



African Human Rights and Access to Justice Programme

Legal Opinion Case No. 132-133-134

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The core issue implicated in these cases is the forced evictions of local peoples from their villages by private multinational with the consent of the Government and the violation of the right to housing as spelt in the International Covenant on Economic Social Cultural Rights and other international conventions.

Summary of the opinion:

The right to housing is protected in many international instruments, *in primis* the International Covenant on Economic, Social, Cultural Rights, a treaty to which the State of Ghana is party. Forced evictions are allowed only in exceptional circumstances, with due procedural forms and with the provision of compensation and alternative and adequate resettlements. Governments are responsible under the Covenant that there are no homeless as a result of the evictions.

Question on which opinion is sought:

The Plaintiffs are owners and residents of different villages in the Western Region of the State of Ghana. The Defendant, an Australian Mining Company, demolished buildings and crops belonging to the Plaintiffs situated on a track of land, which forms part of a mineral concession, granted by the Government. Up to today, the Government has not provided plaintiffs and the other residents with alternative accommodation and compensation for the damages. This is fundamentally a case of forced eviction illegal under international law and violation of the right to housing as defined in several international instruments.

The legal opinion develops in three parts:

1) **The definition of the right to housing and the problem of forced eviction considered under international law.**

Under this part, the international conventions, treaties and international bodies resolution on eviction and right to housing are presented and examined

2) **The foundation of Ghana obligation under international law.**

After a brief introduction of the different sources of law at international level, the chapter focuses on the State of Ghana's obligations under international law.

3) **Remedies and conclusions**

The third part presents different possibilities for the plaintiff for the protection of the right to housing at international level.

PART 1
HOUSING RIGHTS AND THE PRACTICE OF FORCED EVICTION IN
INTERNATIONAL LAW – Definition and Legal Resources

[The] practice of forced eviction constitutes a gross violation of human rights, in particular the right to adequate housing.

COMMISSION ON HUMAN RIGHTS RESOLUTION 1993/77¹ (Para. 1)

Introduction

International human rights law establishes norms and principles touching on virtually all facets of life. This is reflected in the consistent reaffirmation by the international community of the indivisibility and interdependence of all human rights, whether civil, cultural, economic, political or social. The indispensable equality of all human rights, now firmly entrenched in the provisions of international human rights instruments, is particularly evident when examining human rights violations relating not just to one right, but also to a broad range of human rights. One such infringement of human rights is the practice of forced evictions: the removal of individuals, families or communities from their homes, land or neighbourhoods, against their will, directly or indirectly attributable to the State.

Tolerated in most societies and officially encouraged in many, forced evictions dismantle what people have built over months, years and sometimes decades, destroying the livelihood, culture, community, families and homes of millions of people throughout the world every year. Far from offering solutions to housing or urban crises, forced evictions destroy the dwellings and human settlements people call home and could perhaps be more appropriately labelled as a method of "de-housing", rather than as a practice representing a constructive, human-oriented response to the ongoing global housing crisis.

In recent years, there has been marked international recognition of the negative human rights implications, which can and often do result from forced evictions. An emerging global consensus on the unacceptability of forced evictions is increasingly evident. One United Nations Special Rapporteur has emphasized that *"the issue of forced removals and forced evictions has in recent years reached the international human rights agenda because it is considered a practice that does grave and disastrous harm to the basic civil, political, economic, social and cultural rights of large numbers of people, both individual persons and collectivities"* (E/CN.4/Sub.2/1993/8, para. 21).

¹ www.unhcr.ch/html/menu6

Housing Rights in International Law

... The right to adequate housing [is] a basic human right ... people should be protected by law against unfair eviction from their homes or land.

AGENDA 21² (Paras. 7.6 and 7.9 (b))

Housing rights are entrenched in a number of international human rights instruments. The legal resources listed below — declarations, covenants and conventions — together form the body of international law recognising housing rights. Although the legal nature of the various standards differs, they are all relevant sources referring to housing rights:

- **The Universal Declaration of Human Rights**

The Universal Declaration of Human Rights is the first major international agreement on human rights. It is considered to have been the inspiration to all subsequent human rights treaties. It is also the first human rights standard to recognise housing rights. Adopted and proclaimed by the General Assembly on 10 December 1948, Article 25 of the UDHR enshrines a specific right for everyone to adequate housing:

Article 25. Everyone has the right to a standard living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

- **International Covenant on Economic, Social and Cultural Rights**

At the international level, the most significant articulation of the right to housing is found in the International Covenant on Economic, Social and Cultural Rights (ICESCR). The ICESCR became law on 3 January 1976 and is now legally binding on more than 140 countries, the State of Ghana amongst those. The right to adequate housing is found in article 11(1). This is the most legally significant universal codification provision recognizing this right and has been subject to the greatest analysis, application and interpretation of all international legal sources of housing rights. Although the Covenant recognises the right to housing as a part of the larger right to an adequate standard of living, under international human rights law the right to adequate housing is understood as an independent or free-standing right.

Article 11(1). The State parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and for 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, recognizing to this effect the essential importance of international co-operation based on free consent.

- **Convention on the Elimination of All Forms of Racial Discrimination**

The Convention on the Elimination of All Forms of Racial Discrimination entered into force on 4 January 1969 and is currently legally binding on 158 countries,

Article 5(e)(iii). In compliance with the fundamental obligations laid down in article 2 of this Convention, State Parties undertake to prohibit and eliminate racial discrimination in all of its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin to equality before the law, notably in the enjoyment of the following rights:...(e) in particular...(iii) the right to housing.

- **Convention on the Elimination of All Forms of Discrimination Against Women**

² See note no. 1

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) entered into force on 3 September 1981 and is now legally binding on 163 countries,

Article 14(2)(b). State Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right... (b) to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

- Convention on the Rights of the Child

The Convention on the Rights of the Child became law on 2 September 1990 and is now legally binding on 191 countries,

Article 27(3). State Parties in accordance with national conditions and within their means shall take appropriate measure to assist parents and others responsible for the child to implement this right and shall in the case of need provide material assistance and support programmes, particularly with regards to nutrition, clothing and housing.

The Declaration on Social Progress and Development, the Declaration of the Rights of the Child, the Vancouver Declaration on Human Settlements, 1976³, the 1978 Declaration on Race and Racial Prejudice, adopted by the United Nations Educational, Scientific and Cultural Organization (UNESCO), the Declaration on the Right to Development and many other texts affirm the human right to adequate housing.

Several recently established human rights standards recognize the housing requirements of certain social groups, such as migrant workers, disabled persons, the elderly and indigenous peoples. See for example:

- International Convention Relating to the Status of Refugees (1951)
- International Labour Organization (ILO) Convention No. 169 Concerning Indigenous and Tribal Peoples
- International Labour Organization (ILO) Convention No. 161 Concerning Occupational Health Services (1985)
- International Labour Organization (ILO) Convention No. 117 Concerning Social Policy (Basic Aims and Standards) (1962)
- International Labour Organization (ILO) Convention No. 110 Concerning Plantations (1958)
- International Labour Organization (ILO) Convention No. 82 Concerning Social Policy (Non-Metropolitan Territories) (1947)

A series of United Nations resolutions reaffirming housing as a fundamental human right have been adopted since 1986. Statements have been issued in the context of the 1996 United Nations Conference on Human Settlements (Habitat II) by more than 10 United Nations human rights and other institutions supporting further efforts towards achieving the right to housing for all. An experts meeting was convened in early 1996 by the United Nations Centre for Human Rights and the United Nations Centre for Human Settlements (Habitat) which again called for renewed United Nations action towards clarifying, strengthening and supplementing the right to adequate housing⁴.

³ See note no. 1

⁴ The right to housing is mentioned also in international humanitarian and criminal law, which applies in time of war, thus does not concern directly our case: Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War; 1977 Geneva Protocols I and II Additional to the Geneva Conventions of 12 August 1949; Statute of the International Tribunal for the Former

A number of regional human rights instruments also codify housing rights.

- European Convention on Human Rights and Fundamental Freedoms

Article 8(1): Everyone has the right to respect for his private and family life, his home and his correspondence.

Article 1 of Protocol No. 1 of the ECHR: Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

1(2) The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

Article 2(1) of Protocol No. 4 of the ECHR: Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

- European Social Charter

Adopted in 1961 and then revised and amended in 1996 to include article 31 on housing rights. Housing rights provisions are also found in articles 16 and 19(4) of the Charter and within article 4 of the Additional Protocol to the Charter.

- European Community Charter of Fundamental Social Rights (1989)

Article 29: All disabled persons, whatever be the origin and nature of their disablement must be entitled to additional concrete measures aiming at improving their social and professional integration. These measures must concern, in particular, according to the capacities of the beneficiaries, vocational training, ergonomics, accessibility, mobility, means of transport and housing.

- Charter of the Organization of American States (1948)

Article 34 (k); To accelerate their economic social development, in accordance with their own methods and procedures and within the framework of the democratic principles and the institutions of the Inter-American System, the Member States agree to dedicate every effort to achieve the following goals... (k) Adequate housing for all sectors of the population.

- American Declaration on the Rights and Duties of Man (1948)

Article 8: Every person has the right to fix his residence within the territory of the state of which he is a national, to move about freely within such territory, and not to leave it except by his own will.

Article 11: Every person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care to the extent permitted by public and community resources.

Article 23: Every person has the right to own such property as meets the essential needs of decent living and helps maintain the dignity of the individual and of the home.

- Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (1988)

Article 11: Everyone shall have the right to live in a healthy environment and to have access to basic public services.

Forced Evictions in International Law

Yugoslavia; Statute of the International Tribunal for Rwanda; Rome Statute of the International Criminal Court.

The practice of forced eviction involves the removal of persons from their homes or land, directly or indirectly attributable to the State. It entails the effective elimination of the possibility of an individual or group living in a particular house, residence or place, and the assisted (in the case of resettlement) or unassisted (without resettlement) movement of evicted persons or groups to other areas.

According to international law, forced eviction is a gross violation of human rights, depriving women, men and children of the human right to adequate housing. The right to housing guarantees security of tenure and legal protection against forced eviction for all people. As pointed out in a report by the Secretary-General to the Commission on the Status of Women, resettlement and evictions should be avoided, since they particularly increase the vulnerability of women and children and because women bear the brunt of traumatized and dislocated communities (E/CN.6/1994/3, para. 5). Another commentator has suggested that "*by its very nature, displacement is a disruptive and painful process. Economically and culturally ... it creates a high risk of impoverishment that typically occurs along one or several of the following dimensions: landlessness, joblessness, homelessness, marginalisation, food insecurity, morbidity and social disarticulation*"⁵.

The Committee on Economic, Social and Cultural Rights has placed considerable emphasis on forced evictions and has asserted, in its *General Comment No. 4* (1991) on the right to adequate housing⁶, that "*instances of forced eviction are prima facie incompatible with the requirements of the [International Covenant on Economic, Social and Cultural Rights] and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law*" (para. 18).

The term "**exceptional circumstances**" is important. By identifying precisely what such circumstances are, it can be determined what types of forced eviction are unacceptable. According to the jurisprudence of the Committee on Economic, Social and Cultural Rights, activities, which could constitute "exceptional circumstances", include:

- (a) Racist or other discriminatory statements, attacks or treatment by one tenant or resident against a neighbouring tenant;
- (b) Unjustifiable destruction of rented property;
- (c) Persistent non-payment of rent despite a proven ability to pay, and in the absence of unfulfilled duties of the landlord to ensure dwelling habitability;
- (d) Persistent antisocial behaviour which threatens, harasses or intimidates neighbours, or persistent behaviour which threatens public health or safety;
- (e) Manifestly criminal behaviour, as defined by law, which threatens the rights of others;
- (f) Illegal occupation of property which is inhabited at the time of the occupation;
- (g) Occupation of land or homes of occupied populations by nationals of an occupying power.

The human costs of forced evictions are indeed substantial and can involve a wide range of additional negative impacts on the lives and livelihood of those affected. Evicted people not only lose their homes and neighbourhoods, in which they have often invested a considerable proportion of their incomes over the years, but are also often forced to relinquish their personal possessions, since usually no warning is given before bulldozers or demolition squads destroy their settlements. Evictees also lose the often complex reciprocal relationships which provide a safety net or survival network of protection against the costs of ill health, income decline or the loss of a job, and which allow many tasks to be shared. They often lose one or

⁵ See: www.unhcr.ch/html/menu6/2

⁶ *Ibid*

more sources of livelihood as they are forced to move away from the area where they had jobs or sources of income.

The manner in which many evictions are carried out in practice, notwithstanding the existence of guidelines on relocation, contributes significantly to the human hardships inherent in the process. According to the Development Assistance Committee of the Organisation for Economic Cooperation and Development (OECD): *Development projects that displace people involuntarily generally give rise to severe economic, social and environmental problems: production systems are dismantled, productive assets and income sources are lost, and people are relocated to environments where their social and productive skills may be less applicable and the competition for resources greater. Involuntary resettlement thus may cause severe long-term hardship, impoverishment and environmental damage unless appropriate measures are carefully planned and carried out. Past experience indicates that the absence of explicit guidelines regarding involuntary resettlement has contributed in many projects to underestimating, the complexity and impact of displacement*⁷.

Attempts are being made at different levels to guide the eviction process so that inordinate harm and suffering are mitigated. The impetus for adopting such guidelines clearly comes from the recognition of the negative human consequences of this process.

General Comment No. 7 (Para. 16) outlines a number of procedural protections considered necessary to protect the human rights of individuals in the case of eviction.

- a) Relocation should be avoided where possible and minimized when not avoidable;
- b) When relocation is unavoidable, a relocation/resettlement plan should be prepared and implemented which allocates sufficient resources to ensure that those affected are fairly compensated and rehabilitated. They should benefit from the development process on a sustainable basis. At minimum, they should be no worse off than before relocation;
- c) There should be full participation in the planning and management process by the main parties involved, in particular the communities affected;
- d) The parties benefiting from the development causing the relocation should pay the full costs of the relocation process, including the socio-economic rehabilitation of those affected to at least their former level.

Forced evictions: a violation of human rights

In general, we can say that the United Nations Commission on Human Rights has affirmed that forced evictions are “a gross violation of human rights” and a practice resulting in “inhumane acts . . . causing great suffering, or serious injury to body or to mental or physical health.”⁸

All stages of the eviction process have identifiable human rights implications. While the right to adequate housing is perhaps the most obvious human right violated by forced evictions, a number of other rights are also affected. The rights to freedom of movement and to choose one's residence, recognized in many international laws and national constitutions, are infringed when forced evictions occur. The right to security of the person, also widely established,

⁷ See: www.unhcr.ch/html/menu6/2/

⁸ United Nations Commission on Human Rights, resolution 1993/77, UN Doc. E/CN.4/RES/1993/77.

means little in practical terms when people are forcibly evicted with violence, bulldozers and intimidation. When children are unable to attend school due to a forced eviction, the right to education is sacrificed. When people lose their source of employment, the right to work is breached. When psychological and physical health is damaged by the constant threat of eviction, issues of the right to health are raised. When families and communities are torn apart by eviction, the right to family life is infringed. When uninvited eviction squads forcibly enter one's home, the rights to privacy and to security of the home are violated. Emerging human rights such as the right to remain in one's home or land and the right to return to one's home can equally be lost in the event of a forced eviction.

Over the years several United Nations bodies, including the UN Commission on Human Rights, have developed consistent standards unequivocally stating that forced evictions constitute grave violations of human rights, especially the right to adequate housing. Indeed, bodies such as the UN Committee on Economic, Social and Cultural rights have increasingly developed the practice of declaring certain countries to have violated the rights of their residents because of forced evictions.

The following are some of the more prominent international standards and statements of principle addressing the practice of forced eviction:

- General Comment No. 7 on the Right to adequate Housing (E/C.12/1997/4)

The leading legal interpretation of the right to be protected against forced eviction is General Comment No. 7 adopted by the Committee on Economic, Social and Cultural Rights in 1997. This general comment represents the most far-reaching decision yet under international law on forced evictions and human rights, detailing what governments, landlords and institutions must do to prevent forced evictions.

Para. 4: The practice of forced evictions is widespread and affects persons in both developed and developing countries. Owing to the interrelationship and interdependency that exist among all human rights, forced evictions frequently violate other human rights. Thus, while manifestly breaching the rights enshrined in the Covenant, the practice of forced evictions may also result in violations of civil and political rights, such as the right to life, the right to security of the person, the right to non-interference with privacy, family and home and the right to the peaceful enjoyment of possessions.

- Committee on Economic, Social and Cultural Rights General Comment No. 4 on the Right to adequate Housing

General Comment No. 4, released in 1990, made it clear that forced evictions are a violation of human rights.

Para 18: "instances of forced evictions are prima facie incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law."

The General Comment also states that all persons should possess a degree of security of tenure, which guarantees legal protection against forced eviction, harassment and other threats (para. 8 (a)). The same text asserts that legal appeals aimed at preventing planned evictions or demolitions through the issuance of court-ordered injunctions and legal procedures seeking compensation following an illegal eviction should be available (para. 17).

- Conclusions and Recommendation of the Expert Group Meeting on the Right to Adequate Housing, convened by UNCHS (Habitat) and the United Nations Centre for Human Rights.

This meeting, in Geneva on 18/19 January 1996, contributed to the accomplishment of a consensus on the existence and international recognition of the human right to adequate housing. In article 8 of the Conclusion and Recommendations, the Expert Group states that:
"Among the core areas of the State role in realising the human right to adequate housing are provisions of security of tenure...prevention of illegal and mass evictions, elimination of homelessness and promotion of participatory processes for individuals and families in need of housing."

- Forced Evictions and Human Rights Fact Sheet No. 25, from the Office of the United Nations High Commissioner for Human Rights

This fact sheet, from May 1996, examines the issue of forced evictions in an international human rights framework and outlines the distinct connections between forced evictions and human rights. It also outlines the relevant international, regional, national and local legal and other developments addressing this topic.

- Agenda 21

This document adopted by the United Nations Conference on Environment and Development in 1992⁹ directly addresses the issue of forced evictions. It states:

All countries should adopt and/or strengthen national shelter strategies, with targets based, as appropriate, on the principles and recommendations contained in the Global Strategy for Shelter to the Year 2000. People should be protected by law against unfair eviction from their homes or land ... (Para. 7.9 (b).)

The jurisprudence of other treaty bodies within the United Nations system, as well as of bodies responsible for monitoring regional human rights instruments, reflects the position that forced evictions constitute a violation of a broad range of human rights. In general, it appears that a global consensus is emerging which recognizes the essential illegality of forced evictions under international human rights standards and regards the practice as a clear violation of a broad range of basic human rights.

- ❖ Commission on Human Rights Resolution 1993/77 on Forced Evictions

The Commission on Human Rights is the world's most important human rights body. While resolutions adopted by this body are not per se legally binding on governments, they are considered important normative standards and they possess political legitimacy as they are adopted by governments. The Commission's Resolution on March 10 1993 (1993/77), affirms the practice of forced eviction constitutes a grave violation of human rights, and *"recommends that all Governments provide immediate restitution, compensation and/or appropriate and sufficient alternative accommodation or land, consistent with their wishes and needs."*

- ❖ Sub-Commission on the Protection and Promotion of Human Rights Resolution 1998/9 on Forced Evictions

Adopted August 20 1998, the resolution, among other things, urges governments to protect those currently threatened with forced evictions, repel existing plans for forced evictions and include in negotiations and consultation the affected persons or groups.

- ❖ Sub-Commission on Prevention of Discrimination and Protection of Minorities resolution 1991/12 of 26 August 1991

It provides guidance in determining the legal responsibilities of those who evict. It states that *"forced evictions can be carried out, sanctioned, demanded, proposed, initiated or tolerated by a number of actors,*

⁹ See note no. 7

including, but not limited to, occupation authorities, national Governments, local governments, developers, planners, landlords, property speculators and bilateral and international financial institutions and aid agencies". The resolution goes on to emphasize "*ultimate responsibility for preventing evictions rests with Governments*" (preamble).

❖ The Commission on Human Settlements has urged all States to cease any practices which result, or could result, in infringements of the human right to adequate housing, in particular the practice of forced mass evictions and any form of racial or other discrimination in the housing sphere.

PART 2: THE FOUNDATIONS OF GHANA'S OBLIGATIONS UNDER INTERNATIONAL LAW

Introduction: different sources of international law

Before examining the foundations of Ghana obligations under international law, it's important to recall the binding force of the different sources of international law.

Customary international law is the term used to describe a general and consistent practice followed by States that derives from a sense of legal obligation. For example, while the Universal Declaration of Human Rights is not a binding treaty, some of its provisions have the character of customary international law in that they are consistently applied by States. The international customary law and the general principles of law apply to every state, even to those who didn't concur to their creation. Such rules are juridical binding every participant to the international community.

Conversely, the international treaties and covenants apply to one State only if appositely ratified by its government. The Vienna Convention on the Law of Treaties, article 2(1)(a), defines a treaty as "an international agreement concluded between States in written form and governed by international law....". Treaties and conventions bind the states with specific obligations to which, most important, *correspond specific rights of the individuals*. In case the state fails to respect these obligations, the citizens are entitled to claim the violation of their own rights before a national and/or an international tribunal. We can therefore conclude that to the state international obligations follow the citizens' rights to bring a legal action¹⁰.

General norms of international law principles and practices to which most States would agree are often stated in declarations, proclamations, standard rules, guidelines, recommendations and comments. While they are not legally binding on States, they nevertheless represent a broad consensus of the international community and, therefore, have a strong moral force on the practice of States in their international relations. The value of such instruments rests in their recognition and acceptance by a large number of States. Even without binding legal effect, they may be seen as declaring principles widely accepted within the international community.

The foundation of Ghana's obligations in case of forced evictions under international law

The justification used by governments to legitimise their acts of forced eviction can never excuse the violations of others civil and political rights. As the Vienna Declaration and

¹⁰ Even the international habits and principles can entitle the individuals to specific rights. For example, in case of *crimina iuris gentium* or crimes against humanity, like genocide or apartheid, every single individual can claim the violation of his specific rights to life in Court.

Programme of Action (1993) states: "*while development facilitates the enjoyment of human rights, the lack of development may not be invoked to justify the abridgement of internationally recognised human rights.*" While development projects or urban development policies are important, it is as important that communities and individuals have a right to be protected against "arbitrary or unlawful interference" with their homes.

It is clear from the findings in Part 1, that the evictions carried out by Goldfields Ltd in the Tarqwa District are in violation of international law and specifically:

□ **Universal Declaration of Human Rights**

The Universal Declaration of Human Rights has been signed by the State of Ghana; furthermore, this document is nowadays considered as part of customary international law, thus binding every state part of the international community, whether party of the Declaration or not.

The Government of Ghana is in breach of the Universal Declaration of Human Rights in Article 25 para. 1 (right to adequate living standard and housing) in that has allowed forced evictions happening in Tarqwa district, without due procedurals forms and provision of adequate alternative housing for evictees.

□ **ICESCR**

The State of Ghana is among the States signatories of the International Covenant on Economic, Social and Cultural Rights (ICESCR). Therefore, the provisions of this treaty are binding in the Ghana's territory.

The actions of the Government of Ghana are clear violations of the International Covenant on Economic, Social and Cultural Rights (Covenant), in particular the right to adequate housing enshrined in Article 11(1) of the Covenant. According to General Comment No. 4, "*instances of forced eviction are prima facie incompatible with the requirements of the [International Covenant on Economic, Social and Cultural Rights] and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law*" (para. 18). Therefore, the burden is on the Government of Ghana to "fully justify" the evictions and demolitions as a means of furthering the totality of human rights enshrined in the Covenant on Economic, Social and Cultural Rights. The facts of this case clearly indicate that such a justification is not possible and thus the eviction of residents from and the demolition of homes constitutes a violation of the human right to adequate housing as enshrined in the Covenant.

In the light of the interpretation of the UN General Assembly in *General Comment no. 7*, the ICESCR also requires that Governments take "*all appropriate means*" to promote and protect the right to housing and to protect against forced evictions. Procedural protections are required in those exceptional cases where there is no alternative to eviction. Procedural protection should include:

- a. An opportunity for genuine consultation with those affected;
- b. Adequate and reasonable notice for all affected persons prior to the date of the eviction;
- c. Information on the proposed eviction should be made available in a reasonable time to those affected;
- d. Government officials or their representatives should be present during an eviction; persons carrying out the eviction should be properly identified;
- e. Evictions should not take place in particularly bad weather or at night;
- f. Legal remedies should be available and

g. Legal aid should be available to those in need of it to seek redress from the courts.

The State of Ghana is in breach of ICESCR according to the *General Comment no 7* in that did not provided any opportunity for genuine consultation with the people evicted, nor adequate information. Furthermore, the State of Ghana lacks of a proper legislation regulating the forced evictions.

The Committee on Economic, Social and Cultural Rights in General Comment No. 7 (1997) states that no matter the cause "*Evictions should not result in rendering individuals homeless or vulnerable to the violation of other human rights (Para. 17).*" According to the interpretation of ICESCR in General Comment no. 7, States are obliged to ensure that no individual or family is rendered homeless as a result of the eviction. In turn, where those affected are unable to provide for themselves, the State party must take all appropriate measures to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available. Therefore, the State of Ghana is in breach of the ICESCR in that it did not provided opportunities to prevent homelessness for the evictees.

Alternative resettlement in case of forced eviction is also mentioned in the Ghana's Constitution, thus the State of Ghana is in breach also of its own Constitution.

According to the General Comment no 4, Article 11(1) of the Covenant also requires that:
... all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups

Therefore the State of Ghana is also in breach of its obligation to provide a legislation that guarantees the security of tenure against forced evictions.

This obligation is also mentioned in the Ghana's Constitution.

The Committee on Economic, Social and Cultural Rights has also requested Governments which have ratified the ICESCR to provide it periodically with various types of information pertaining directly to the practice of forced eviction. For instance, States parties are requested to provide information as to the number of persons evicted in the past five years and the number of persons currently lacking legal protection against arbitrary eviction or any other kind of eviction; information on legislation concerning the rights of tenants to security of tenure and to protection from eviction, as well as on legislation specifically prohibiting any form of eviction; and information on measures taken during, *inter alia*, urban renewal programmes, redevelopment projects, site upgrading, etc. which guarantee protection from eviction or rehousing based on mutual consent for any persons living at or near the affected sites.

The State of Ghana is also in breach of the ICESCR in that it has not yet provided the Committee with the requested reports and information.

□ ICERD

The International Convention on the Elimination of All Forms of Racial Discrimination prohibits and obliges States parties to eliminate racial discrimination in all its forms in the enjoyment of, *inter alia*, the right to housing (art. 5 (e) (iii)). The eviction of local residents and demolition of their homes might amounts to discrimination against indigenous peoples, in the

case that the evictees are all part of the same ethnic group or minority in Ghana. In this case, the evictions violate also the legal obligations under the CERD.

In Article 2(1), each State Party agreed:

(a) ... to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation; and

(c) ... [to] take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists....

Article 6 of the CERD concerns the role of this and other courts. In it, the States Parties undertook to "assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination."

□ CEDAW

The Convention on the Elimination of All Forms of Discrimination against Women requires States parties to eliminate discrimination against women in rural areas and to ensure to such women the right "to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply" (art. 14, para. 2 (b)).

As far as the forced evictions carried out in Ghana result in violations of other fundamental human rights, the State of Ghana might be considered in breach of both the ICCPR and the African Charter in the following provisions:

□ ICCPR:

Art 9 (liberty and security of person); Art 12 (liberty of movement and freedom to choose his residence); Art 17 (interference with privacy, family, home).

□ African Charter:

Art 12 (rights to freedom of movement and to choose one's residence); Art 6 (right to security of the person); Art 17 (right to education); Art 14 (right to property); Art 15 (right to work); Art 18 (right to family life); Art 22 (rights to economic, social, cultural development).

Both treaties have been signed and ratified by the State of Ghana, thus are binding in its territory.

PART 3

REMEDIES IN INTERNATIONAL LAW AND CONCLUSIONS

... all citizens of all States, poor as they may be, have a right to expect their Governments to be concerned about their shelter needs, and to accept a fundamental obligation to protect and improve houses and neighbourhoods, rather than damage or destroy them.

GLOBAL STRATEGY FOR SHELTER TO THE YEAR 2000¹¹ (Para. 13)

¹¹ See note 1

Not only is the right to housing one of the most developed economic, social and cultural rights in terms of content, but a number of the constituent elements of the right to housing are adjudicated in courts of law, tribunals and other legal and quasi-legal forums on a daily basis. Regional and international human rights bodies, such as: the European Court of Human Rights; the UN Committee on Economic, Social and Cultural Rights; the UN Committee on the Elimination of All Forms of Racial Discrimination have directly considered housing rights issues in their case law or jurisprudence.

The United Nations system has a number of procedures by which groups and individuals can make complaints or otherwise bring their human rights concerns to the attention of a wide range of UN human rights mechanisms¹². Basically, there are two ways in which the supervisory committees monitor a State Party's performance on implementing its human rights treaty obligations. The first is by considering complaints from individuals that their rights under a particular treaty have been violated. The second way is through the State reports procedure. Most human rights treaties rely heavily on a State reporting procedure and on the authority of the committee in question to review such reports in order to determine whether or not States parties have complied with the various obligations involved. Under the International Covenant on Economic, Social and Cultural Rights, for example, all States parties are required under articles 16 and 17 to submit comprehensive reports once every five years outlining all legislative, policy and other measures which they have taken to ensure compliance with the rights set out in the Covenant.

ICESCR

The International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Rights of the Child (CRC) do not have complaints mechanisms, but they consider reports, regularly submitted by governments, on how those governments are implementing treaties. States Parties to any of the treaties listed above are legally obliged to submit these reports, as all the treaties provide for a reporting procedure. In its reports, a government must inform the relevant supervisory body of measures taken to implement the human rights obligations contained in the corresponding treaty.

The ICESCR does not yet include an individual complaints mechanism. Despite the absence of a formal complaints procedure within a treaty, however, the Committee on Economic, Social and Cultural Rights is able, through the examination of States parties' reports, the adoption of legally interpretative "General Comments" on certain provisions of the treaty (elaborating States' obligations arising from the treaty) and the receipt of information from United Nations specialized agencies (ILO, WHO, UNESCO, etc.) and non-governmental organizations, to make consistent, balanced and constructive observations as to the degree to which States parties are complying with their obligations under international law. The Committee has often declared countries that have carried out forced evictions as violators of the Covenant.

In particular, the Committee:

- Receives the required States reports from governments every five years;
- Receives parallel or shadow reports from NGOs;

¹² For a general overview and links to specific mechanisms see <http://www.unhcr.ch/html/menu2/complain.htm#conv>

- Requests further information and clarification of particular issues that may constitute violations of rights contained in the ICESCR;
- Conducts oral hearings where it questions representatives of States parties regarding laws and policies related to economic, social and cultural rights;
- Listens to oral submissions from NGOs during its sessions in Geneva;
- Assess all of the information it has received throughout the review process;
- Writes reports — Concluding Observations — evaluating each State party's performance based on this information;

General Comment No. 4 identifies six specific areas within the right to housing that are capable of judicial scrutiny:

1. Legal appeals aimed at preventing planned evictions through the issuance of injunctions;
2. Legal procedures seeking compensation following an illegal eviction;
3. Complaints against illegal actions carried out or supported by landlords in relation to rent levels, dwelling maintenance, and racial or other forms of discrimination;
4. Allegations of any form of discrimination in the allocation and availability of access to housing;
5. Complaints against landlords concerning unhealthy or inadequate housing conditions;
6. Class action suits in situations involving significantly increased levels of homelessness.

In the Concluding Observations about government's performance under the Covenant the Committee may urge the government to adopt new legislation, for example regularization of land ownership arrangements, and request that a government do not take a planned action that would violate the Covenant, for example a mass forced eviction.

In case of emergency, the Committee may also send letters to governments concerning emergency human rights situations involving pending and clear violations of the Covenant.

Currently lacking a formal petition procedure, the Committee on Economic, Social and Cultural Rights has agreed to receive written submissions from non-governmental organizations and to hear oral information from them in the context of its consideration of reports of States parties on the implementation of particular articles of the Covenant. Information that highlights weaknesses in a State's report, such as **alternative reports**, can be sent directly to the relevant supervisory committee in Geneva. The most effective approach is to coordinate with other organizations that are also preparing information on the State's report for a particular treaty. That way, the committee will receive a comprehensive alternate view to the State's report.

NGOs may also consider going to Geneva at the time the committees are considering the reports to emphasize to members of the committees the shortcomings in the reports and any gaps between the report and reality. In July 2000, the Committee on Economic, Social and Cultural Rights adopted a paper on the participation of NGOs in its work (document number E/C.12/2000/6)¹³.

ICCPR, CERD, CEDAW, CAT

¹³ The paper can be found under "Other treaty-related documents" in the Treaty Body Database of the OHCHR web site (www.unhchr.ch). This document provides useful information on how NGOs can contribute effectively to the Committee's work, as it is based on the Committee's extensive experience in working with NGOs.

The International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention Against Torture (CAT), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) include **individual complaints** mechanisms before the respective monitoring committees.

A committee will only consider complaints that are made against a country that has agreed to be bound by the treaty. The procedures for handling complaints are similar for all three of these instruments. In a quasi-judicial process, the relevant committee considers a complaint and the comments of the government concerned, and reaches a view as to whether or not a violation has occurred. The consideration of complaints does not require a personal appearance by complainants or other parties before the committee, and the committee's views are not legally binding on governments. However, views are persuasive; ignoring them would leave a government that is not complying with its international obligations open to criticism, both at home and abroad. If the committee finds that the rights set out in the treaty have been violated, there will be an expectation that the government concerned will take appropriate actions to remedy the situation¹⁴.

The complaints mechanism of the ICCPR is the best established within the UN human rights system. Since 1976, the Human Rights Committee has made findings on about 1,000 complaints, from people in many different countries, about violations of this Covenant. A smaller but growing number of complaints have been filed under CERD and CAT. CERD's complaints mechanism allows *groups*, not just individuals, to take their complaints to the Committee on the Elimination of Racial Discrimination.

As a general rule, the complaint cannot be considered if the same problem is being investigated under another international procedure, and all domestic remedies must have been exhausted before it can be taken up by the Committee.

African Commission for Human and Peoples' Rights

The African Commission for Human Rights monitors the African Charter on Human and Peoples' Rights. The African Commission considers communications from State parties to the Charter. Pursuant to Articles 55 and 56 of the Charter, the African Commission may also elect to consider communications from individuals alleging human rights violations under the Charter¹⁵.

Internal Jurisdiction

According to the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights⁽¹⁵⁾ *"States parties shall provide for effective remedies, including,*

¹⁴ Several bodies dealing with communications have developed model forms to make it easier to examine reports of human rights violations. These forms have been made available to persons who wish to report cases of alleged violations. Model forms can be found on the OHCHR web site, www.unhchr.ch, under "OHCHR Programme", "Conventional Mechanisms/Communication, complaints procedures" However, communications are considered even when they are not submitted on this form. All communications should clearly indicate the name of the Committee you are addressing and be sent to: (Name of the Committee concerned), OHCHR-UNOG, 1211 Geneva 10, Switzerland, FAX: 41-22-917-90-1

¹⁵ Web-site: http://www.oau-oua.org/oau_info/rules.htm

where appropriate, judicial remedies" (principle 19). At the national level, the judiciary must consider international human rights law as an interpretative aid to domestic law and ensure that domestic law is interpreted and applied in a manner consistent with the provisions of international human rights instruments ratified by the State. From the perspective of international law, the underlying principle is that courts should avoid placing their Government in violation of the terms of a treaty, which it has ratified. Generally, under international human rights law, States undertake to ensure certain human rights to all individuals under their jurisdiction and to do so without distinction as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. All States, therefore, as part of the international community, undertake to ensure, at minimum: (a) that any person whose rights or freedoms are violated shall have an effective domestic remedy for such violation, even if the violation has been committed by persons acting in an official capacity; (b) that any person claiming such remedy shall have his or her rights determined by a competent judicial, administrative or legislative authority, or by any other competent authority provided for by the legal system of the State, with a view to developing the possibilities of judicial remedy; (c) that the competent authorities shall enforce such remedies when granted.

The necessity of implementing international human rights obligations through domestic legislation is consistent with article 27 of the 1969 Vienna Convention on the Law of Treaties, which states that *"a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty"*. Indeed, the International Covenant on Economic, Social and Cultural Rights, for example, often requires legislative action to be taken in cases where existing laws are in violation of the obligations assumed under the Covenant. The Committee on Economic, Social and Cultural Rights emphasized the importance of domestic legal remedies with respect to illegal evictions or discrimination in access to housing in its General Comment No. 4 (1991) on the right to adequate housing

Right to reparation

In most cases, evicted persons and communities do not receive any form of compensation whatsoever; where it is provided, it tends to fall far short of the requirements of those moved. This situation is clearly unsatisfactory viewed from any angle, and even more so seen from the human rights perspective.

As pointed out in the analytical report of the Secretary-General on forced evictions, compensation and restitution may take various forms. Cash payments represent the most frequent form of compensation, although experience shows that the money offered is usually insufficient and it is argued that this type of indemnity by itself is an inadequate form of countering the problems involved in forced evictions (E/CN.4/1994/20, para. 180). Alternative accommodation at relocation sites is one of the most feasible ways to reduce the adverse effects of evictions. However, overcrowding, long distances from employment opportunities and previous neighbours, lack of basic amenities and a general decline in living conditions are too frequently characteristics of this alternative. At the other extreme, the costs of the alternative housing offered may far exceed the means of the evicted persons. Furthermore, in many cases the victims are offered no compensation whatsoever. Thus the situation with regard to the consequences of forced evictions is clearly unsatisfactory and points to the urgent need to avoid the practice in the first instance, rather than trying to "soften the blow" afterwards (*ibid.*, para. 181).

Few Governments will openly defend the legitimacy of an eviction without any form of compensation. States usually recognize the legitimacy of compensation-claims whether or not those affected actually receive adequate compensation or are occupying land in technically

illegal circumstances. This view has been reflected in a number of relevant texts, including Commission on Human Rights resolution 1993/77 of 10 March 1993: *... all Governments [should] provide immediate restitution, compensation and/or appropriate and sufficient alternative accommodation or land, consistent with their wishes and needs, to persons and communities that have been forcibly evicted, following mutually satisfactory negotiations with the affected persons or groups ...* (Para. 4.) The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the General Assembly in 1985, outlines basic compensatory principles which could be applied in the case of illegal evictions to victims of this clear violation of human rights. These include the following: (a) victims are entitled to prompt redress for the harm they have suffered; (b) victims should be informed of their rights in seeking redress; (c) offenders or third parties should make fair restitution to victims and their families or dependents. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights; (d) when compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation; (e) victims should receive the necessary material, medical, psychological and social assistance and support.