



HOUSING INDIGENOUS PEOPLES IN CITIES

POLICY GUIDE TO HOUSING FOR
INDIGENOUS PEOPLES IN CITIES

Urban Policy Guides for Indigenous Peoples

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Foreword

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.



House construction by Hmong,
Sapa, Vietnam
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ONE

**THE CHALLENGES FACING
INDIGENOUS PEOPLES IN CITIES**





THE CHALLENGES FACING INDIGENOUS PEOPLES IN CITIES

Worldwide, the majority of indigenous peoples still live in rural areas. However, the numbers of indigenous peoples living in urban areas is on the increase worldwide. In some countries like Canada and Chile, more than half of the indigenous population lives in cities. In Mexico, almost one in every three indigenous individuals lives in a city.

The urbanization of indigenous peoples is the result of two processes: (i) cities growing to engulf indigenous settlements, making their ancestral lands part of the urban space; and (ii) migration by members of indigenous peoples to towns and cities for various reasons. The main difference between these two categories is based on the relationship that the communities have to the land and housing they occupy. When indigenous land is engulfed in urban space, the indigenous community continues to live on ancestral lands, although now in an urbanized setting; whereas in the case of rural migration, indigenous individuals are in-migrants as all the other new arrivals to the city. Generally, both indigenous rural-urban migrants and long-time indigenous “urbanites” tend to be marginalized and discriminated against by dominant population groups.

Their current lack of worldwide reliable data on the numbers of indigenous peoples living in urban areas and their origins points to a much-needed area of research. However, it seems that voluntary or involuntary rural-urban migration is currently the main cause behind the rapid increase in indigenous populations in urban areas. This migration to urban areas can be either temporary or permanent.



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 towns 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.



Himba women sell jewelry in the
urban markets of Swakopmund,
Namibia.
© UN-HABITAT/ Adrian Perez

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TWO

**WHY DO INDIGENOUS PEOPLES
MIGRATE TO URBAN AREAS?**





MIGRATION TO URBAN AREAS

Migration of indigenous peoples to urban areas can happen for positive reasons, such as improved educational or employment prospects, and availability of various services in cities. Migration for work opportunities (either at home or abroad) has become an important way out of poverty for some indigenous peoples. However, in most cases, the root causes of this migration are related to human rights violations on their home territories, physical insecurity in conflict areas (which often involves military violence against indigenous people, including women, such as sexual harassment and rape). Other factors behind indigenous migration include overzealous policing, and forced evictions in connection with development projects (by governments, corporations and financial institutions), along with poverty and destitution resulting from large-scale displacement, dispossession and degradation of land, resources and territories, sometimes under the effect of climate change. Human trafficking, particularly of women and children, is another cause of indigenous migration.

Indigenous peoples who migrate to urban areas and away from homelands where they have experienced violations to their rights, including cultural, linguistic, land and treaty rights, sovereignty and even their right to life, often face discriminatory barriers from society in general, as well as racist and discriminatory immigration policies and laws. This includes blanket enforcement of anti-terrorist laws resulting in violations of the human rights of indigenous peoples. When migrating from rural to urban areas, indigenous women and girls are at risk of rape, murder, disappearance and trafficking, more so than other groups due to their displacement and increased vulnerability (Source: Indigenous



Peoples; Caucus (North America's Preparatory Report for the UN Permanent Forum on Indigenous Issues, 7th Session).

While rural-urban migrants typically maintain close ties with their communities of origin, over time their attachment to their traditional lands can become weaker, as other concerns arise. However, in many instances indigenous peoples maintain their original identities, passing on the cultural aspects related to their connection to traditional territories for generations. It is important to note that cross-border movement of indigenous peoples between rural and urban areas can be mistaken for long-term migration. Rights to language and treaty rights are important to preserve in the context of rural to urban migration, so that cultural connections can be maintained. These rights are explicitly recognized in articles 14 and 37 of the Declaration on the Rights of Indigenous peoples. (Source: Indigenous Peoples ' Caucus (North America's Preparatory Report for the UN Permanent Forum on Indigenous Issues, 7th Session).







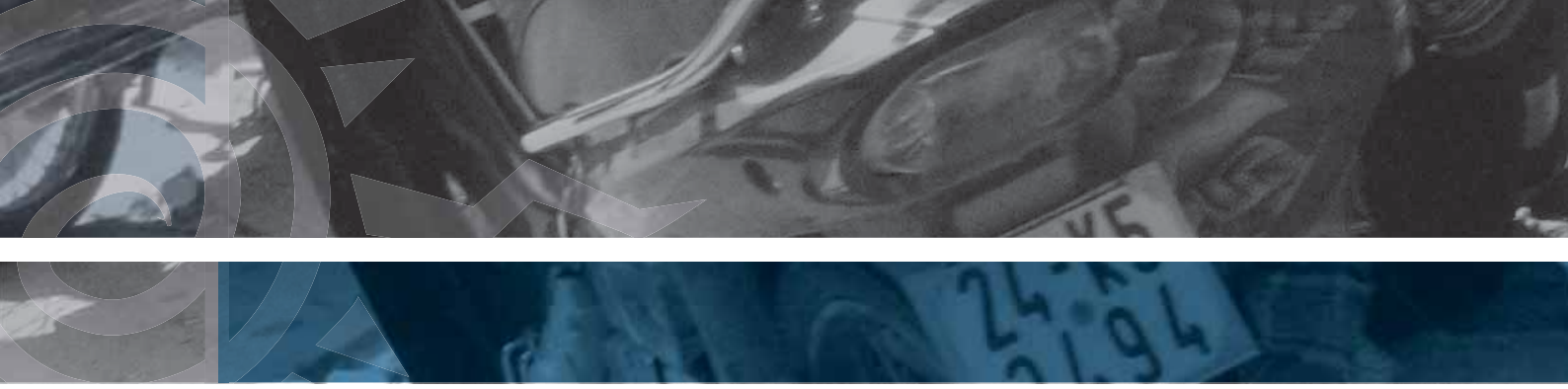
INDIGENOUS PEOPLES' RIGHT TO ADEQUATE HOUSING

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.



This policy guide focuses only on two international instruments: (i) The International Covenant on Economic, Social and Cultural Rights (ICESCR, 16 December 1966), as the most relevant document with respect to housing rights; and (ii) the Declaration on the Rights of Indigenous peoples (DRIP), adopted by UN Member States on 13 September 2007, which sets out minimum international standards for the protection and promotion of the rights of indigenous peoples necessary for their survival, well-being and dignity.

The right to adequate housing

- **The International Covenant on Economic, Social and Cultural Rights (ICESCR)** is perhaps the most important document with respect to housing rights. This is because it explicitly outlines housing as a right within its articles. The UN Committee on Economic, Social and Cultural Rights (CESCR) has, through its general comments, played a prominent role in interpreting the contents of the right to adequate housing and has consistently applied the right when reviewing State parties' compliance with the Covenant.

- **Legal Provisions**

Article 11 (1) of the ICESCR says that everyone has the right to an adequate standard of living and that this includes adequate housing:

"The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right..."

The right to adequate housing does not necessarily mean that governments are required to build housing for the entire population. It does mean that governments have a duty to take immediate steps to ensure that particularly vulnerable populations have access to the housing they need. This applies to indigenous peoples, and particular groups of indigenous peoples such as indigenous women leaving abusive households, those who are homeless and those who are disabled.

Under the ICESCR, Articles 2(2) and 3, the State also has a legal responsibility immediately to address discrimination and inequality against particular groups, including indigenous

peoples and indigenous women and people facing intersecting discrimination.

The housing rights of indigenous peoples are also protected through an application of Article 1 of the ICESCR, which states:

"All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."

For indigenous peoples, the right to self-determination, rights related to land, territories and resources, and the right to adequate housing, are intimately connected.



■ General Comments

General Comments are legal interpretations of treaties adopted by treaty monitoring bodies. The Committee on Economic, Social and Cultural Rights has adopted two significant legal interpretations of the right to adequate housing: General Comment No. 4 and General Comment No. 7.

General Comment No. 4 on the right to adequate housing affirms that the right to housing must be regarded as an expansive right; i.e., the right to housing must go beyond having a roof over one's head. It must be regarded as the right to live somewhere in peace, security and dignity. General Comment No. 4 also includes a description of the seven elements required in order for housing to be adequate, as follows:

- Legal security of tenure;
- Availability of services, materials, facilities and infrastructure;
- Affordability;
- Habitability;
- Accessibility;
- Location; and
- Cultural Adequacy.

General Comment No. 7 on forced evictions is the most comprehensive legal document pertaining to forced evictions under international law. It recognizes that the practice of forced evictions has a disparate impact on both indigenous peoples and women (CESCR, para. 10). The comment stipulates that the State must refrain from implementing forced evictions and ensure that the law is enforced against its agents or third parties who carry out forced evictions (CESCR, para. 9). In keeping with this, the comment states that the development of legislation that protects against forced eviction will be a key instrument in preventing this practice of forced eviction (CESCR, para. 10).

The Declaration on the Rights of Indigenous peoples (DRIP)

- The DRIP represents the culmination of over twenty years of articulating the human rights of indigenous peoples. The Declaration sets out minimum international standards for the protection and promotion of the rights of indigenous peoples that are necessary for their survival, well-being and dignity. In other words, any standard that is lower than those in the DRIP is no longer acceptable.

The legal provisions in the DRIP of particular relevance to the right to adequate housing include the right of self-determination; rights related to land, resources and territories (including the rights to development and to free, prior and informed consent); social and economic rights, and rights related to non-discrimination. All policy and programme initiatives in the area of housing for indigenous peoples should be approached using the DRIP, and in particular the following aspects:

- **Rights related to self-determination and indigenous institutions and systems:**
 - The right of self-determination – the right to freely determine their political status and freely pursue their economic, social and cultural development (article 3).
 - Self-government is also provided for under article 4.
 - Article 5 states that “Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.” Article 18 also provides for a right to participate and to be consulted in decision-making matters that affect their rights. Numerous articles provide for cultural rights, including articles 8, 9, 11, 12, 13 and 15 which are relevant to the right to culturally adequate housing.
- **Rights related to lands, resources and territories:**
 - The right to traditional lands, resources and territories (article 26), including the right to an adjudication process (article 27).
 - The right of indigenous peoples to maintain a spiritual relationship to traditional lands, resources and territories (article 25).



- **Rights to equal enjoyment of economic and social rights, including housing:**
 - Article 21(1) of the DRIP recognizes the right, without discrimination, to improve social and economic conditions, “including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.” Article 21 (2) calls for special measures in relation to the continuing improvement of indigenous peoples’ economic and social conditions, and requires that “Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.” Non-discrimination is a foundational principle of the DRIP, as contained, inter alia, in articles 2, 9 and 46(2) and (3).
 - The DRIP underscores the importance of indigenous peoples’ right to determine their own housing institutions, programmes and policies, right to equality and non-discrimination and right to improved socio-economic conditions, with particular attention on the special needs of indigenous elders, women, youth and persons with disabilities.

The DRIP is likely to have a significant impact on the enforcement of the rights of indigenous peoples. For example, Bolivia has adopted the DRIP into her national law, and in Belize the Supreme Court recently rendered a judgment which cited the DRIP to justify its decision to uphold the rights of Mayan People to their traditional lands. (See: <http://www.kennett.co.nz/law/indigenous/>).

THE LEGAL STANDING OF UN DECLARATIONS

UN Declarations “represent the dynamic development of international legal norms and reflect the commitment of States to move in certain directions and abide by certain principles.... the Declaration on the Rights of Indigenous peoples is expected to have major effects on the rights of indigenous peoples worldwide. ... It will establish an important standard for the treatment of indigenous peoples and will undoubtedly be a significant tool towards elimination human rights violations against the over 370 million indigenous peoples worldwide and assist them in combating discrimination and marginalization”.

From: <http://www.un.org/esa/socdev/unpfii/documents/FAQsindigenousdeclaration.pdf>







IV

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 inviable, 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 percent of indigenous households owning their home outright, compared with 40 percent 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 percent 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

"Adequate housing must be habitable, in terms of providing the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors. The physical safety of occupants must be guaranteed as well...." General Comment No. 4, para. 8 (d)

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

In Mexico, indigenous housing conditions are inferior to housing for other populations. In particular, indigenous people tend to live in overcrowded conditions. For example, while only 16.4 per cent of all houses in Mexico City are single-room, 34.3 per cent of indigenous homes fall into this category. Indigenous houses in the city are less likely to be constructed from solid materials, and more likely to include dangerous materials such as asbestos, or insubstantial material such as cardboard, which does not offer adequate protection from the elements.

(**Source:** Pablo Yanes, EGM, Santiago, Chile, 2007).

CANADA

A recent study on indigenous households in urban areas households in Canada's prairies and territory regions revealed that 25 per cent of indigenous households are in need of 'core housing', while the non-indigenous rate is only 9.9 per cent. A household is in 'core housing need' if it does not live in, and cannot access, housing that is affordable, in adequate condition and of a suitable size.

(**Source:** Canada Mortgage and Housing Corporation, Urban Aboriginal Households: A Profile of Demographic, Economic and Housing Conditions in Canada's Prairies and Territories Region, November 2006).

4.1.4. Availability of services, materials, facilities and infrastructure

"An adequate house must contain certain facilities essential for health, security, comfort and nutrition... [including, inter alia, access to] safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services." General Comment 4, para. 8(b)

Many indigenous households lack basic services such as drinking water, electricity and access to healthcare facilities. This is true regardless of the degree of development of the country.

KENYA

In Nairobi, "60 per cent of the urban population live in slums. Most slums and informal settlements are severely overcrowded, insecure and unsanitary. Urban infrastructure - such as electricity, proper sanitation and garbage collection - is virtually non-existent, and in many instances potable water has to be purchased from vendors for nearly ten times the rate charged by local authorities.

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



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:

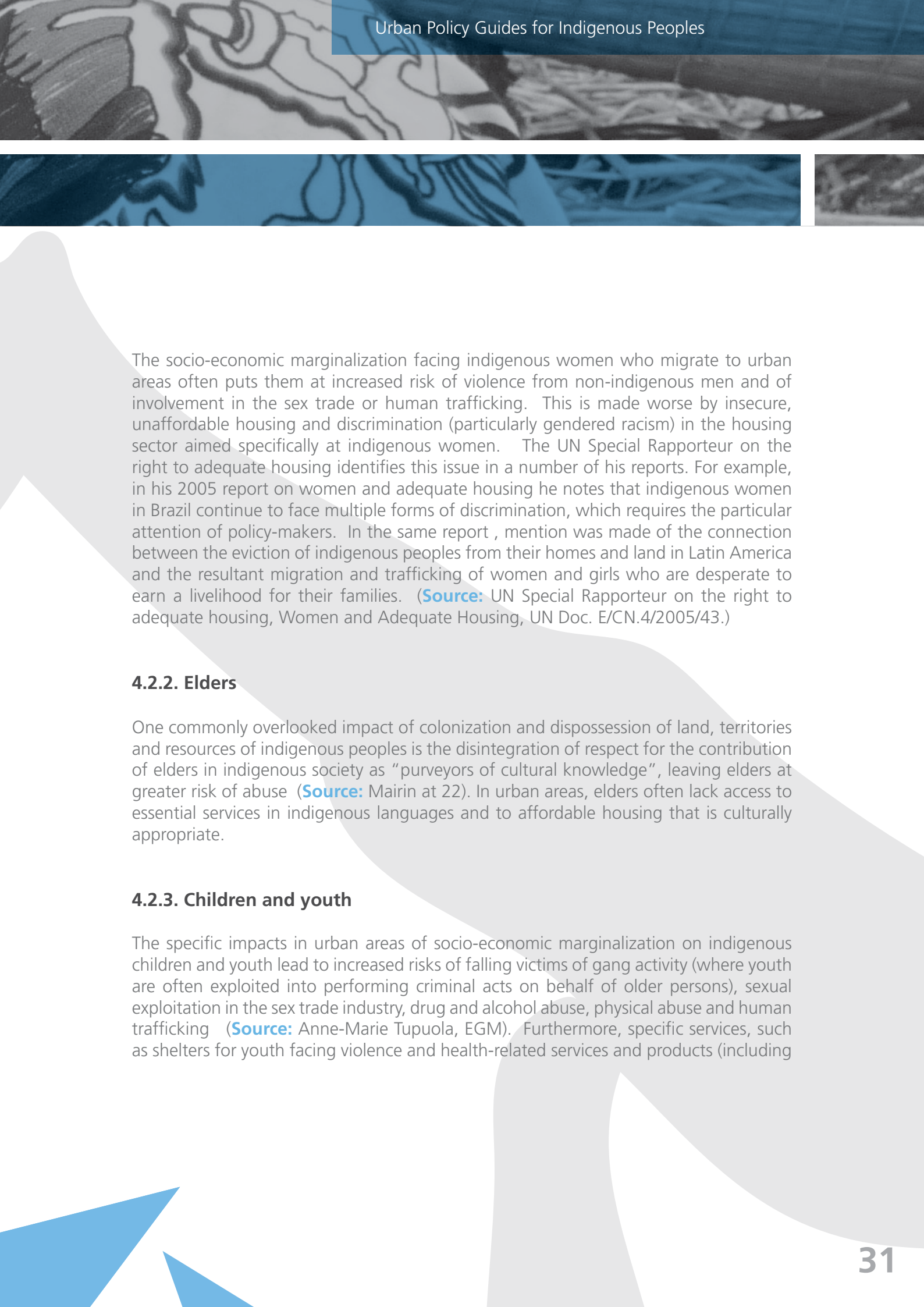
<http://daccessdds.un.org/doc/UNDOC/GEN/N04/384/66/PDF/N0438466.pdf?OpenElement>

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.



The socio-economic marginalization 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.

Indigenous
Peoples family's
house, near
Alice Springs,
Australia, 2006,
mission of the
SR Miloon
Kothari Bahram
Ghazi.
© Bahram Gazi



UN HABITAT
FOR A BETTER URBAN FUTURE

FIVE

HOW TO IMPLEMENT EFFECTIVE URBAN
HOUSING POLICY FOR INDIGENOUS PEOPLES





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 socio-economic 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.
- Assess the extent to which existing enforcement mechanisms are accessible 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.

ANNOTATED RESOURCES:

Housing Rights for Indigenous Peoples

Web Resources

The UN Permanent Forum on Indigenous Issues

<http://www.un.org/esa/socdev/unpfii/>

The UN Permanent Forum on Indigenous Issues is an advisory body to the Economic and Social Council, with a double mandate: providing expert advice and recommendations, and raising awareness throughout the UN system on indigenous issues related to economic and social development, culture, the environment, education, health and human rights.

The Special Rapporteur on the situation of Human Rights and Fundamental Freedoms of Indigenous Peoples

<http://www.ohchr.org/english/issues/indigenous/rapporteur/#country>

The Special Rapporteur collects and exchanges information and reports on violations of human rights and fundamental freedoms from Governments, indigenous peoples and their communities and organizations, as well as other relevant sources. The Special Rapporteur is also responsible for developing recommendations and proposals on appropriate measures and activities to prevent and remedy violations of the human rights and fundamental freedoms of indigenous peoples. The Rapporteur also monitors and addresses discrimination against indigenous women. A dedicated Website features recent reports and comments from the Special Rapporteur, including links and documents regarding the human rights and freedoms of indigenous peoples.

The UN Special Rapporteur on Violence Against Women

<http://www.ohchr.org/english/issues/women/rapporteur/>

The Special Rapporteur on Violence Against Women collects information on the causes and consequences of violence against women emanating from Governments, UN bodies, and NGOs including women's organizations. The Special Rapporteur develops recommendations, policies, etc. at all levels to eradicate the causes of violence against women and to remedy its consequences. In addition to reports, the Website includes links to other relevant documents and resources.



The UN Special Rapporteur on Adequate Housing

<http://www.ohchr.org/english/issues/housing/index.htm>

The Special Rapporteur's mandate includes reporting on the status of effective rights to adequate housing, gender mainstreaming and Government efforts to secure these rights. On top of official reports, the Website features links to further relevant documents and resources.

OHCHR Website for Human Rights Treaty Bodies

<http://www.ohchr.org/english/bodies/treaty/index.htm>

This Website features all UN bodies monitoring the implementation of international human rights treaties.

■ **UN Documents with Global Scope**

UN-HABITAT and OHCHR (2009), Urban Indigenous Peoples and Migration: a Review of Policies, Programmes and Practices.

<http://www.unhabitat.org/unhrp>

This publication stems from an international meeting on Urban Indigenous Peoples and Migration held on 27-29 March 2007 in Santiago de Chile. It provides a comprehensive analysis of indigenous migration paths to urban areas, focusing on the idiosyncrasies of the rural-urban drift and its effect on the living standards and human rights of urban-dwelling indigenous peoples around the world. The document also details not just the devastation caused by urbanization but also the potential developmental, economic and cultural impacts.

UN-HABITAT and OHCHR (2005), Indigenous peoples' right to adequate housing: A global overview.

<http://www.unhabitat.org/unhrp>

This publication is part of the United Nations Housing Rights Programme (UNHRP) Report Series. It represents a preliminary effort to determine whether, and to what extent, indigenous individuals and peoples enjoy the right to adequate housing in various regions of the world. The publication includes seven country case studies on the status of housing for indigenous peoples, reviewing relevant policies and programmes. Also

included is a comprehensive set of recommendations on improved housing and living conditions for indigenous peoples, calling for further attention for this critical human rights concern.

United Nations Settlements Programme (UN-HABITAT); Office of the High Commissioner for Human Rights (OHCHR); Secretariat of the United Nations Permanent Forum on Indigenous Issues (UNPFII); Latin America and the Caribbean Demographic Centre (CELADE) – ECLAC; International Organization for Migration (IOM), (2007), Urban Indigenous peoples and Migration: Report and full account of the International Expert Group Meeting 27 – 29 March 2007, Santiago, Chile.

<http://www.unhabitat.org/unhrp>

This report provides an overview of debates, comments and recommendations at the Expert Group Meeting on Urban Indigenous peoples and Migration in Santiago de Chile in 2007. This includes expert case studies in Africa, Eastern Asia Eastern, Europe, the Russian Federation, Central Asia and Transcaucasia, Latin America, and the Caribbean, North America, and the Pacific. This comes complete with a summary of the general debate about urban indigenous housing, with recommendations to all relevant authorities focusing on urban indigenous housing rights within the broader context of human rights.

UN General Assembly. UN Doc. A/RES/61/295, (2007), United Nations Declaration on the Rights of Indigenous peoples.

<http://daccessdds.un.org/doc/UNDOC/GEN/N06/512/07/PDF/N0651207.pdf?OpenElement>

The Declaration sets out a universal framework of minimum standards for the survival, dignity, well-being and rights of the world's indigenous peoples. The Declaration addresses both individual and collective rights; cultural rights and identity; rights to education, health, employment, and language, among others. The document outlaws discrimination against indigenous peoples and promotes their full and effective participation in all matters that concern them. It also ensures their right to remain distinct and to pursue their own priorities in economic, social and cultural development. The Declaration explicitly encourages harmonious and cooperative relations between governments and indigenous peoples.



Office of the High Commissioner for Human Rights (OHCHR), (2007), Fact Sheet 21. The Human Right to Adequate Housing.

<http://www.ohchr.org/english/about/publications/docs/fs21.htm>

This fact-sheet provides a comprehensive description of the right to adequate housing as outlined in the 1966 Covenant on Economic, Social and Cultural Rights. Additionally, it outlines indigenous peoples' seven major entitlements under their Right to Adequate Housing, with information on the resources, systems, and organizations dedicated to upholding this specific right.

Office of the High Commissioner of Human Rights (OHCHR), (2007), Fact Sheet 25. Forced Evictions.

<http://www.ohchr.org/english/about/publications/docs/fs25.htm>

This fact-sheet focuses on forced evictions based on an international human rights framework, outlining the specific connections between forced evictions and human rights, together with relevant international, regional, national and local legal and other developments regarding forced eviction.

Committee on Economic, Social and Cultural Rights, The right to adequate housing (art.11.1 of the Covenant): forced evictions:.20/05/97. CESCR General Comment 7.

[http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/CESCR+General+Comment+7.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/CESCR+General+Comment+7.En?OpenDocument)

The leading legal interpretation of the right to protection against forced eviction is General Comment No. 7 from the Committee on Economic, Social and Cultural Rights (1997). This is, to date, the most far-reaching decision under international law on forced evictions and human rights, specifying what governments, landlords and institutions must do to prevent forced evictions.

Committee on Economic, Social and Cultural Rights, The right to adequate housing (art. 11(1) of the Covenant: 13/12/91. CESCR General Comment No. 4.
[http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/CESCR+General+comment+4.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/CESCR+General+comment+4.En?OpenDocument)

General Comment No. 4 is recognized as the most authoritative legal interpretation of the right to adequate housing under international human rights law. The Comment defines the right to adequate housing broadly, as a place to live in “peace, security and dignity”. It also identifies seven elements that are required for adequate housing: legal security of tenure, availability of services, affordability, habitability, accessibility, location, and cultural adequacy.

OHCHR (Office of the United Nations High Commissioner for Human Rights), (2001), United Nations Guide for Indigenous peoples. Indigenous peoples and the United Nations System: An Overview, Leaflet No. 1.
<http://www.unhchr.ch/html/racism/indileaflet1.do>

OHCHR (Office of the United Nations High Commissioner for Human Rights), (2001), United Nations Guide for Indigenous peoples: UN charter based bodies and indigenous peoples, Leaflet No. 3.
<http://www.unhchr.ch/html/racism/indileaflet3.do>

OHCHR (Office of the United Nations High Commissioner for Human Rights), (2001), United Nations guide for indigenous peoples: Human rights treaty bodies and indigenous peoples, Leaflet No. 4.
<http://www.unhchr.ch/html/racism/indileaflet4.do>



■ Documents with Global Scope

International Indigenous Women's Forum, (2006), Mairin Iwanka Raya: Indigenous Women Stand Against Violence, A companion report to the UN Secretary-General's study on violence against women.

<http://www.indigenouswomensforum.org/vaiwreport06.pdf>

This document conceptualizes indigenous gender-based violence, highlighting the multiple forms of violence that are experienced by indigenous women, from a systemic to an individual level. This includes spiritual and economic violence, violence in the name of tradition, government violence, gender violence, and violence against a background of armed conflict and militarization. From an indigenous women's perspective, this report reflects on neo-liberal policies, manipulation of traditional norms, acts of State oppression, war, displacement and HIV/AIDs as they impact indigenous women and their right to be free from violence. The report also highlights valuable practice in research, political mobilization, and community organizing, mapping out future challenges for indigenous women's pursuit of a life free from all forms of violence.

Justino, P., and Litchfield, J., Minority Rights Group, International Issues Paper, (2003), Economic exclusion and discrimination: The experiences of minorities and indigenous peoples.

<http://www.minorityrights.org/?lid=925>

This paper highlights the link between discrimination and poverty for minority groups and indigenous peoples. For all the lack of clear data and working definitions for analysis, the authors find evidence that minority and indigenous peoples suffer from higher degrees of poverty and poor access to education, healthcare and basic services, with fewer employment opportunities than the majority population. The paper discusses the overall alienation of minority and indigenous peoples from their economic, social and political rights in a bid to further an understanding of the relationship between discrimination and poverty.

Australia

ATSIC (Aboriginal and Torres Strait Islander Social Justice Commissioner), (1996), Aboriginal and Torres Strait Islander Social Justice Commissioner, Fourth Report for the Human Rights and Equal Opportunity Commission of Australia.

http://www.hreoc.gov.au/pdf/social_justice/sj_report96.pdf

This report addresses Australia's human rights performance regarding Aboriginal and Torres Strait Islander peoples. It uses a framework of international human rights standards and instruments to assess the human rights exercised and enjoyed by Aboriginal and Torres Strait Islanders. Additionally it highlights the efforts of Aboriginal and Torres Strait Islander for social justice and self-determination and makes recommendations to the government of Australia to ensure the actualization the human rights of the same.

Australian Government. Department of Families, Community Services and Indigenous Affairs, (2006), Indigenous Homelessness within Australia.

[http://www.facsia.gov.au/internet/facsinternet.nsf/VIA/indig_homelessness/\\$File/Indigenous_Homelessness_within_Australia.pdf](http://www.facsia.gov.au/internet/facsinternet.nsf/VIA/indig_homelessness/$File/Indigenous_Homelessness_within_Australia.pdf)

This document reflects on the findings from the National Indigenous Homelessness Forum held in Melbourne during March 2003 and a national consultation on Aboriginal and Torres Strait Islander homelessness conducted in 2005 on the housing situation of Aboriginal and Torres Strait Islander peoples. The report defines five distinct types of homelessness experienced by Aboriginal and Torres Strait Islander peoples, including: spiritual homelessness; overcrowding; relocation and transient homelessness; escaping from an unsafe or unstable home and lack of access to any stable shelter. This report makes comments and recommendations for the development of more effective and inclusive housing policies in Australia.

The Philippines

Asian Human Rights Commission. Urgent Appeals Programme. (2003). Philippines: Discrimination against indigenous peoples - urgent action.

<http://www.ahrchk.net/ua/mainfile.php/2003/462/>

This appeal calls for the return of 115 indigenous families to their ancestral lands after they were made homeless by forced eviction in Mindanao on April 16th, 2003. The



eviction was sanctioned by the provincial sheriff with support from federal government organizations, and has forced the evicted families to live precariously on riverbanks, making them vulnerable to homelessness due to flooding.

Carling, J., Asian Social Issues Program, (2001), Indigenous peoples, the environment and human rights in the Philippines: the Cordillera experience.

<http://www.asiasource.org/asip/carling.cfm/#wealt>

This document outlines the ongoing struggle of indigenous peoples in the Philippines' Cordillera to uphold their human rights and remain on their land in the face of mining developments in the region. Based on this experience, this report provides insights into the issues of human rights violations facing indigenous peoples throughout the Philippines.

Canada

Canada-Aboriginal Peoples Roundtable, Housing Sectoral Follow-up Sessions, Facilitator's Report and Background Documents,

http://www.aboriginalroundtable.ca/sect/hsng/index_e.html

The facilitator's report and related background literature, together, document the outcomes of the Housing Sectoral Session of the Canada-Aboriginal Peoples Roundtable. This includes background documents from the Government of Canada, the five national Aboriginal organizations (the Assembly of First Nations, the Native Women's Association of Canada, the Metis National Council, the Inuit Tapiriit Kanatami and the Congress of Aboriginal Peoples and the Government of Nunavut). These documents provide an overview of the distinct housing concerns of the Metis, Inuit and First Nations peoples in Canada, including the particular perspectives of indigenous women and indigenous peoples living in urban and remote areas.

UN Special Rapporteur on Adequate Housing, (2007), Press Release: United Nations Expert on Adequate Housing to tackle the national housing crisis in Canada.

<http://www.unhchr.ch/hurricane/hurricane.nsf/view01/90995D69CE8153C3C1257387004F40B5?opendocument>

This press release provides a concise summary of the violations to the right to adequate housing facing indigenous peoples in Canada, together with proposed remedies.

Statistics Canada, catalogue No. 89-589, (2001), Aboriginal Peoples Survey Initial Findings: Well-being of the non-reserve Aboriginal population.

<http://www.statcan.ca/english/freepub/89-589-XIE/pdf/89-589-XIE03001.pdf>

This survey provides a statistical overview of the situation of non-reserve indigenous peoples in Canada. It highlights the rampant urbanization of aboriginal peoples and reviews their situation in terms of access to healthcare, education, housing and water. Based on statistical research and analysis, the survey also assesses the extent to which aboriginal peoples are able to preserve their languages and cultures outside reserves.

Ecuador

Organization of American States, Inter-American Commission on Human Rights, (1997), Report on the situation of human rights in Ecuador. Chapter IX. Human Rights Issues of Special Relevance to the Indigenous Inhabitants of the Country.

<http://www.cidh.oas.org/countryrep/ecuador-eng/chaper-99.hh>

This chapter focuses on human rights violations experienced by indigenous peoples in Ecuador. It emphasizes how violations of indigenous rights to equal protection and freedom from discrimination continue to plague indigenous peoples; ability to secure proper land rights and protect their culture. It concludes with references to International human rights conventions and recommendations to the Ecuadorian government to uphold indigenous peoples' rights.

México

Psacharopoulos G. and Patrinos, H.A., (eds.), World Bank Regional and Sectoral Studies, (1994), Indigenous peoples and poverty in Latin America: an empirical analysis , Washington, D.C.

http://www.eric.ed.gov/ERICWebPortal/custom/portlets/recordDetails/detailmini.jsp?_nfpb=true&_ERICExtSearch_SearchValue_0=ED411122&ERICExtSearch_SearchType_0=no&accno=ED411122

This book documents the socio-economic conditions of indigenous peoples in Latin America, suggesting how it can be improved through education and other policies. Indigenous peoples are a significant part of Latin American population and suffer from severe and widespread poverty. The authors review the literature on indigenous peoples around the world, with a specific statistical overview of Latin America. Case studies



profile the indigenous populations in Bolivia, Guatemala, Mexico, and Peru, reviewing their distribution, education, incomes, labour force participation and differences in gender roles. A final chapter offers recommendations for future research.

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

Develop meaningful relationships with diverse groups of indigenous peoples and representative institutions.

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.

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

Develop housing laws, policies and programs that improve the housing conditions of indigenous individuals in conformity with the right to adequate housing.

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.

In conjunction with indigenous women, incorporate a culturally relevant gender analysis into housing policy and legislative reviews, developments and implementation.

Use best practices of indigenous peoples' housing from other jurisdictions to inform housing policy review, design, development and implementation.



DON'T

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.

Exclude indigenous peoples and representatives in the review, development or implementation of housing laws, policies and programs.

Assume that good-housing laws on the books means good housing practice on the ground.

Assume a housing law, policy or program that benefits the general population will equally benefit all indigenous individuals and peoples.

Assume that governments and/or indigenous peoples have applied a culturally relevant gender analysis.

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.

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