representative institutions.	Forcibly evict indigenous peoples from their homes and lands unless every alternative to the eviction has been fully explored and unless the eviction can be carried out in full compliance with international human rights law, including free, prior and informed consent.
Re-examine policies and practices to ensure they do not violate the rights and titles of indigenous peoples to lands, resources and territories and self-determination.	Exclude indigenous peoples and representatives in the review, development or implementation of housing laws, policies and programs.

DO	DON'T
<p>Review, develop and implement all housing laws, policies and programs in light of international human rights law and standards and in conjunction with indigenous peoples and representative institutions.</p>	<p>Assume that good-housing laws on the books means good housing practice on the ground.</p>
<p>Develop housing laws, policies and programs that improve the housing conditions of indigenous individuals in conformity with the right to adequate housing.</p>	<p>Assume a housing law, policy or program that benefits the general population will equally benefit all indigenous individuals and peoples.</p>
<p>Examine all housing laws, policies and programs in terms of their effects on indigenous individuals and peoples; those that have detrimental effects must be repealed or redesigned.</p>	<p>Assume that governments and/or indigenous peoples have applied a culturally relevant gender analysis.</p>
<p>In conjunction with indigenous women, incorporate a culturally relevant gender analysis into housing policy and legislative reviews, developments and implementation.</p>	<p>Assume that States and indigenous peoples have adequately sought the participation and perspectives of vulnerable populations, including indigenous women, children, people with disabilities and sexual minorities.</p>
<p>Use best practices of indigenous peoples' housing from other jurisdictions to inform housing policy review, design, development and implementation.</p>	

